

CHAPTER 2013-159

Committee Substitute for House Bill No. 7025

An act relating to timeshares; amending s. 718.112, F.S.; specifying that certain provisions relating to condominium board elections do not apply to timeshare condominiums; amending s. 721.05, F.S.; revising and providing definitions related to the Florida Vacation Plan and Timesharing Act; amending s. 721.07, F.S.; revising formula requirements for calculating reserves for accommodations and facilities of real property timeshare plans; amending s. 721.15, F.S.; requiring the successor in interest to be listed as the owner of the timeshare interest under certain conditions; requiring an estoppel letter in certain timeshare resale transfer transactions; amending s. 721.17, F.S.; prohibiting certain activities related to offering timeshare interest transfer services; requiring resale transfer agreements to contain specified information; requiring the establishment of an escrow account for certain purposes; providing requirements and duties of the escrow agent; providing penalties; providing for applicability; amending s. 721.82, F.S.; revising definitions applicable to the Timeshare Lien Foreclosure Act; amending s. 721.84, F.S.; making an editorial change; amending s. 721.855, F.S.; revising procedure for the trustee foreclosure of assessment liens; revising conditions under which a trustee may sell a foreclosed encumbered timeshare interest; revising and providing notice requirements; providing for perfection of notice; providing requirements for a notice of lis pendens; providing sale requirements; providing exceptions for actions for failure to follow the trustee foreclosure procedure; amending s. 721.856, F.S.; revising procedure for the trustee foreclosure of mortgage liens; revising conditions under which a trustee may sell a foreclosed encumbered timeshare interest; revising and providing notice requirements; providing for perfection of notice; providing requirements for a notice of lis pendens; providing sale requirements; providing exceptions for actions for failure to follow the trustee foreclosure procedure; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) Unit owner meetings.—

1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium

property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Any unit owner desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (n), is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a

conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8½ inches by 11 inches, which must be

furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except

that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. If authorized by the bylaws, notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

Section 2. Subsection (34) of section 721.05, Florida Statutes, is amended, and subsections (51) and (52) are added to that section, to read:

721.05 Definitions.—As used in this chapter, the term:

(34) “Timeshare estate” means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term includes shall ~~also mean~~ an interest in a condominium unit pursuant to s. 718.103, an interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect ~~an~~ interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

(51) “Resale transfer agreement” means a contract or other agreement between a person offering timeshare interest transfer services and a consumer timeshare reseller, in which the person offering timeshare interest transfer services agrees to provide such services as described in s. 721.17(3).

(52) “Timeshare interest transfer services” means any good or service relating to an offer or agreement to transfer ownership of a consumer resale timeshare interest, or assistance with or a promise of assistance in connection with the transfer of ownership of a consumer resale timeshare interest, as described in s. 721.17(3). The term does not include resale advertising services as provided in this chapter.

Section 3. Paragraph (t) of subsection (5) of section 721.07, Florida Statutes, is amended 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.

(t) An estimated operating budget for the timeshare plan and a schedule of the purchaser’s expenses shall be attached as an exhibit and shall contain the following information:

1. The estimated annual expenses of the timeshare plan collectible from purchasers by assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall also be shown for the shortest timeshare period offered for sale by the developer. If the timeshare plan provides for the offer and sale of units to be used on a nontimeshare basis, the estimated monthly and annual expenses of such units shall be set forth in a separate schedule.

2. The estimated weekly, monthly, and annual expenses of the purchaser of each timeshare interest, other than assessments payable to the managing entity. Expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the timeshare plan documents may be excluded from this estimate.

3. The estimated items of expenses of the timeshare plan and the managing entity, except as excluded under subparagraph 2., including, but not limited to, if applicable, the following items, which shall be stated either as management expenses collectible by assessments or as expenses of the purchaser payable to persons other than the managing entity:

a. Expenses for the managing entity:

(I) Administration of the managing entity.

(II) Management fees.

(III) Maintenance.

(IV) Rent for facilities.

(V) Taxes upon timeshare property.

(VI) Taxes upon leased areas.

(VII) Insurance.

(VIII) Security provisions.

(IX) Other expenses.

(X) Operating capital.

(XI) Reserves for deferred maintenance and reserves for capital expenditures, including:

(A) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a real property timeshare plan, if any. All reserves for any accommodations and facilities of real property timeshare plans located in this state shall be calculated using by a formula which is based upon estimated life and replacement cost of each reserve item that will provide funds equal to the total estimated deferred maintenance expense or total estimated life and replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves shall be based on either a separate analysis of each of the required assets using the straight-line accounting method or a pooled analysis of two or more of the required assets using the pooling accounting method. Reserves for deferred maintenance for such accommodations and facilities shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of timeshare unit furnishings and equipment, and any other component, the useful life of which is less than the useful life of the

overall structure. For any accommodations and facilities of real property timeshare plans located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance or capital expenditures required by the law of the situs state, if applicable, and maintained for such accommodations and facilities.

(B) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a personal property timeshare plan, if any. If such reserves are maintained, the estimated operating budget shall disclose the methodology of how the reserves are calculated. If a personal property timeshare plan does not require reserves, the following statement, in conspicuous type, shall appear in both the budget and the public offering statement:

The estimated operating budget for this personal property timeshare plan does not include reserves for deferred maintenance or capital expenditures; each timeshare interest may be subject to substantial special assessments from time to time because no such reserves exist.

(XII) Fees payable to the division.

b. Expenses for a purchaser:

(I) Rent for the timeshare unit, if subject to a lease.

(II) Rent payable by the purchaser directly to the lessor or agent under any lease for the use of facilities, which use and payment is a mandatory condition of ownership and is not included in the common expenses or assessments for common maintenance paid by the purchasers to the managing entity.

4. The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period before ~~prior to~~ the time that purchasers elect a majority of the board of administration and the period after that date.

5. If the developer intends to guarantee the level of assessments, such guarantee must be based upon a good faith estimate of the revenues and expenses of the timeshare plan. The guarantee must include a description of the following:

a. The specific time period measured in one or more calendar or fiscal years during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the timeshare plan pursuant to s. 721.15(2) if the developer has excused himself or herself from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the budget. If the developer has reserved the right to extend or increase the

guarantee level pursuant to s. 721.15(2), a disclosure must be included to that effect.

6. If the developer intends to provide a trust fund to defer or reduce the payment of annual assessments, a copy of the trust instrument shall be attached as an exhibit and shall include a description of such arrangement, including, but not limited to:

- a. The specific amount of such trust funds and the source of the funds.
- b. The name and address of the trustee.
- c. The investment methods permitted by the trust agreement.
- d. A statement in conspicuous type that the funds from the trust account may not cover all assessments and that there is no guarantee that purchasers will not have to pay assessments in the future.

7. The budget of a phase timeshare plan may contain a note identifying the number of timeshare interests covered by the budget, indicating the number of timeshare interests, if any, estimated to be declared as part of the timeshare plan during that calendar year, and projecting the common expenses for the timeshare plan based upon the number of timeshare interests estimated to be declared as part of the timeshare plan during that calendar year.

Section 4. Subsection (7) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(7)(a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor. The predecessor in interest or his or her agent, or a person providing resale transfer services for the predecessor in interest pursuant to s. 721.17(3) or his or her agent, shall deliver to provide the managing entity ~~with~~ a copy of the recorded deed of conveyance if the interest is a timeshare estate or a copy of the instrument of transfer if the interest is a timeshare license, with containing the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery the successor in interest shall be listed by the managing entity as the owner of the timeshare interest on the books and records of the timeshare plan. The managing entity shall not be liable to any person for any inaccuracy in the books and records of the timeshare plan arising from the failure of the

predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.

(b) Within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller pursuant to s. 721.17(3), a managing entity must provide a certificate, signed by an officer or agent of the managing entity, to the person requesting the certificate, that states the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity, and of any assessment, transfer fee, or other moneys approved by the managing entity that will be due within the next 90 days, with respect to the designated consumer resale timeshare interest, as well as any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.

1. A person who relies upon such certificate shall be protected thereby.

2. A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this paragraph, and in such an action the prevailing party may recover reasonable attorney fees and court costs.

3. The managing entity may charge a fee not to exceed \$150 for the preparation and delivery of the certificate. The amount of the fee must be included on the certificate.

Section 5. Section 721.17, Florida Statutes, is amended to read:

721.17 Transfer of interest; resale transfer agreements.—

(1) Except in the case of a timeshare plan subject to the provisions of chapter 718 or chapter 719, no developer, owner of the underlying fee, or owner of the underlying personal property shall sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations and facilities of the timeshare plan except by an instrument evidencing the transfer recorded in the public records of the county in which such accommodations and facilities are located or, with respect to personal property timeshare plans, in full compliance with s. 721.08. The instrument shall be executed by both the transferor and transferee and shall state:

(a)(1) That its provisions are intended to protect the rights of all purchasers of the plan.

(b)(2) That its terms may be enforced by any prior or subsequent timeshare purchaser so long as that purchaser is not in default of his or her obligations.

(c)(3) That so long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the timeshare plan, the

transferee shall honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

(d)(4) That the transferee will fully honor all rights of timeshare purchasers to cancel their contracts and receive appropriate refunds.

(e)(5) That the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of bankruptcy proceedings.

(2) Should any transfer of the interest of the developer, the owner of the underlying fee, or the owner of the underlying property occur in a manner which is not in compliance with subsection (1) this section, the terms set forth in subsection (1) this section shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice shall be mailed to each purchaser of record within 30 days after the transfer unless such transfer does not affect the purchaser's rights in or use of the timeshare plan. Persons who hold mortgages or liens on the property constituting a timeshare plan before the filed public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of subsection (1) this section.

(3)(a) In the course of offering timeshare interest transfer services, no person shall:

1. Engage in any timeshare interest transfer services for consideration, or the expectation of receiving consideration, without first obtaining a written resale transfer agreement signed by the consumer timeshare reseller that complies with this subsection.

2. Fail to provide both the consumer timeshare reseller and the escrow agent required by paragraph (c) with an executed copy of the resale transfer agreement.

3. Fail to comply with the requirements of paragraphs (b) and (c).

(b) Each resale transfer agreement shall contain:

1. A statement that no fee, cost, or other compensation may be paid to the person providing the timeshare resale transfer services before the delivery to the consumer timeshare reseller of written evidence that all promised timeshare interest transfer services have been performed, including, but not limited to, delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee, accompanied by the full name, address, and other known contact information for the transferee.

2. The name, address, current phone number, and current e-mail address of the escrow agent required by paragraph (c).

3. A statement that the person providing the timeshare resale transfer services will provide the consumer timeshare reseller with written notice of the full performance of the timeshare resale transfer services, together with a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest from the consumer timeshare reseller to a transferee.

4. A statement in substantially the following form in conspicuous type immediately preceding the space in the resale transfer agreement provided for the consumer timeshare reseller's signature:

...(Name)... has agreed to provide you with timeshare resale transfer services pursuant to this resale transfer agreement. After those services have been fully performed, ...(Name)... is obligated to provide you with written notice of such full performance and a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee. Any fee or other compensation paid by you under this agreement before such full performance by ...(Name)... must be held in escrow by the escrow agent specified in this agreement, and ...(Name)... is prohibited from receiving any such fee or other compensation until all promised timeshare interest transfer services have been performed.

(c)1. Before entering into any resale transfer agreement, a person providing timeshare resale transfer services shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. An attorney who is a member in good standing of The Florida Bar, a licensed Florida real estate broker in good standing, or a licensed Florida title insurer or agent in good standing, any of whom also provides timeshare interest transfer services as described in this subsection, may serve as escrow agent under this subsection. The escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each consumer timeshare reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller's funds or other property from escrow only in accordance with this subsection.

2. All funds or other property that are received from or on behalf of a consumer timeshare reseller pursuant to a resale transfer agreement shall be deposited into an escrow account pursuant to this paragraph. A fee, cost, or other compensation that is due or that will be paid to the person providing the timeshare resale transfer services must be held in such escrow account until the person providing the timeshare resale transfer services has fully complied with all of his or her obligations under the resale transfer agreement and under this subsection.

3. The funds or other property required to be escrowed pursuant to this paragraph may only be released from escrow as follows:

a. On the order of the person providing the timeshare resale transfer services upon presentation of an affidavit by the person that all promised timeshare interest transfer services have been performed, including delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee.

b. To a managing entity to pay any assessments, transfer fees, or other moneys owed with respect to the consumer resale timeshare interest as set forth in the certificate provided for in s. 721.15(7)(b) or to pay a governmental agency for the purpose of completing and perfecting the transfer. A managing entity shall accept any funds remitted to it by an escrow agent pursuant to this sub-subparagraph.

4. The escrow agent shall retain all resale transfer agreements, escrow account records, and affidavits received pursuant to this subsection for a period of 5 years.

(d) A person providing timeshare resale transfer services, an agent or third party service provider for the timeshare resale transfer services provider, or an escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) No person shall participate, for consideration or with the expectation of consideration, in a plan or scheme, a purpose of which is to transfer a consumer resale timeshare interest to a transferee that the person knows does not have the ability, means, or intent to pay all assessments and taxes associated with the consumer resale timeshare interest.

(f) Providing timeshare interest transfer services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(g) A managing entity may bring an action to enforce the provisions of paragraph (e). In any such action, the managing entity may recover its actual damages, and the prevailing party may recover its reasonable attorney fees and court costs.

(h) Paragraphs (a)-(d) do not apply to:

1. A resale broker who offers timeshare interest transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with chapter 475 and with s. 721.20; or

2. An attorney who is a member in good standing of The Florida Bar or a licensed Florida title insurer or agent in good standing who offers timeshare interest transfer services to a consumer timeshare reseller, if the total consideration paid by the consumer timeshare reseller to such person does not exceed \$600, exclusive of any assessments, transfer fees, or moneys owed with respect to the consumer resale timeshare interest as set forth in the certificate provided for in s.721.15(7)(b), and exclusive of any fees owed to a governmental agency for the purpose of completing and perfecting the transfer.

(i) This subsection does not apply to the transfer of ownership of a consumer resale timeshare interest from a consumer timeshare reseller to the developer or managing entity of that timeshare plan.

Section 6. Subsections (9) and (11) of section 721.82, Florida Statutes, are amended to read:

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

(9) “Notice address” means:

(a) As to an assessment lien, the address of the owner of a timeshare interest 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 owner of the timeshare interest is different from the mortgagor, the address of the owner of the timeshare interest 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 or interest, or in any recorded amendment thereto changing the address, or in any written notification by the junior interestholder to the foreclosing lienholder changing the address.

(d) As to an owner of a timeshare interest, mortgagor, or junior interestholder whose current address is not the address as determined by paragraph (a), paragraph (b), or paragraph (c), such address as is known to be the current address.

(11) “Permitted delivery service” means any nationally recognized common carrier delivery service, ~~or international airmail service that allows for return receipt service, or a service recognized by an international jurisdiction as the equivalent of certified, registered mail for that jurisdiction.~~

Section 7. Subsection (6) of section 721.84, Florida Statutes, is amended to read:

721.84 Appointment of a registered agent; duties.—

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the registered office must mail, by first-class ~~first-class~~ mail if the obligor’s address is within the United States, and by international air mail if the obligor’s address is outside the United States, with postage fees prepaid, such notice or documents to the obligor at the obligor’s last designated address within 5 days after receipt.

Section 8. Paragraph (c) of subsection (2), subsections (4) and (5), paragraph (c) of subsection (6), paragraph (b) of subsection (7), and paragraph (b) of subsection (14) of section 721.855, Florida Statutes, are amended 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.

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

(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.

(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 before the recording of the notice of lis pendens pursuant to paragraph (5)(h), 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; ~~and~~

(f) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(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:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;~~if~~

b. The trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the

receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt; or

c. 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 receipt from the obligor or junior interestholder, as applicable, is refused, returned, or the trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder 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 notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. 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, and 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 and shall state that after diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. The affidavit and shall also include a statement that notice was perfected by publication, and shall set forth the information required, as applicable, 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.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county in which the deed conveying the timeshare interest to the obligor was recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.

3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.

5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(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. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), 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.

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

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

(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. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in s. 721.855(5) does not violate this section if the trustee made a good faith effort to properly ascertain that the obligor signed the return receipt in accordance with subsection (5).

Section 9. Paragraph (b) of subsection (2), subsections (4) and (5), paragraphs (c) and (d) of subsection (6), paragraph (b) of subsection (7), and paragraph (b) of subsection (13) of section 721.856, Florida Statutes, are amended 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.

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

(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.

(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 before the initiation of the trustee foreclosure action and provided a notice of lis pendens has been recorded pursuant to paragraph (5)(h), 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; and

(g) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(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:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;~~;~~ if

b. The trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt; or

c. ~~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 receipt from the obligor or junior interestholder is refused, returned, or the trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder 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 notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. 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, and 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 and shall state that after diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. ~~The affidavit shall also include a statement that notice was perfected by publication, and shall set forth the information required, as applicable, 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.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county or counties in which the mortgage is recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.
2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.
3. The name and contact information of the trustee.
4. The legal description of the timeshare interest.
5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(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. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), 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.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

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

(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. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in s. 721.856(5) does not violate this section if the trustee made a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with subsection (5).

Section 10. This act shall take effect July 1, 2013.

Approved by the Governor June 12, 2013.

Filed in Office Secretary of State June 12, 2013.