

CHAPTER 2010-134

Council Substitute for Committee Substitute for House Bill No. 1411

An act relating to foreclosures; amending s. 721.07, F.S.; providing lien disclosure requirements for filed public offering statements for certain timeshare plans; amending s. 721.13, F.S.; requiring officers, directors, and agents of a timeshare owners' association to act in good faith; providing for damages; providing exceptions; amending s. 721.16, F.S.; authorizing a managing entity to bring a judicial action or a trustee procedure to foreclose certain liens under specified conditions; revising when a lien is effective; renaming part III of chapter 721, F.S., to conform to changes made by this act; amending s. 721.81, F.S.; revising and providing legislative purposes of the part; amending s. 721.82 F.S.; revising and providing definitions; amending s. 721.83, F.S., relating to consolidation of foreclosure actions; clarifying application to judicial foreclosure actions; amending s. 721.85, F.S., relating to service to notice address or on registered agent; conforming provisions to changes made by this act; creating s. 721.855, F.S.; establishing procedure for the trustee foreclosure of assessment liens; providing for the appointment of a trustee; providing recording requirements for such liens; providing procedures for the initiation of a trustee foreclosure procedure against a timeshare interest; providing procedures for an obligor's objection to the trustee foreclosure procedure; providing conditions to a trustee's exercise of power of sale; providing requirements for a notice of default and intent to sell; providing requirements for a notice of sale; providing requirements for the sale by auction of foreclosed encumbered timeshare interests; providing requirements for a trustee's certificate of compliance; providing for the effect of a trustee's sale; providing requirements for a trustee's deed; providing for the disposition of proceeds of the sale; providing that the trustee foreclosure procedure does not impair or otherwise affect the right to bring certain actions; providing application; providing for actions for failure to follow the trustee foreclosure procedure; providing a criminal penalty; creating s. 721.856, F.S.; establishing procedure for the trustee foreclosure of mortgage liens; providing for the appointment of a trustee; providing recording requirements for such liens; providing procedures for the initiation of a trustee foreclosure procedure against a timeshare interest; providing procedures for an obligor's objection to the trustee foreclosure procedure; providing conditions to a trustee's exercise of power of sale; providing requirements for a notice of default and intent to sell; providing requirements for a notice of sale; providing requirements for the sale by auction of foreclosed encumbered timeshare interests; providing requirements for a trustee's certificate of compliance; providing for the effect of a trustee's sale; providing requirements for a trustee's deed; providing for the disposition of proceeds of the sale; providing that the trustee foreclosure procedure does not impair or otherwise affect the right to bring certain actions; providing for actions for failure to follow the

trustee foreclosure procedure; providing a criminal penalty; amending s. 721.86, F.S.; providing for priority of application in case of conflict; conforming terminology to changes made by this act; amending s. 721.20, F.S.; revising exemptions from certain licensing requirements; imposing an administrative fee on certain recorded trustee deeds; providing that revenues from such fees be deposited into the State Courts Revenue Trust Fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (jj) is added to subsection (5) of section 721.07, Florida Statutes, to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

(5) Every filed public offering statement for a timeshare plan which is not a multisite timeshare plan shall contain the information required by this subsection. The division is authorized to provide by rule the method by which a developer must provide such information to the division.

(jj) The following statement in conspicuous type:

The managing entity has a lien against each timeshare interest to secure the payment of assessments, ad valorem assessments, tax assessments, and special assessments. Your failure to make any required payments may result in the judicial or trustee foreclosure of an assessment lien and the loss of your timeshare interest. If the managing entity initiates a trustee foreclosure procedure, you shall have the option to object to the use of the trustee foreclosure procedure and the managing entity may only proceed by filing a judicial foreclosure action.

Section 2. Subsection (13) is added to section 721.13, Florida Statutes, to read:

721.13 Management.—

(13) Notwithstanding any provisions of chapter 607, chapter 617, or chapter 718, an officer, director, or agent of an owners’ association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the owners’ association. An officer, director, or agent of an owners’ association shall be exempt from liability for monetary damages in the same manner as provided in s. 617.0834 unless such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her

duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 3. Subsections (2) and (3) of section 721.16, Florida Statutes, are amended to read:

721.16 Liens for overdue assessments; liens for labor performed on, or materials furnished to, a timeshare unit.—

(2) The managing entity may bring a judicial ~~an~~ action in its name to foreclose a lien under subsection (1) in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing entity may initiate a trustee procedure to foreclose an assessment lien under s. 721.855.

(3) The lien is effective from the date of recording a claim of lien in the official public ~~public~~ records of the county or counties in which the timeshare interest is accommodations and facilities constituting the timeshare plan ~~timeshare plan~~ are located. The claim of lien shall state the name of the timeshare plan and identify the timeshare interest for which the lien is effective, state the name of the purchaser, state the assessment amount due, and state the due dates. Notwithstanding any provision of s. 718.116(5)(a) or s. 719.108(4) to the contrary, the lien is effective until satisfied or until 5 years have expired after the date the claim of lien is recorded unless, within that time, an action to enforce the lien is commenced pursuant to subsection (2). A claim of lien for assessments may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.

Section 4. Part III of chapter 721, Florida Statutes, entitled “Foreclosure of Liens on Timeshare Estates,” is renamed “Foreclosure of Liens on Timeshare Interests.”

Section 5. Section 721.81, Florida Statutes, is amended to read:

721.81 Legislative purpose.—The purposes of this part are to:

(1) Recognize that timeshare interests ~~estates~~ are parcels of real property ~~used for vacation experience rather than for homestead or investment purposes~~ and that there are numerous timeshare interests ~~estates~~ in this ~~the~~ state.

(2) Recognize that the economic health and efficient operation of the vacation ownership industry are in part dependent upon the availability of

an efficient and economical process for all timeshare interest foreclosures foreclosure.

(3) Recognize the need to assist both owners’ associations and mortgagees by simplifying and expediting the process for the judicial and trustee of foreclosure of assessment liens and mortgage liens against timeshare interests estates.

(4) Improve judicial economy and reduce court congestion and the cost to taxpayers by establishing streamlined procedures for the judicial and trustee foreclosure of assessment liens and mortgage liens against timeshare interests estates.

(5) Recognize that nearly all timeshare interest foreclosures are uncontested.

(6) Protect the ability of consumers who own timeshare interests located in this state to choose a judicial proceeding for the foreclosure of an assessment lien or a mortgage lien against their timeshare interest.

(7) Recognize that the use of the trustee foreclosure procedure established under ss. 721.855 and 721.856 shall have the same force and effect as the use of the judicial foreclosure procedure against a timeshare interest with respect to the provisions of this chapter or any other applicable law. However, obligors shall not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

Section 6. Section 721.82, Florida Statutes, is amended to read:

721.82 Definitions.—As used in this part, the term:

(1) “Amounts secured by the lien” means all amounts secured by an assessment lien or mortgage lien, including, but not limited to, all past due amounts, accrued interest, late fees, taxes, advances for the payment of taxes, insurance and maintenance of the timeshare interest, and any fees or costs incurred by the lienholder or trustee, including any reasonable attorney’s fees, trustee’s fees, and costs incurred in connection with the default.

(2)(1) “Assessment lien” means:

(a) A lien for delinquent assessments as provided in ss. ~~721.16~~, 718.116, and 719.108, and 721.16 as to timeshare condominiums; or

(b) A lien for unpaid ad valorem assessments, tax assessments, taxes and special assessments as provided in s. 192.037(8).

(3)(2) “Junior interestholder” means any person who has a lien or interest of record against a timeshare interest estate in the county or counties in

which the timeshare interest estate is located, which is inferior to the mortgage lien or assessment lien being foreclosed under this part.

(4)(3) “Lienholder” means a holder of an assessment lien or a holder of a mortgage lien, as applicable. A receiver appointed under s. 721.26 is a lienholder for purposes of foreclosure of assessment liens under this part.

(5)(4) “Mortgage” has the same meaning set forth in s. 697.01.

(6)(5) “Mortgage lien” means a security interest in a timeshare interest estate created by a mortgage encumbering the timeshare interest estate.

(7)(6) “Mortgagee” means a person holding a mortgage lien.

(8)(7) “Mortgagor” means a person granting a mortgage lien or a person who has assumed the obligation secured by a mortgage lien.

(9)(8) “Notice address” means:

(a) As to an assessment lien, the address of the ~~current~~ owner of a timeshare interest estate as reflected by the books and records of the timeshare plan under ss. 721.13(4) and 721.15(7).

(b) As to a mortgage lien:

1. The address of the mortgagor as set forth in the mortgage, the promissory note or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

2. If the ~~current~~ owner of the timeshare interest estate is different from the mortgagor, the address of the ~~current~~ owner of the timeshare interest estate as reflected by the books and records of the mortgagee.

(c) As to a junior interestholder, the address as set forth in the recorded instrument creating the junior lien interest or interest lien, or in any recorded amendment supplement thereto changing the address, or in any written notification by the junior interestholder to the foreclosing lienholder changing the of such change in address.

(10)(9) “Obligor” means the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare interest estate.

(11) “Permitted delivery service” means any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service.

(12)(10) “Registered agent” means an agent duly appointed by the obligor under s. 721.84 for the purpose of accepting all notices and service of process under this part. A registered agent may be an individual resident in this state whose business office qualifies as a registered office, or a domestic or foreign corporation or a not-for-profit corporation as defined in chapter 617

authorized to transact business or to conduct its affairs in this state, whose business office qualifies as a registered office. A registered agent for any obligor may not be the lienholder or the attorney for the lienholder.

(13)(11) “Registered office” means the street address of the business office of the registered agent appointed under s. 721.84, located in this state.

(14) “Trustee” means an attorney who is a member in good standing of The Florida Bar and who has been practicing law for at least 5 years or that attorney’s law firm, or a title insurer authorized to transact business in this state under s. 624.401 and who has been authorized to transact business for at least 5 years, appointed as trustee or as substitute trustee in accordance with s. 721.855 or s. 721.856. A receiver appointed under s. 721.26 may act as a trustee under s. 721.855. A trustee must be independent as defined in s. 721.05(20).

Section 7. Section 721.83, Florida Statutes, is amended to read:

721.83 Consolidation of judicial foreclosure actions.—

(1) A complaint in a foreclosure proceeding involving timeshare interests estates may join in the same action multiple defendant obligors and junior interestholders of separate timeshare interests estates, provided:

- (a) The foreclosure proceeding involves a single timeshare property.
- (b) The foreclosure proceeding is filed by a single plaintiff.
- (c) The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant.
- (d) The nature of the defaults alleged is the same for each defendant.
- (e) No more than 15 timeshare interests estates, without regard to the number of defendants, are joined within the same consolidated foreclosure action.

(2) In any foreclosure proceeding involving multiple defendants filed under subsection (1), the court shall sever for separate trial any count of the complaint in which a defense or counterclaim is timely raised by a defendant.

(3) A consolidated timeshare foreclosure action shall be considered a single action, suit, or proceeding for the payment of filing fees and service charges pursuant to general law. In addition to the payment of such filing fees and service charges, an additional filing fee of up to \$10 for each timeshare interest estate joined in that action shall be paid to the clerk of court.

Section 8. Section 721.85, Florida Statutes, is amended to read:

721.85 Service to notice address or on registered agent.—

(1) Service of process for a foreclosure proceeding involving a timeshare interest estate may be made by any means recognized by law. In addition, substituted service on an obligor ~~a party~~ who has appointed a registered agent under s. 721.84 may be made on such registered agent at the registered office. Also, when using s. 48.194 where in rem or quasi in rem relief only is sought, such service of process provisions are modified in connection with a foreclosure proceeding against a timeshare interest estate to provide that:

(a) Such service of process may be made on any person whether the person is located inside or outside this state, by certified mail, ~~or registered mail, or permitted delivery service, return receipt requested,~~ addressed to the person to be served at the notice address, or on the person's party's registered agent duly appointed under s. 721.84, at the registered office; and

(b) Service shall be considered obtained upon the signing of the return receipt by any person at the notice address, or by the registered agent.

(2) The current owner and the mortgagor of a timeshare interest estate must promptly notify the owners' association and the mortgagee of any change of address.

(3) Substituted notice under s. 721.855 or s. 721.856 for any party who has appointed a registered agent under s. 721.84 may be made on such registered agent at the registered office.

Section 9. Section 721.855, Florida Statutes, is created to read:

721.855 Procedure for the trustee foreclosure of assessment liens.—The provisions of this section establish a trustee foreclosure procedure for assessment liens.

(1) APPOINTMENT OF TRUSTEE.—

(a) A trustee or a substitute trustee may be appointed by a lienholder at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the lienholder regarding the trustee foreclosure of any assessment lien under any timeshare plan for which the trustee is appointed.

(b) A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this section and shall deal honestly and fairly with all parties.

(c) The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the lienholder, and the name and address of the timeshare plan.

(2) INITIATING THE USE OF A TRUSTEE FORECLOSURE PROCEDURE.—

(a) Before initiating the trustee foreclosure procedure against any timeshare interest in a given timeshare plan:

1. If a timeshare instrument contains any provision specifically prohibiting the use of the trustee foreclosure procedure, or if the managing entity otherwise determines that the timeshare instrument should be amended to specifically provide for the use of the trustee foreclosure procedure, an amendment to the timeshare instrument permitting the use of the trustee foreclosure procedure set forth in this section must be adopted and recorded prior to the use of the trustee foreclosure procedure. Such amendment to the timeshare instrument shall contain a statement in substantially the following form and may be adopted by a majority of those present and voting at a duly called meeting of the owners' association at which at least 15 percent of the voting interest are present in person or by proxy:

If a timeshare owner fails to make timely payments of timeshare plan common expenses, ad valorem taxes, or special assessments, an assessment lien against the timeshare owner's timeshare interest may be foreclosed in accordance with a judicial foreclosure procedure or a trustee foreclosure procedure, either of which may result in the loss of the timeshare owner's timeshare interest. If the managing entity initiates a trustee foreclosure procedure, the timeshare owner shall have the option to object pursuant to Florida law, and in such event the managing entity may thereafter proceed only by filing a judicial foreclosure action.

2. The managing entity shall inform owners of timeshare interests in the timeshare plan in writing that the managing entity has the right to elect to use the trustee foreclosure procedure with respect to foreclosure of assessment liens as established in this section. The managing entity shall be deemed to have complied with the requirements of this subparagraph if the owners of timeshare interests in the given timeshare plan are informed by mail sent to each owner's notice address, in the notice of an annual or special meeting of the owners, by posting on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

(b) Before initiating the trustee foreclosure procedure against any timeshare interest, a claim of lien against the timeshare interest shall be recorded under s. 721.16 or, if applicable, s. 718.116 or s. 719.108, and the notice of the intent to file a lien shall be given under s. 718.121 for timeshare condominiums and s. 719.108 for timeshare cooperatives.

(c)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor; the notice address of the obligor; the timeshare interest; the date that the notice of the intent to file a lien was given, if

applicable; the official records book and page number where the claim of lien is recorded; and the name and notice address of any junior interestholder. The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the timeshare instrument or applicable law.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the assessment lien was properly created and authorized pursuant to the timeshare instrument and applicable law.

(3) OBLIGOR'S RIGHTS.—

(a) The obligor may object to the lienholder's use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest under subsection (7) by delivering a written objection to the trustee using the objection form provided for in subsection (5). If the trustee receives the written objection from the obligor, the trustee may not proceed with the trustee foreclosure procedure as to the default specified in the notice of default and intent to foreclose under subsection (5), and the lienholder may proceed thereafter only with a judicial foreclosure action as to that specified default.

(b) At any time before the trustee issues the certificate of sale under paragraph (7)(f), the obligor may cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee. After the trustee issues the certificate of sale, there is no right of redemption.

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE. A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(c);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); and

(e) The notice of sale required under subsection (6) has been recorded in the official records of the county or counties in which the timeshare interest is located.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: "The undersigned obligor exercises the obligor's right to object to the use of the trustee foreclosure procedure contained in section 721.855, Florida Statutes."

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.855, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee's receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee's sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be

subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice, if the trustee cannot ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt, or if the receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the trustee cannot ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt or the receipt from the obligor or junior interestholder, as applicable, is returned refused. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notices were mailed, the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received, and the name and address on the envelopes containing the notice.

(f) If notice is perfected by publication under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication after diligent search and inquiry was made for the current address for the person, and shall include a statement that notice was perfected by publication, and shall set forth the information required by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation, whichever is applicable. No other action of the trustee is necessary to perfect notice.

(6) NOTICE OF SALE.—

(a) The notice of sale shall set forth:

1. The name and notice addresses of the obligor and any junior interestholder.

2. The legal description of the timeshare interest.

3. The name and address of the trustee.

4. A description of the default that is the basis for the foreclosure.
5. The official records book and page numbers where the claim of lien is recorded.
6. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.
7. The date, location, and starting time of the trustee's sale.
8. The right of and the method by which the obligor may cure the default or the right of any junior interestholder to redeem its interest up to the date the trustee issues the certificate of sale in accordance with paragraph (7)(f).
 - (b) The trustee shall send a copy of the notice of sale within 3 business days after the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder.
 - (c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. The recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.
 - (d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.
2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

- (a) The sale of a timeshare interest by the trustee in a public auction shall be held in the county in which the timeshare interest is located, on the date, location, and starting time designated in the notice of sale, which shall be after 9:00 a.m. but before 4:00 p.m. on a business day not less than 30 calendar days after the recording of the notice of sale. The trustee's sale may occur online at a specific website on the Internet or in any other manner used by the clerk of the court for a judicial foreclosure sales procedure in the county or counties in which the timeshare interest is located.
- (b) The trustee shall conduct the sale and act as the auctioneer.
- (c) The lienholder and any person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(d) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale shall be mailed under paragraph (6)(b), recorded under paragraph (4)(e), and published under paragraph (6)(d). The effective date of the initial notice of sale under paragraph (6)(b) is not affected by a postponed sale.

(e) The highest bidder of the timeshare interest shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale as required under subparagraph (6)(a)6.

(f) On the date of the sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred, including the time, location, and date of the sale, that the timeshare interest was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate of sale shall be mailed by certified mail, registered mail, or permitted delivery service, return receipt requested, to all persons entitled to receive a notice of sale under subsection (6).

(g) Before a sale conducted under this subsection, a junior interestholder may pursue adjudication by court, by interpleader, or in any other authorized manner respecting any matter that is disputed by the junior interestholder.

(8) EFFECT OF TRUSTEE'S SALE.—

(a) A sale conducted under subsection (7) forecloses and terminates all interests of any person with notice to whom notice is given under paragraph (4)(d) and paragraph (6)(b), and of any other person claiming interests by, through, or under any such person, in the affected timeshare interest. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to the interests of any person properly notified. A person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure.

(b) On the issuance of a certificate of sale under paragraph (7)(f), all rights of redemption that have been foreclosed under this section shall terminate.

(c) A sale conducted under subsection (7) releases the obligor's liability for all amounts secured by the lien. The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor's timeshare interest under this section.

(d) The issuance and recording of the trustee's deed is presumed valid and may be relied upon by third parties without actual knowledge of irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated

to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to reforeclose the assessment lien in order to correct the irregularity and becomes entitled to an action de novo for the foreclosure of such assessment lien. Any subsequent reforeclosure required to correct an irregularity may be conducted under this section.

(9) TRUSTEE’S CERTIFICATE OF COMPLIANCE.—

(a) Within 10 calendar days after the trustee conducts a sale, the trustee shall execute and acknowledge a certificate of compliance that:

- 1. Confirms delivery of the notice of default and intent to foreclose and attaches the affidavit required under subsection (5).
- 2. States that the default was not cured, that the trustee did not receive any written objection under paragraph (3)(a), and that the timeshare interest was not redeemed under paragraph (3)(b).
- 3. Confirms that the notice of sale was published as required under paragraph (6)(d) and attaches an affidavit of publication for the notice of sale.
- 4. Confirms that the notice of sale was mailed under paragraph (6)(b) together with a list of the parties to whom the notice of sale was mailed.

(b) In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to cure the default.

(10) TRUSTEE’S DEED.—

(a) The trustee’s deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, a legal description of the timeshare interest, and the name and address of the preparer of the trustee’s deed. The trustee’s deed shall contain no warranties of title from the trustee. The certificate of compliance shall be attached as an exhibit to the trustee’s deed.

(b) Ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee’s deed to the timeshare interest, the trustee shall:

- 1. Issue a trustee’s deed to the highest bidder.
- 2. Record the trustee’s deed in the official records of the county or counties in which the timeshare interest is located.

(c)1. The certificate of compliance and trustee’s deed together are presumptive evidence of the truth of the matters set forth in them, and an action to set aside the sale and void the trustee’s deed may not be filed or

otherwise pursued against any person acquiring the timeshare interest for value.

2. The trustee's deed conveys to the highest bidder all rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey, at the time of the recording of the claim of lien, together with all rights, title, and interest that the former owner or his or her successors in interest acquired after the recording of the claim of lien.

3. The issuance and recording of a trustee's deed shall have the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

(11) DISPOSITION OF PROCEEDS OF SALE.—

(a) The trustee shall apply the proceeds of the sale as follows:

1. To the expenses of the sale, including compensation of the trustee.

2. To the amount owed and set forth in the notice as required in subparagraph (6)(a)6.

3. If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to a court of competent jurisdiction, name the competing junior interestholders, and ask the court to determine the proper distribution of the surplus. In any interpleader action, the trustee shall recover reasonable attorney's fees and costs.

4. If there are no junior interestholders, or if all junior interestholders have been paid, any surplus shall be paid to the former owner. If the trustee is unable to locate the former owner within 1 year after the sale, the surplus, if any, shall be deposited with the Chief Financial Officer under chapter 717.

(b) In disposing of the proceeds of the sale, the trustee may rely on the information provided in the affidavit of the lienholder under paragraph (2)(c) and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or in any other authorized manner and shall recover reasonable attorney's fees and costs.

(12) TRUSTEE FORECLOSURE ACTIONS.—The trustee foreclosure procedure established in this section does not impair or otherwise affect the lienholder's continuing right to bring a judicial foreclosure action, in lieu of using the trustee foreclosure procedure, with respect to any assessment lien.

(13) APPLICATION.—This section applies to any default giving rise to the imposition of an assessment lien which occurs after the effective date of this section.

(14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(a) An action for actual damages for a material violation of this section may be brought by an obligor against the lienholder for the failure to follow the trustee foreclosure procedure contained in this section.

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 721.856, Florida Statutes, is created to read:

721.856 Procedure for the trustee foreclosure of mortgage liens.—The provisions of this section establish a trustee foreclosure procedure for mortgage liens.

(1) APPOINTMENT OF TRUSTEE.—

(a) A trustee or a substitute trustee may be appointed by a lienholder at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the lienholder regarding the trustee foreclosure of any mortgage lien.

(b) A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this section and shall deal honestly and fairly with all parties.

(c) The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the lienholder, and the name and address of the timeshare plan.

(2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

(a) Before initiating the trustee foreclosure against a timeshare interest, the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of this section, must contain a statement in substantially the following form:

If the mortgagor fails to make timely payments under the obligation secured by this mortgage, or is otherwise deemed in uncured default of this mortgage, the lien against the mortgagor’s timeshare interest created by this mortgage may be foreclosed in accordance with either a judicial foreclosure procedure or a trustee foreclosure procedure and may result in the loss of your timeshare interest. If the mortgagee initiates a trustee foreclosure procedure, the mortgagor shall have the option to object and the mortgagee may proceed only by filing a judicial foreclosure action.

(b)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor, the notice address of the obligor, the timeshare interest, the official records book and page number where the mortgage is recorded, and the name and notice address of any junior interestholder. The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the mortgage or is otherwise deemed in uncured default under a specified provision of the mortgage.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the appropriate amount of documentary stamp tax and intangible taxes has been paid upon recording of the mortgage, or otherwise paid to the state.

5. The affidavit shall also state that the lienholder is the holder of the note and has complied with all preconditions in the note and mortgage to determine the amounts secured by the lien and to initiate the use of the trustee foreclosure procedure.

(3) OBLIGOR'S RIGHTS.—

(a) The obligor may object to the lienholder's use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest under subsection (7) by delivering a written objection to the trustee using the objection form provided for in subsection (5). If the trustee receives the written objection from the obligor, the trustee may not proceed with the trustee foreclosure procedure as to the default specified in the notice of default and intent to foreclose under subsection (5), and the lienholder may proceed thereafter only with a judicial foreclosure action as to that specified default.

(b) At any time before the trustee issues the certificate of sale under paragraph (7)(f), the obligor may cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee. After the trustee issues the certificate of sale, there is no right of redemption.

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.
A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(b);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest, and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien;

(e) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); and

(f) The notice of sale required under subsection (6) has been recorded in the official records of the county in which the mortgage was recorded.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: "The undersigned obligor exercises the obligor's right to object to the use of the trustee foreclosure procedure contained in section 721.856, Florida Statutes."

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.856, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee's receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee's sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice, if the trustee cannot ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt, or if the receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30

calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the trustee cannot ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt or the receipt from the obligor or junior interestholder, as applicable, is returned refused. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notice was mailed, the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received, and the name and address on the envelopes containing the notice.

(f) If notice is perfected under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication after diligent search and inquiry was made for the current address for the person, shall include a statement that notice was perfected by publication, and shall set forth the information required by s. 49.041 in the case of a natural person or s. 49.051 in the case of

a corporation, whichever is applicable. No other action of the trustee is necessary to perfect notice.

(6) NOTICE OF SALE.—

(a) The notice of sale shall set forth:

1. The name and notice addresses of the obligor and any junior interestholder.

2. The legal description of the timeshare interest.

3. The name and address of the trustee.

4. A description of the default that is the basis for the foreclosure.

5. The official records book and page numbers where the mortgage is recorded.

6. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.

7. The date, location, and starting time of the trustee’s sale.

8. The right of and the method by which the obligor may cure the default or the right of any junior interestholder to redeem its interest up to the date the trustee issues the certificate of sale in accordance with paragraph (7)(f).

(b) The trustee shall send a copy of the notice of sale within 3 business days after the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder.

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. The recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

(a) The sale of a timeshare interest by the trustee in a public auction shall be held in the county in which the timeshare interest is located, on the date,

location, and starting time designated in the notice of sale, which shall be after 9:00 a.m. but before 4:00 p.m. on a business day not less than 30 calendar days after the recording of the notice of sale. The trustee's sale may occur online at a specific website on the Internet or in any other manner used by the clerk of the court for a judicial foreclosure sales procedure in the county or counties in which the timeshare interest is located.

(b) The trustee shall conduct the sale and act as the auctioneer.

(c) The lienholder and any person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(d) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale shall be mailed under paragraph (6)(b), recorded under paragraph (4)(f), and published under paragraph (6)(d). The effective date of the initial notice of sale under paragraph (6)(b) is not affected by a postponed sale.

(e) The highest bidder of the timeshare interest shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale as required under subparagraph (6)(a)6.

(f) On the date of the sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred, including the time, location, and date of the sale, that the timeshare interest was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate of sale shall be mailed by certified mail, registered mail, or permitted delivery service, return receipt requested, to all persons entitled to receive a notice of sale under subsection (6).

(g) Before a sale conducted pursuant to this subsection, a junior interestholder may pursue adjudication by court, by interpleader, or in any other authorized manner respecting any matter that is disputed by the junior interestholder.

(8) EFFECT OF TRUSTEE'S SALE.—

(a) A sale conducted under subsection (7) forecloses and terminates all interests of any person with notice to whom notice is given under paragraph (4)(e) and paragraph (6)(b), and of any other person claiming interests by, through, or under any such person, in the affected timeshare interest. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to the interests of any person properly notified. A

person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure.

(b) On the issuance of a certificate of sale under paragraph (7)(f), all rights of redemption that have been foreclosed under this section shall terminate.

(c) A sale conducted under subsection (7) releases the obligor's liability for all amounts secured by the lien. The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor's timeshare interest under this section.

(d) The issuance and recording of the trustee's deed is presumed valid and may be relied upon by third parties without actual knowledge of any irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to reforeclose the mortgage lien in order to correct the irregularity and becomes entitled to an action de novo for the foreclosure of such mortgage lien. Any subsequent reforeclosure required to correct an irregularity may be conducted under this section.

(9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

(a) Within 10 calendar days after the trustee conducts a sale, the trustee shall execute and acknowledge a certificate of compliance which:

1. Confirms delivery of the notice of default and intent to foreclose and attaches the affidavit required under subsection (5).

2. States that the default was not cured, that the trustee did not receive any written objection under paragraph (3)(a), and that the timeshare interest was not redeemed under paragraph (3)(b).

3. States that the trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien.

4. Confirms that the notice of sale was published as required under paragraph (6)(d) and attaches an affidavit of publication for the notice of sale.

5. Confirms that the notice of sale was mailed under paragraph (6)(b) together with a list of the parties to whom the notice of sale was mailed.

(b) In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to cure the default.

(10) TRUSTEE'S DEED.—

(a) The trustee's deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, a legal description of the timeshare interest, and the name and address of the preparer of the trustee's deed. The trustee's deed shall contain no warranties of title from the trustee. The certificate of compliance shall be attached as an exhibit to the trustee's deed.

(b) Ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee's deed to the timeshare interest, the trustee shall:

1. Cancel the original promissory note executed by the mortgagor and secured by the mortgage lien.
2. Issue a trustee's deed to the highest bidder.
3. Record the trustee's deed in the official records of the county or counties in which the timeshare interest is located.

(c)1. The certificate of compliance and trustee's deed together are presumptive evidence of the truth of the matters set forth in them, and an action to set aside the sale and void the trustee's deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for value.

2. The trustee's deed conveys to the highest bidder all rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey, together with all rights, title, and interest that the former owner or his or her successors in interest acquired after the execution of the mortgage.

3. The issuance and recording of a trustee's deed shall have the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

(11) DISPOSITION OF PROCEEDS OF SALE.—

(a) The trustee shall apply the proceeds of the sale as follows:

1. To the expenses of the sale, including compensation of the trustee.
2. To the amount owed and set forth in the notice as required under subparagraph (6)(a)6.
3. If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to a court of competent jurisdiction, name the competing junior interestholders, and ask the court to determine the proper distribution of the surplus. In any interpleader action, the trustee shall recover reasonable attorney's fees and costs.

4. If there are no junior interestholders, or if all junior interestholders have been paid, any surplus shall be paid to the former owner. If the trustee is unable to locate the former owner within 1 year after the sale, the surplus, if any, shall be deposited with the Chief Financial Officer under chapter 717.

(b) In disposing of the proceeds of the sale, the trustee may rely on the information provided in the affidavit of the lienholder under paragraph (2)(b) and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or in any other authorized manner and shall recover reasonable attorney's fees and costs.

(12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure procedure established in this section does not impair or otherwise affect the lienholder's continuing right to bring a judicial foreclosure action, in lieu of using the trustee foreclosure procedure, with respect to any mortgage lien.

(13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(a) An action for actual damages for a material violation of this section may be brought by an obligor against the lienholder for the failure to follow the trustee foreclosure procedure contained in this section.

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 11. Subsections (1) and (4) of section 721.86, Florida Statutes, are amended to read:

721.86 Miscellaneous provisions.—

(1) In the event of a conflict between the provisions of this part and the other provisions of this chapter, chapter 702, or other applicable law, the provisions of this part shall prevail. The procedures in this part must be given effect in the context of any foreclosure proceedings against timeshare interests estates governed by this chapter, chapter 702, chapter 718, or chapter 719.

(4) In addition to assessment liens and mortgage liens arising after the effective date of this part, except as provided in s. 721.855(13), the provisions of this part apply to all assessment liens and mortgage liens existing prior to the effective date of this act regarding which a foreclosure proceeding has not yet commenced.

Section 12. Subsection (2) of section 721.20, Florida Statutes, is amended to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.

(2) Solicitors who engage only in the solicitation of prospective purchasers and any purchaser who refers no more than 20 people to a developer or managing entity per year or who otherwise provides testimonials on behalf of a developer or managing entity are exempt from the provisions of chapter 475.

Section 13. An administrative fee of \$50 per trustee deed for each deed recorded pursuant to the trustee foreclosure procedures set forth in ss. 721.855 and 721.856, Florida Statutes, shall be paid and remitted at the same time and in the same manner as documentary stamp taxes imposed pursuant to s. 201.02, Florida Statutes. Revenues from such fees shall be remitted to the Department of Revenue in the same manner as documentary stamp taxes and deposited in the State Courts Revenue Trust Fund.

Section 14. This act shall take effect upon becoming a law.

Approved by the Governor May 27, 2010.

Filed in Office Secretary of State May 27, 2010.