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# **Civil Justice & Courts Policy Committee**

**Monday, March 22, 2010  
3:15 PM - 5:00 PM  
Reed Hall**

**Action Packet**

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**Summary:**

**Civil Justice & Courts Policy Committee**

*Monday March 22, 2010 03:15 pm*

HB 9	Favorable	Yeas: 13	Nays: 1
CS/HB 31	Favorable	Yeas: 10	Nays: 3
HB 195	Favorable With Committee Substitute	Yeas: 13	Nays: 1
HB 363	Favorable	Yeas: 13	Nays: 1
CS/HB 691	Favorable	Yeas: 14	Nays: 0
CS/HB 751	Favorable	Yeas: 14	Nays: 0
HB 777	Favorable With Committee Substitute	Yeas: 11	Nays: 0
HB 959	Favorable With Committee Substitute	Yeas: 9	Nays: 2
HB 1017	Favorable With Committee Substitute	Yeas: 13	Nays: 1
HB 1155	Favorable	Yeas: 13	Nays: 1
HB 1303	Favorable With Committee Substitute	Yeas: 13	Nays: 1
HB 1411	Favorable With Committee Substitute	Yeas: 13	Nays: 0
HB 1431	Favorable	Yeas: 14	Nays: 0
HB 1433	Favorable	Yeas: 14	Nays: 0
HB 1435	Favorable	Yeas: 14	Nays: 0
HB 1497	Favorable	Yeas: 11	Nays: 0
HB 1523	Favorable With Committee Substitute	Yeas: 10	Nays: 4
HB 1599	Favorable With Committee Substitute	Yeas: 14	Nays: 0

**Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM**

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**Attendance:**

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Carl Domino (Chair)	X		
Eric Eisnaugle	X		
Adam M. Fetterman	X		
Anitere Flores	X		
James Frishe	X		
Audrey Gibson	X		
Eduardo Gonzalez	X		
Tom Grady	X		
Seth McKeel	X		
Dave Murzin	X		
H. Marlene O'Toole	X		
Ralph Poppell	X		
Darren Soto	X		
Michael Weinstein	X		
<b>Totals:</b>	<b>14</b>	<b>0</b>	<b>0</b>

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**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 9 : Relief/Stephen Hall/DOT**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady		X			
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13</b>		<b>Total Nays: 1</b>			

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**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**CS/HB 31 : Public Education**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman		X			
Anitere Flores	X				
James Frishe	X				
Audrey Gibson		X			
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin				X	
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto		X			
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 10      Total Nays: 3</b>					

**Appearances:**

Public Education

David Barkey, ADL Southern Area Council (Lobbyist) - Opponent

Anti-Defamation League  
621 NW 53rd Street, Ste 450  
Boca Raton Florida 33487  
Phone: 561-988-2912

Public Education (Amendment)

Mary Allen - Opponent

Student  
812 W Jefferson Street  
Tallahassee Florida 32313  
Phone: 850-261-3936

Public Education

Nathan Dunn (Lobbyist) - Proponent

Florida Family Action  
P.O. Box 10626  
Tallahassee Florida 32302  
Phone: 850-567-8143

Public Education

Benjamin Stevenson - Opponent

ACLU of Florida  
PO Box 12723  
Pensacola Florida 32591  
Phone: 786-363-2738

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**AMENDED**

**Location:** Reed Hall (102 HOB)  
Public Education (Amendment)  
Frank Lay, Principal - Proponent  
Self  
4521 S. Spencerfield Road  
Pace Florida 32521  
Phone: 850-994-7632

Public Education  
Mary Allen - Proponent  
Student  
812 W Jefferson Street  
Tallahassee Florida 32313  
Phone: 850-261-3936

Public Education  
Mickey Lindsey - Proponent  
4715 Easter Street  
Pace Florida 32571  
Phone: 850-994-9564

Public Education  
Kay Evers Dawson - Proponent  
4931 Pattock Place  
Pace Florida 32571  
Phone: 850-994-6900

Public Education  
Bob Harris (Lobbyist) - Opponent  
Panhandle Area Education Consortium  
2618 Centennial Place  
Tallahassee Florida 32308  
Phone: 850-222-0720

Public Education  
Courtney Strickland (Lobbyist) - Opponent  
ACLU of Florida  
4500 Biscayne Blvd., #340  
Miami Florida 33137  
Phone: 305-457-5422

**Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM**

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 31 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT ✓ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

FAILED TO  
ADOPT  
3-22-10

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Soto offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove line 25 and insert:

7 (2) However, any participating student shall have the right  
8 individually or by and through a legal guardian to object to the  
9 delivery of such inspirational message under subsection (1) by  
10 delivering a written objection to the principal of said high  
11 school prior to holding said noncompulsory high school activity.  
12 In such case, the delivery of the inspirational message shall be  
13 barred. School personnel shall be barred from taking any  
14 retaliatory action in response to such objection. A violation of  
15 this subsection shall be punishable by a civil penalty of up to  
16 \$5,000.

17 (3) District school boards, administrative personnel, and  
18  
19

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 31 (2010)

Amendment No. 1

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**T I T L E   A M E N D M E N T**

Remove line 7 and insert:

activity; providing that any participating student may object,  
in which case the message may not be given; providing for a  
civil penalty; prohibiting district school boards,



**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

3/22/2010 3:15:00PM

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 195 : Relief/Pierreisna Archille/DCFS**

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady		X			
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13</b>		<b>Total Nays: 1</b>			

**Appearances:**

Relief/Pierreisna Archille/DCFS  
 Richard Filson, Attorney - Proponent  
 Pierreisna Archille  
 2727 South Tamiami Trail  
 Sarasota Florida 34239  
 Phone: 941-952-0771

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM



**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

3/22/2010 3:15:00PM

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 363 : Relief/Erskin Bell, II/City of Altamonte Springs**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady		X			
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13</b>		<b>Total Nays: 1</b>			

**Appearances:**

Relief/Erskin Bell, II/City of Altamonte Springs  
Tom Feeney (Lobbyist) - Proponent  
Partner, Fowley, O'Quinn, Feeney and Sneed  
28 W Central Blvd  
Orlando Florida 32801  
Phone: 407-425-2684

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**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**CS/HB 691 : Underground Facility Damage Prevention and Safety**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 14</b>		<b>Total Nays: 0</b>			

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**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**CS/HB 751 : Automatic Renewal of Service Contracts**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 14</b>		<b>Total Nays: 0</b>			

**Appearances:**

Automatic Renewal of Service Contracts

Laura Cantwell (Lobbyist) - Proponent

AARP

200 W. College Ave, Ste 304

Tallahassee Florida 32301

Phone: 850-577-5163

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**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 777 : Supervised Visitation**

*Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores			X		
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin				X	
H. Marlene O'Toole	X				
Ralph Poppell			X		
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 11    Total Nays: 0</b>					

**Appearances:**

Supervised Visitation  
 Karen Oehme (State Employee) - Information Only  
 Institute for Family  
 Violence Studies Florida State University  
 Tallahassee Florida 32306-2570  
 Phone: 850-644-6303

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED  (Y/N)  
 ADOPTED AS AMENDED  (Y/N)  
 ADOPTED W/O OBJECTION  (Y/N)  
 FAILED TO ADOPT  (Y/N)  
 WITHDRAWN  (Y/N)  
 OTHER

WITHDRAWN  
3-22-10

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
 2 Committee  
 3 Representative Domino offered the following:

**Amendment (with title amendment)**

Remove lines 85-90 and insert:

753.07 Service providers; background checks; immunity.-

8 (1) Because of the special trust or responsibility placed  
 9 in volunteers and employees of supervised visitation and  
 10 supervised exchange programs, such program may conduct a  
 11 security background investigation before hiring an employee or  
 12 certifying a volunteer to serve. A security background  
 13 investigation must include, but need not be limited to,  
 14 employment history checks, checks of references, local criminal  
 15 records checks through local law enforcement agencies, and  
 16 statewide criminal records checks through the Department of Law  
 17 Enforcement. Upon request, an employer shall furnish a copy of  
 18 the personnel record for the employee or former employee who is  
 19 the subject of a security background investigation conducted

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 1

20 under this section. The information contained in the personnel  
21 record may include, but need not be limited to, disciplinary  
22 matters and the reason why the employee was terminated from  
23 employment. An employer who releases a personnel record for  
24 purposes of a security background investigation is presumed to  
25 have acted in good faith and is not liable for information  
26 contained in the record without a showing that the employer  
27 maliciously falsified the record. A security background  
28 investigation conducted under this section must ensure that a  
29 person is not employed by, or certified as a volunteer for, a  
30 program if the person has been convicted of, regardless of  
31 adjudication, or entered a plea of nolo contendere or guilty to,  
32 any offense prohibited under the provisions of the Florida  
33 Statutes specified in s. 435.04(2) or under any similar law in  
34 another jurisdiction. Before certifying an applicant to serve as  
35 an employee or volunteer, the program may request a federal  
36 criminal records check of the applicant through the Federal  
37 Bureau of Investigation. In analyzing and evaluating the  
38 information obtained in the security background investigation, a  
39 program must give particular emphasis to past activities  
40 involving children, including, but not limited to, child-related  
41 criminal offenses or child abuse. A program has the sole  
42 discretion in determining whether to certify a person based on  
43 his or her security background investigation.

44 (2) No person providing services pursuant to a court order  
45 at a certified supervised visitation program or monitored  
46 exchange program shall be held personally liable in tort or  
47 named as a party defendant in any action for any injury or



Amendment No. 1

48 damage suffered as a result of any act, event, or omission or  
49 action in the scope of his or her employment or function, unless  
50 such person acted in bad faith or with malicious purpose or in a  
51 manner exhibiting wanton and willful disregard of human rights,  
52 safety, or property.  
53  
54  
55

56 -----  
57 **T I T L E A M E N D M E N T**

58 Remove lines 10-14 and insert:

59 referrals; creating s. 753.07, F.S.; authorizing security  
60 background checks of employees and volunteers of supervised  
61 visitation or monitored exchange programs; providing standards;  
62 providing immunity to employers who provide information for  
63 purposes of a background check; providing that a person  
64 providing services pursuant to a court order at a supervised  
65 visitation or monitored exchange program is not liable for  
66 actions; providing exceptions; creating s. 753.08, F.S.;  
67 providing that

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED Y (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

*Adopted  
as Amended  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee  
3 Representative(s) Jones offered the following:  
4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 753.06, Florida Statutes, is created to  
8 read:

9 753.06 Standards.-

10 (1) The standards announced in the final report submitted  
11 to the Legislature pursuant to s. 753.03(4) shall be the basis  
12 for the state's standards for supervised visitation and exchange  
13 monitoring programs, and may be modified only by the advisory  
14 board created under s. 753.03(2) after reasonable notice to the  
15 programs, but not more often than annually. The clearinghouse  
16 shall publish the standards, as modified, on its website. The  
17 published standards shall be regarded as the state standards for  
18 supervised visitation and exchange monitoring programs.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2

19       (2) Each supervised visitation and exchange monitoring  
20 program must affirm annually in a written agreement with the  
21 court that they abide by the standards. If the program has a  
22 contract with a child-placing agency, that contract must include  
23 an affirmation that the program complies with the standards. A  
24 copy of the agreement or contract must be made available to any  
25 party upon request.

26       Section 2. Section 753.07, Florida Statutes, is created to  
27 read:

28       753.07 Referrals.-

29       (1) Courts and referring child-placing agencies must adhere  
30 to the following priorities when determining where to refer  
31 cases for supervised visitation or exchange monitoring:

32       (a) For cases that are filed under chapter 61 or chapter  
33 741 where the courts are the primary source of referrals, the  
34 court shall direct referrals for supervised visitation or  
35 exchange monitoring as follows:

36       1. The order shall refer the parties to a supervised  
37 visitation or exchange monitoring program that has a written  
38 agreement with the court as provided in s. 753.06(2) if such a  
39 program exists in the community.

40       2. If a program does not exist, or if the existing program  
41 is not able to accept the referral for any reason, the court may  
42 refer the case to a local mental health professional. Such  
43 professionals are not required to abide by the state standards  
44 established in s. 753.06(1); however, such professionals must  
45 affirm to the court in writing that they have completed the

Amendment No. 2

46 clearinghouse's free, online supervised visitation training  
47 program and have read and understood the state standards.

48 (b) In cases governed by chapter 39, the referring child-  
49 placing agency must adhere to the following:

50 1. The agency having primary responsibility for the case  
51 must ensure that each family is assessed for problems that could  
52 present safety risks during parent-child contact. If risks are  
53 present, agency staff shall consider referring the parties to a  
54 local supervised visitation program that has affirmed in writing  
55 that it adheres to the state standards if such a program exists  
56 in the community.

57 2. If agency staff determine that there is no need for a  
58 supervised visitation program, no such program exists, or the  
59 existing program is unable to accept the referral for any  
60 reason, the child protective investigator or case manager having  
61 primary responsibility for the case may:

62 a. Supervise the parent-child contact him or herself.  
63 However, before a child protective investigator or case manager  
64 may supervise visits, he or she must review or receive training  
65 on the online training manual for the state's supervised  
66 visitation programs and affirm in writing to his or her own  
67 agency that he or she has received training on, or read and  
68 understands, the state standards.

69 b. Designate a foster parent or relative to supervise the  
70 parent-child visits in those cases that do not warrant the  
71 supervision of the child protective investigator or case  
72 manager. However, the designated foster parent or relative must  
73 first be apprised that the case manager conducted a safety

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2

74 assessment described in subparagraph 1., and must be provided  
75 access to free training material on the foster parent's or  
76 relative's role in supervised visitation. Such materials may be  
77 created by the clearinghouse using existing or new material, and  
78 must be approved by the department. Such training may be  
79 included in any preservice foster parent training done by the  
80 agency.

81 3. If a program does not exist, or if the existing program  
82 is unable to accept the referral and the child protective  
83 investigator or case manager is unable to supervise the parent-  
84 child contact or designate a foster parent or relative to  
85 supervise the visits as described in subparagraph 2., the agency  
86 having primary responsibility for the case may refer the case to  
87 other qualified staff within that agency to supervise the  
88 contact. However, before such staff may supervise any visits, he  
89 or she must review or receive training on the online training  
90 manual for supervised visitation programs and affirm in writing  
91 to his or her own agency that he or she has received training  
92 on, or has read and understands, the training manual and the  
93 state standards.

94 4. The agency that has primary responsibility for the case  
95 may not refer the case to a subcontractor or other agency to  
96 perform the supervised visitation unless that subcontractor's or  
97 other agency's child protective investigators or case managers  
98 who supervise onsite or offsite visits have reviewed or received  
99 training on the clearinghouse's online training manual for  
100 supervised visitation programs and affirm to their own agency

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2

101 that they have received training on, or have read and  
102 understand, the training manual and the state standards.

103 (2) This section does not prohibit the court from allowing  
104 a litigant's relatives or friends to supervise visits if the  
105 court determines that such supervision is safe. However, such  
106 informal supervisors must be made aware of the free online  
107 clearinghouse materials that they may voluntarily choose to  
108 review. These materials must provide information that helps  
109 educate the informal supervisors about the inherent risks and  
110 complicated dynamics of supervised visitation.

111 (3) Supervised visitation and exchange monitoring programs  
112 may alert the court in writing if there are problems with cases  
113 referred and the court may set a hearing to address these  
114 problems.

115 Section 3. Section 753.08, Florida Statutes, is created to  
116 read:

117 753.08 Service providers; immunity.—All persons who are  
118 responsible for providing services at a supervised visitation or  
119 exchange monitoring program who have affirmed to the court in  
120 writing that they abide by the state standards described in s.  
121 753.06(6) are presumed, prima facie, to be acting in good faith  
122 are therefore immune from any liability, civil or criminal,  
123 which otherwise might be incurred or imposed.

124 Section 4. Section 753.09, Florida Statutes, is created to  
125 read:

126 753.09 Funding.—After January 1, 2011, only supervised  
127 visitation programs that have affirmed in a written agreement  
128 with the court that they abide by and are in compliance with the

Amendment No. 2

129 state standards provided under s. 753.06(1) may receive state  
130 funding for visitation or exchange monitoring services.

131 Section 5. This act shall take effect October 1, 2010.  
132

133 -----

134 **T I T L E A M E N D M E N T**

135 Remove the entire title and insert:

136 An act relating to supervised visitation and exchange  
137 monitoring programs; creating s. 753.06, F.S.; adopting  
138 state standards for supervised visitation and exchange  
139 monitoring programs; providing for modification; requiring  
140 the standards to be published on the website of the  
141 Clearinghouse on Supervised Visitation; requiring each  
142 program to annually affirm compliance with the standards  
143 to the court; creating s. 753.07, F.S.; providing factors  
144 for the court or child-placing agency to consider when  
145 referring cases for supervised visitation or exchange  
146 monitoring; specifying training requirements for persons  
147 referring to or providing such services; authorizing  
148 supervised visitation programs to alert the court to  
149 problems with referred cases; creating s. 753.08, F.S.;  
150 providing a presumption of good faith and civil and  
151 criminal immunity for persons who have affirmed to courts  
152 that they abide by the state standards; creating s.  
153 753.09, F.S.; providing that after a specified date only  
154 those supervised visitation programs that adhere to the  
155 state standards may receive state funding; providing an  
156 effective date.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2

157



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2a

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<input checked="" type="checkbox"/>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted  
w/out objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Domino offered the following:  
4

5 **Amendment to Amendment (2) by Representative Jones (with**  
6 **title amendment)**

7 Remove lines 117-123 and insert:

8 753.08 Service providers; background checks; immunity.—

9 (1) Because of the special trust or responsibility placed  
10 in volunteers and employees of supervised visitation and  
11 supervised exchange programs, such program may conduct a  
12 security background investigation before hiring an employee or  
13 certifying a volunteer to serve. A security background  
14 investigation must include, but need not be limited to,  
15 employment history checks, checks of references, local criminal  
16 records checks through local law enforcement agencies, and  
17 statewide criminal records checks through the Department of Law  
18 Enforcement. Upon request, an employer shall furnish a copy of  
19 the personnel record for the employee or former employee who is

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 777 (2010)

Amendment No. 2a

20 the subject of a security background investigation conducted  
21 under this section. The information contained in the personnel  
22 record may include, but need not be limited to, disciplinary  
23 matters and the reason why the employee was terminated from  
24 employment. An employer who releases a personnel record for  
25 purposes of a security background investigation is presumed to  
26 have acted in good faith and is not liable for information  
27 contained in the record without a showing that the employer  
28 maliciously falsified the record. A security background  
29 investigation conducted under this section must ensure that a  
30 person is not employed by, or certified as a volunteer for, a  
31 program if the person has been convicted of, regardless of  
32 adjudication, or entered a plea of nolo contendere or guilty to,  
33 any offense prohibited under the provisions of the Florida  
34 Statutes specified in s. 435.04(2) or under any similar law in  
35 another jurisdiction. Before certifying an applicant to serve as  
36 an employee or volunteer, the program may request a federal  
37 criminal records check of the applicant through the Federal  
38 Bureau of Investigation. In analyzing and evaluating the  
39 information obtained in the security background investigation, a  
40 program must give particular emphasis to past activities  
41 involving children, including, but not limited to, child-related  
42 criminal offenses or child abuse. A program has the sole  
43 discretion in determining whether to certify a person based on  
44 his or her security background investigation.

45 (2) No person providing services pursuant to a court order  
46 at a certified supervised visitation program or monitored  
47 exchange program shall be held personally liable in tort or

Amendment No. 2a

48 | named as a party defendant in any action for any injury or  
49 | damage suffered as a result of any act, event, or omission or  
50 | action in the scope of his or her employment or function, unless  
51 | such person acted in bad faith or with malicious purpose or in a  
52 | manner exhibiting wanton and willful disregard of human rights,  
53 | safety, or property.

54 |

55 |

56 | -----

57 |

**T I T L E   A M E N D M E N T**

58 |

Remove lines 150-152 and insert:

59 |

authorizing security background checks of employees and  
60 | volunteers of supervised visitation or monitored exchange  
61 | programs; providing standards; providing immunity to employers  
62 | who provide information for purposes of a background check;  
63 | providing that a person providing services pursuant to a court  
64 | order at a supervised visitation or monitored exchange program  
65 | is not liable for actions; providing exceptions; creating s.

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 959 : Residential Properties**

*Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman		X			
Anitere Flores			X		
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez		X			
Tom Grady	X				
Seth McKeel	X				
Dave Murzin				X	
H. Marlene O'Toole	X				
Ralph Poppell			X		
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 9      Total Nays: 2</b>					

**Appearances:**

Residential Properties (Amendment 6)  
 Anthony DiMarco (Lobbyist) - Proponent  
 Florida Bankers Association  
 1001 Thomasville Road  
 Tallahassee Florida 32303  
 Phone: 224-2265

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 1

*Accepted  
w/out objection  
3-22-10*

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Skidmore offered the following:

4  
5 **Amendment (with title amendment)**

6 Between lines 52 and 53, insert:

7 Section 1. Section 627.714, Florida Statutes, is created  
8 to read:

9 627.714 Residential condominium unit owner coverage; loss  
10 assessment coverage required.—For policies issued or renewed on  
11 or after July 1, 2010, coverage under a unit owner's residential  
12 property policy must include at least \$2,000 in property loss  
13 assessment coverage for all assessments made as a result of the  
14 same direct loss to the property, regardless of the number of  
15 assessments, owned by all members of the association  
16 collectively if such loss is of the type of loss covered by the  
17 unit owner's residential property insurance policy, to which a  
18 deductible of no more than \$250 per direct property loss  
19 applies. If a deductible was or will be applied to other

Amendment No. 1

20 property loss sustained by the unit owner resulting from the  
21 same direct loss to the property, no deductible applies to the  
22 loss assessment coverage. Every individual unit owner's  
23 residential property policy must contain a provision stating  
24 that the coverage afforded by such policy is excess coverage  
25 over the amount recoverable under any other policy covering the  
26 same property.

27 Section 2. Paragraphs (a), (b), (c), (d), (f), (g), (j),  
28 and (n) of subsection (11) of section 718.111, Florida Statutes,  
29 are amended to read:

30 718.111 The association.—

31 (11) INSURANCE.—In order to protect the safety, health,  
32 and welfare of the people of the State of Florida and to ensure  
33 consistency in the provision of insurance coverage to  
34 condominiums and their unit owners, this subsection applies to  
35 every residential condominium in the state, regardless of the  
36 date of its declaration of condominium. It is the intent of the  
37 Legislature to encourage lower or stable insurance premiums for  
38 associations described in this subsection.

39 (a) Adequate property hazard insurance, regardless of any  
40 requirement in the declaration of condominium for coverage by  
41 the association for full insurable value, replacement cost, or  
42 similar coverage, must shall be based on upon the replacement  
43 cost of the property to be insured as determined by an  
44 independent insurance appraisal or update of a prior appraisal.  
45 The replacement cost must full insurable value shall be  
46 determined at least once every 36 months.

## Amendment No. 1

47 1. An association or group of associations may provide  
48 adequate property hazard insurance through a self-insurance fund  
49 that complies with the requirements of ss. 624.460-624.488.

50 2. The association may also provide adequate property  
51 hazard insurance coverage for a group of at least no fewer than  
52 three communities created and operating under this chapter,  
53 chapter 719, chapter 720, or chapter 721 by obtaining and  
54 maintaining for such communities insurance coverage sufficient  
55 to cover an amount equal to the probable maximum loss for the  
56 communities for a 250-year windstorm event. Such probable  
57 maximum loss must be determined through the use of a competent  
58 model that has been accepted by the Florida Commission on  
59 Hurricane Loss Projection Methodology. A ~~No~~ policy or program  
60 providing such coverage may not shall be issued or renewed after  
61 July 1, 2008, unless it has been reviewed and approved by the  
62 Office of Insurance Regulation. The review and approval must  
63 ~~shall~~ include approval of the policy and related forms pursuant  
64 to ss. 627.410 and 627.411, approval of the rates pursuant to s.  
65 627.062, a determination that the loss model approved by the  
66 commission was accurately and appropriately applied to the  
67 insured structures to determine the 250-year probable maximum  
68 loss, and a determination that complete and accurate disclosure  
69 of all material provisions is provided to condominium unit  
70 owners before ~~prior to~~ execution of the agreement by a  
71 condominium association.

72 3. When determining the adequate amount of property hazard  
73 insurance coverage, the association may consider deductibles as  
74 determined by this subsection.

## Amendment No. 1

75 (b) If an association is a developer-controlled  
76 association, the association shall exercise its best efforts to  
77 obtain and maintain insurance as described in paragraph (a).  
78 Failure to obtain and maintain adequate property hazard  
79 insurance during any period of developer control constitutes a  
80 breach of fiduciary responsibility by the developer-appointed  
81 members of the board of directors of the association, unless the  
82 members can show that despite such failure, they have made their  
83 best efforts to maintain the required coverage.

84 (c) Policies may include deductibles as determined by the  
85 board.

86 1. The deductibles must ~~shall~~ be consistent with industry  
87 standards and prevailing practice for communities of similar  
88 size and age, and having similar construction and facilities in  
89 the locale where the condominium property is situated.

90 2. The deductibles may be based upon available funds,  
91 including reserve accounts, or predetermined assessment  
92 authority at the time the insurance is obtained.

93 3. The board shall establish the amount of deductibles  
94 based upon the level of available funds and predetermined  
95 assessment authority at a meeting of the board. ~~Such meeting~~  
96 ~~shall be open to all unit owners in the manner set forth in s.~~  
97 ~~718.112(2)(e). The notice of such meeting must state the~~  
98 ~~proposed deductible and the available funds and the assessment~~  
99 ~~authority relied upon by the board and estimate any potential~~  
100 ~~assessment amount against each unit, if any. The meeting~~  
101 ~~described in this paragraph may be held in conjunction with a~~  
102 ~~meeting to consider the proposed budget or an amendment thereto.~~



## Amendment No. 1

103 (d) An association controlled by unit owners operating as  
104 a residential condominium shall use its best efforts to obtain  
105 and maintain adequate property insurance to protect the  
106 association, the association property, the common elements, and  
107 the condominium property that ~~must is required to~~ be insured by  
108 the association pursuant to this subsection.

109 (f) Every property ~~hazard~~ insurance policy issued or  
110 renewed on or after January 1, 2009, for the purpose of  
111 protecting the condominium must ~~shall~~ provide primary coverage  
112 for:

113 1. All portions of the condominium property as originally  
114 installed or replacement of like kind and quality, in accordance  
115 with the original plans and specifications.

116 2. All alterations or additions made to the condominium  
117 property or association property pursuant to s. 718.113(2).

118 3. The coverage must ~~shall~~ exclude all personal property  
119 within the unit or limited common elements, and floor, wall, and  
120 ceiling coverings, electrical fixtures, appliances, water  
121 heaters, water filters, built-in cabinets and countertops, and  
122 window treatments, including curtains, drapes, blinds, hardware,  
123 and similar window treatment components, or replacements of any  
124 of the foregoing which are located within the boundaries of the  
125 unit and serve only such unit. Such property and any insurance  
126 thereupon is the responsibility of the unit owner.

127 (g) A condominium unit owner's policy must conform to the  
128 requirements of s. 627.714. Every hazard insurance policy issued  
129 or renewed on or after January 1, 2009, to an individual unit  
130 owner must contain a provision stating that the coverage

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 1

131 | ~~afforded by such policy is excess coverage over the amount~~  
132 | ~~recoverable under any other policy covering the same property.~~  
133 | ~~Such policies must include special assessment coverage of no~~  
134 | ~~less than \$2,000 per occurrence. An insurance policy issued to~~  
135 | ~~an individual unit owner providing such coverage does not~~  
136 | ~~provide rights of subrogation against the condominium~~  
137 | ~~association operating the condominium in which such individual's~~  
138 | ~~unit is located.~~

139 |       ~~1. All improvements or additions to the condominium~~  
140 | ~~property that benefit fewer than all unit owners shall be~~  
141 | ~~insured by the unit owner or owners having the use thereof, or~~  
142 | ~~may be insured by the association at the cost and expense of the~~  
143 | ~~unit owners having the use thereof.~~

144 |       ~~2. The association shall require each owner to provide~~  
145 | ~~evidence of a currently effective policy of hazard and liability~~  
146 | ~~insurance upon request, but not more than once per year. Upon~~  
147 | ~~the failure of an owner to provide a certificate of insurance~~  
148 | ~~issued by an insurer approved to write such insurance in this~~  
149 | ~~state within 30 days after the date on which a written request~~  
150 | ~~is delivered, the association may purchase a policy of insurance~~  
151 | ~~on behalf of an owner. The cost of such a policy, together with~~  
152 | ~~reconstruction costs undertaken by the association but which are~~  
153 | ~~the responsibility of the unit owner, may be collected in the~~  
154 | ~~manner provided for the collection of assessments in s. 718.116.~~

155 |       ~~1.3.~~ All reconstruction work after a property casualty  
156 | ~~loss~~ must ~~shall~~ be undertaken by the association except as  
157 | otherwise authorized in this section. A unit owner may undertake  
158 | reconstruction work on portions of the unit with the prior

Amendment No. 1

159 written consent of the board of administration. However, such  
160 work may be conditioned upon the approval of the repair methods,  
161 the qualifications of the proposed contractor, or the contract  
162 that is used for that purpose. A unit owner must ~~shall~~ obtain  
163 all required governmental permits and approvals before ~~prior to~~  
164 commencing reconstruction.

165 ~~2.4.~~ Unit owners are responsible for the cost of  
166 reconstruction of any portions of the condominium property for  
167 which the unit owner is required to carry property ~~casualty~~  
168 insurance, and any such reconstruction work undertaken by the  
169 association is ~~shall be~~ chargeable to the unit owner and  
170 enforceable as an assessment pursuant to s. 718.116. ~~The~~  
171 ~~association must be an additional named insured and loss payee~~  
172 ~~on all casualty insurance policies issued to unit owners in the~~  
173 ~~condominium operated by the association.~~

174 ~~3.5.~~ A multicondominium association may elect, by a  
175 majority vote of the collective members of the condominiums  
176 operated by the association, to operate the ~~such~~ condominiums as  
177 a single condominium for purposes of insurance matters,  
178 including, but not limited to, the purchase of the property  
179 ~~hazard~~ insurance required by this section and the apportionment  
180 of deductibles and damages in excess of coverage. The election  
181 to aggregate the treatment of insurance premiums, deductibles,  
182 and excess damages constitutes an amendment to the declaration  
183 of all condominiums operated by the association, and the costs  
184 of insurance must ~~shall~~ be stated in the association budget. The  
185 amendments must ~~shall~~ be recorded as required by s. 718.110.

## Amendment No. 1

186 (j) Any portion of the condominium property that must  
187 ~~required to~~ be insured by the association against property  
188 ~~casualty~~ loss pursuant to paragraph (f) which is damaged by  
189 ~~casualty~~ shall be reconstructed, repaired, or replaced as  
190 necessary by the association as a common expense. All property  
191 ~~hazard~~ insurance deductibles, uninsured losses, and other  
192 damages in excess of property hazard insurance coverage under  
193 the property hazard insurance policies maintained by the  
194 association are a common expense of the condominium, except  
195 that:

196 1. A unit owner is responsible for the costs of repair or  
197 replacement of any portion of the condominium property not paid  
198 by insurance proceeds, if such damage is caused by intentional  
199 conduct, negligence, or failure to comply with the terms of the  
200 declaration or the rules of the association by a unit owner, the  
201 members of his or her family, unit occupants, tenants, guests,  
202 or invitees, without compromise of the subrogation rights of the  
203 ~~any insurer as set forth in paragraph (g)~~.

204 2. The provisions of subparagraph 1. regarding the  
205 financial responsibility of a unit owner for the costs of  
206 repairing or replacing other portions of the condominium  
207 property also apply to the costs of repair or replacement of  
208 personal property of other unit owners or the association, as  
209 well as other property, whether real or personal, which the unit  
210 owners are required to insure ~~under paragraph (g)~~.

211 3. To the extent the cost of repair or reconstruction for  
212 which the unit owner is responsible under this paragraph is  
213 reimbursed to the association by insurance proceeds, and, ~~to the~~

Amendment No. 1

214 ~~extent~~ the association has collected the cost of such repair or  
215 reconstruction from the unit owner, the association shall  
216 reimburse the unit owner without the waiver of any rights of  
217 subrogation.

218 4. The association is not obligated to pay for  
219 reconstruction or repairs of property casualty losses as a  
220 common expense if the property casualty losses were known or  
221 should have been known to a unit owner and were not reported to  
222 the association until after the insurance claim of the  
223 association for that property casualty was settled or resolved  
224 with finality, or denied because ~~on the basis that~~ it was  
225 untimely filed.

226 (n) The association is not obligated to pay for any  
227 reconstruction or repair expenses due to property casualty loss  
228 to any improvements installed by a current or former owner of  
229 the unit or by the developer if the improvement benefits only  
230 the unit for which it was installed and is not part of the  
231 standard improvements installed by the developer on all units as  
232 part of original construction, whether or not such improvement  
233 is located within the unit. This paragraph does not relieve any  
234 party of its obligations regarding recovery due under any  
235 insurance implemented specifically for ~~any~~ such improvements.

236

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**T I T L E A M E N D M E N T**

Remove line 2 and insert:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 1

241 An act relating to residential properties; creating s. 627.714,  
242 F.S.; requiring that coverage under a unit owner's policy for  
243 certain assessments include at least a minimum amount of loss  
244 assessment coverage; requiring that every property insurance  
245 policy to an individual unit owner contain a specified  
246 provision; amending s. 718.111, F.S.; deleting a requirement for  
247 the board of a condominium to hold a meeting open to unit owners  
248 to establish the amount of an insurance deductible; revising the  
249 property to which a property insurance policy for a condominium  
250 association applies; revising the requirements for a condominium  
251 unit owner's property insurance policy; amending s.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

*Adopted  
w/out objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Skidmore offered the following:

4  
5 **Amendment**

6 Remove lines 56-60 and insert:

7 (13) A condominium, cooperative, or multifamily  
8 residential building that is less than four stories in height  
9 and has a corridor providing an exterior means of egress is  
10 exempt from the requirement to install a manual fire alarm  
11 system under s. 9.6 of the Life Safety Code adopted in the  
12 Florida Fire Prevention Code.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 3

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	<input checked="" type="checkbox"/>	(Y/N)
OTHER	_____	

WITHDRAWN  
3-22-10

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Skidmore offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 92-96 and insert:

7 of common areas with a sprinkler system before the end of 2014.

8 A condominium that has 1 1/2 hour or higher fire-rated interior

9 walls separating condominium units and that is not a high-rise

10 building need not retrofit the inside of units with fire alarm

11 systems.

12

13

14

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15 **T I T L E A M E N D M E N T**

16 Remove lines 7-11 and insert:

17 F.S.; providing that certain condominiums need not retrofit the

18 inside of units with fire alarm systems;



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 4

COUNCIL/COMMITTEE ACTION

ADOPTED	<input checked="" type="checkbox"/> (Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/> (Y/N)
ADOPTED W/O OBJECTION	<input checked="" type="checkbox"/> (Y/N)
FAILED TO ADOPT	<input type="checkbox"/> (Y/N)
WITHDRAWN	<input type="checkbox"/> (Y/N)
OTHER	<input type="checkbox"/>

*Adopted  
w/out  
objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
 2 Committee  
 3 Representative(s) Skidmore offered the following:  
 4

**Amendment (with directory and title amendments)**

Between lines 183 and 184, insert:

7 (11) If the unit is occupied by a tenant and the unit  
 8 owner is delinquent in paying any monetary obligation due to the  
 9 association, the association may make a written demand that the  
 10 tenant pay the future monetary obligations related to the  
 11 condominium unit to the association, and the tenant must make  
 12 such payment. The demand is continuing in nature and, upon  
 13 demand, the tenant must pay the monetary obligations to the  
 14 association until the association releases the tenant or the  
 15 tenant discontinues tenancy in the unit. The association must  
 16 mail written notice to the unit owner of the association's  
 17 demand that the tenant make payments to the association. Both  
 18 the demand to tenant, and the notice to the unit owner, must  
 19 contain the following statement in no less than 12-point type:

Amendment No. 4

20  
21 WHERE A CONDOMINIUM OWNER IS DELINQUENT IN PAYMENTS OWED TO  
22 THE CONDOMINIUM ASSOCIATION, FLORIDA LAW ALLOWS THE  
23 CONDOMINIUM ASSOCIATION TO REQUIRE TENANTS TO PAY  
24 ASSESSMENTS TO THE ASSOCIATION AND DEDUCT THE AMOUNT OF THE  
25 ASSESSMENTS FROM THE RENT OWED TO THE CONDOMINIUM OWNER.  
26 ASSESSMENTS PAID BY THE TENANT WILL BE CREDITED TO THE UNIT  
27 OWNER'S ACCOUNT WITH THE ASSOCIATION. THE APPLICABLE LAW  
28 IS AT SECTION 718.116(11) OF THE FLORIDA STATUTES. THE  
29 CONDOMINIUM OWNER MAY NOT EVICT OR ATTEMPT TO EVICT A  
30 TENANT BECAUSE THE TENANT COMPLIES WITH THIS LAW. THE  
31 TENANT IS ENTITLED TO ATTORNEYS FEES FROM THE CONDOMINIUM  
32 OWNER SHOULD THE CONDOMINIUM OWNER ATTEMPT TO EVICT OR  
33 OTHERWISE SUE A TENANT BECAUSE THE TENANT HAS COMPLIED WITH  
34 THIS LEGAL REQUIREMENT. A CONDOMINIUM UNIT OWNER THAT  
35 DISAGREES WITH THIS DEMAND UPON THE TENANT SHOULD CONTACT  
36 THE ASSOCIATION.

37  
38 The association shall, upon request, provide the tenant with  
39 written receipts for payments made. A tenant who acts in good  
40 faith in response to a written demand from an association is  
41 immune from any claim from the unit owner. A unit owner has no  
42 cause of action against a tenant for making a payment to a  
43 condominium association in substantial compliance with this  
44 subsection, and who has paid the remaining rent to the unit  
45 owner after deducting the payment to the condominium  
46 association. The court shall award a tenant costs and

Amendment No. 4

47 attorney's fees payable by a unit owner who wrongfully attempts  
48 to evict or sue such a tenant.

49 (a) If the tenant prepaid rent to the unit owner before  
50 receiving the demand from the association and provides written  
51 evidence of paying the rent to the association within 14 days  
52 after receiving the demand, the tenant must make any subsequent  
53 rental payments to the association to be credited against the  
54 monetary obligations of the unit owner to the association.

55 (b) The tenant is not liable for increases in the amount  
56 of the monetary obligations due unless the tenant was notified  
57 in writing of the increase at least 10 days before the date the  
58 rent is due. The liability of the tenant may not exceed the  
59 amount due from the tenant to the tenant's landlord. The  
60 tenant's landlord shall provide the tenant a credit against  
61 rents due to the unit owner in the amount of monies paid to the  
62 association under this section.

63 (c) The association may issue notices under s. 83.56 and  
64 may sue for eviction under ss. 83.59-83.625 as if the  
65 association were a landlord under part II of chapter 83 if the  
66 tenant fails to pay a required payment to the association.  
67 However, the association is not otherwise considered a landlord  
68 under chapter 83 and specifically has no duties under s. 83.51.

69 (d) The tenant does not, by virtue of payment of monetary  
70 obligations to the association, have any of the rights of a unit  
71 owner to vote in any election or to examine the books and  
72 records of the association.

73 (e) A court may supersede the effect of this subsection by  
74 appointing a receiver.

Amendment No. 4

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**D I R E C T O R Y   A M E N D M E N T**

Remove line 126 and insert:

(h), (i), and (j) are added to that subsection, and subsection  
(11) is added to that section, to read:

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**T I T L E   A M E N D M E N T**

Remove line 29 and insert:

pursuing certain causes of action; requiring a tenant in a unit  
owned by a person who is delinquent in the payment of a monetary  
obligation to the condominium association to pay rent to the  
association under certain circumstances; authorizing the  
condominium association to sue such tenant who fails to pay rent  
for eviction under certain circumstances; providing that the  
tenant is immune from claims from the unit owner as the result  
of paying rent to the association under certain circumstances;  
amending s. 720.3085,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 5

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<input checked="" type="checkbox"/>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted  
w/out objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Skidmore offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 254-259 and insert:

7 homeowners' association and provided for use by members of such  
8 association.

9 (2) A homeowners' association may disallow the use of  
10 common area facilities by parcel owners who are delinquent in  
11 the payment of association fees by more than 90 days.

12 Section 6. Section 718.1165, Florida Statutes, is created  
13 to read:

14 718.1165 Common area facilities; restriction of use.—

15 (1) For purposes of this section, the term "common area  
16 facilities" includes, but is not limited to, any clubhouse,  
17 entertainment facility, exercise facility, swimming pool, tennis  
18 court, or other recreation area owned or maintained by a  
19 condominium association, multicondominium association, or master

Amendment No. 5

20 condominium association and provided for use by members of a  
21 condominium association.

22 (2) A condominium association, multicondominium  
23 association or master condominium association may disallow the  
24 use of common area facilities by a condominium unit owner who is  
25 delinquent in the payment of condominium association fees by  
26 more than 90 days.

27  
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30 -----  
31 **T I T L E A M E N D M E N T**

32 Remove lines 41-45 and insert:

33 for specified purposes; authorizing a homeowners' association to  
34 disallow the use of common area facilities by parcel owners who  
35 are delinquent in the payment of association fees by more than a  
36 specified number of days; creating s. 718.1165, F.S.; defining  
37 the term "common area facilities" for specified purposes;  
38 authorizing a condominium association, multicondominium  
39 association or master condominium association to disallow the  
40 use of common area facilities by unit owners who are delinquent  
41 in the payment of association fees by more than a specified  
42 number of days; repealing s. 553.509(2), F.S., relating to



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 959 (2010)

Amendment No. 7

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

*Adopted  
w/out objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Soto offered the following:

4

5 **Amendment**

6 Remove lines 93-96 and insert:

7 2014. A condominium that has 1 1/2 hour or higher fire-rated  
8 interior walls separating condominium units and that is not a  
9 high-rise building need not retrofit the inside of units with  
10 fire alarm systems.



**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1017 : Relief/Edwidge Valmyr/City of North Miami**

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Elsnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady		X			
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13</b>		<b>Total Nays: 1</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1017 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	<input type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input checked="" type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

*Adopted  
as amended  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative Galvano offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. The facts stated in the preamble to this act  
8 are found and declared to be true.

9 Section 2. The City of North Miami is authorized and  
10 directed to appropriate from funds of the city not otherwise  
11 appropriated and draw a warrant payable to Edwidge Valmyr  
12 Gabriel, as natural parent and guardian of her son, Stanley  
13 Valmyr, a minor, and personal representative of his estate, in  
14 the sum of \$750,000 to be paid in eight equal payments of  
15 \$93,750, beginning on the first anniversary of the passage of  
16 this claim bill and each year thereafter, plus an amount  
17 equivalent to 50 percent of the negotiated medical lien asserted  
18 by Jackson Memorial Hospital up to \$40,000, as compensation for

Amendment No. 1

19 the death of Stanley Valmyr due to the negligence of the City of  
20 North Miami.

21 Section 3. The amount paid by the City of North Miami  
22 pursuant to s. 768.28, Florida Statutes, and the amount awarded  
23 under this act are intended to provide the sole compensation for  
24 all present and future claims arising out of the factual  
25 situation described in this act which resulted in the death of  
26 Stanley Valmyr. The total amount paid for attorney's fees,  
27 lobbying fees, costs, and other similar expenses relating to  
28 this claim may not exceed 25 percent of the amount awarded under  
29 this act.

30 Section 4. This act shall take effect upon becoming a law.  
31  
32

33 -----  
34 **T I T L E A M E N D M E N T**

35 Remove the entire title and insert:

36 A bill to be entitled

37 An act for the relief of Edwidge Valmyr Gabriel, as  
38 parent and natural guardian of her son, Stanley  
39 Valmyr, a minor, and as personal representative of the  
40 Estate of Stanley Valmyr, deceased, by the City of  
41 North Miami; providing for an appropriation to  
42 compensate her for the wrongful death of her son,  
43 Stanley Valmyr, as a result of the negligence of the  
44 City of North Miami; providing a limitation on the  
45 payment of fees and costs; providing an effective  
46 date.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1017 (2010)

Amendment No. 1

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WHEREAS, on March 28, 2007, Edwidge Valmyr Gabriel registered her son, Stanley Valmyr, who was 7 years of age, for a Fun Day camp operated by the City of North Miami, and

WHEREAS, the Fun Day camp was supposed to consist of various arts and crafts activities at the community center, and

WHEREAS, before March 30, 2007, which was the day on which the Fun Day was scheduled, the City of North Miami planned a day at the Thomas Sasso Pool located in the City of North Miami, and

WHEREAS, on March 30, 2007, at approximately 8 a.m., Edwidge Valmyr Gabriel took Stanley to the camp, and

WHEREAS, the children who were taken to the pool were given swim tests, and

WHEREAS, Stanley and many other children who were unable to swim were sent to a more shallow area of the pool, and

WHEREAS, if the camp counselors had known that they were bringing the children to the pool that day, they would have been in the pool to observe and protect the children, and

WHEREAS, the City of North Miami had four lifeguards on duty that day at the Thomas Sasso Pool, and

WHEREAS, while the children swam in the pool, three of those four lifeguards were in the administrative office, rather than observing the children, and

WHEREAS, one lifeguard was sitting in the lifeguard chair furthest from the area where the children were swimming, and

WHEREAS, Stanley Valmyr drowned in the Thomas Sasso Pool on March 30, 2007, and died on July 26, 2007, as a result of injuries sustained from drowning, and

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1017 (2010)

Amendment No. 1

75 WHEREAS, the City of North Miami was negligent in its  
76 actions, which directly resulted in the death of Stanley Valmyr,  
77 and

78 WHEREAS, a tort claim was filed on behalf of Edwidge Valmyr  
79 Gabriel, as parent and natural guardian of her son, Stanley  
80 Valmyr, a minor, and as personal representative of his estate,  
81 case number 08-22810(13), in the Circuit Court for the Eleventh  
82 Judicial Circuit, and

83 WHEREAS, the claim against the City of North Miami was  
84 settled prior to trial, and

85 WHEREAS, the City of North Miami has agreed to pay \$200,000  
86 to Edwidge Valmyr Gabriel, pursuant to the statutory limits of  
87 liability set forth in s. 768.28, Florida Statutes, and

88 WHEREAS, the settlement agreement provides for the entry of  
89 a consent judgment in the amount of \$750,000 to be paid in eight  
90 equal payments beginning on the first anniversary of the passage  
91 of this claims bill, and each year thereafter, and

92 WHEREAS, the City of North Miami has agreed to pay 50  
93 percent of the negotiated medical lien asserted by Jackson  
94 Memorial Hospital, up to \$40,000, and

95 WHEREAS, the amount of the medical lien asserted by  
96 Medicare is resolved, and

97 WHEREAS, the total amount of the medical lien is  
98 \$134,007.61, and

99 WHEREAS, Medicare has agreed to installments until the lien  
100 is satisfied, and

101 WHEREAS, the prior attorneys for Edwidge Valmyr Gabriel  
102 asserted a charging lien, the charging lien has been satisfied,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1017 (2010)

Amendment No. 1

103 and the total amount of attorney's fees to be paid by Edwidge  
104 Valmyr Gabriel will not exceed 25 percent of the recovery, and

105 WHEREAS, pursuant to the settlement, the City of North  
106 Miami agrees that the passage of this act is appropriate and  
107 agrees to pay in accordance with this act, NOW, THEREFORE,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1017 (2010)

Amendment No. 1A

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted  
w/out objection*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee  
3 Representative Gonzalez offered the following:  
4

5 **Amendment to Amendment (1) by Representative Galvano**

6 Remove lines 16-18 and insert:

7 this claim bill and each year thereafter, plus an additional  
8 \$4,185.50 to be included in the first warrant as payment for 50  
9 percent of the negotiated medical lien asserted by Jackson  
10 Memorial Hospital, as compensation for  
11

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1155 : Relief/Madonna Castillo/ City of Hialeah**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady		X			
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13</b>		<b>Total Nays: 1</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM



**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1303 : Relief/Lois Lacava/Munroe Regional Health System**

*Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady		X			
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13</b>		<b>Total Nays: 1</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1303 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	✓	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted w/out  
objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
 2 Committee  
 3 Representative Fresen offered the following:

**Amendment (with title amendment)**

Remove lines 89-90 and insert:

7 appropriated and to pay the sum of \$125,000 to Lois H. Lacava  
 8 within 30 days and to make a second payment of \$125,000 to Lois  
 9 H. Lacava within 365 days thereafter, as compensation for  
 10 injuries and

11  
 12  
 13 -----  
 14 **T I T L E A M E N D M E N T**

Remove lines 19-40 and insert:

16 WHEREAS, Dr. Mehra brought these observations to the  
 17 attention of the nursing staff, ordered an arterial Doppler test  
 18 to be performed immediately, and advised the nurse to continue  
 19 to daily monitor Ms. Lacava's production of red blood cells and

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1303 (2010)

Amendment No. 1

20 the effectiveness of a blood-thinning drug that Ms. Lacava was  
21 prescribed, and

22 WHEREAS, an arterial Doppler test is a blood pressure test  
23 that measures the lack of blood flow which may be caused by a  
24 blockage in the arteries in the legs, and

25 WHEREAS, Dr. Mehra was not on call on the evening of  
26 November 12, but the next morning he was paged by the nurse  
27 taking care of Ms. Lacava and told that her venous Doppler test,  
28 a test used to check the circulation in the large veins in the  
29 legs, was negative for deep venous thrombosis, and

30 WHEREAS, upon further questioning, Dr. Mehra realized that  
31 the arterial Doppler test had not been performed even though he  
32 had ordered a nurse to conduct the test, and

33 WHEREAS, the Doppler technician, upon hearing the clinical  
34 features and history of the patient, had been reluctant to  
35 perform an arterial Doppler test because the technician thought  
36 there was a venous problem in Ms. Lacava's leg, and  
37

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

3/22/2010 3:15:00PM

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1411 : Timeshares**

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Eric Elsnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell				X	
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 13    Total Nays: 0</b>					

**Appearances:**

Timeshares

Pete Dunbar (Lobbyist) - Opponent  
 Real Property Section-Florida Bar  
 215 S. Monroe Street  
 Tallahassee Florida 32301  
 Phone: 222-3533

Timeshares (Bill & Amendment)

Jason Gamel (Lobbyist) - Proponent  
 American Resort development Association  
 4901 Vineland Road, Ste 635  
 Orlando Florida 32811  
 Phone: 407-245-7601

Timeshares (Bill & Amendment)

Kurt Gurber (Lobbyist) - Proponent  
 American Resort Development Association  
 200 S. Orange Ave  
 Orlando Florida 32801  
 Phone: 407-649-4042

Timeshares (Bill & Amendment)

Andrew M. Fisher (Lobbyist) - Proponent  
 American Resort Development Association  
 200 S. Orange Ave, Ste 2300  
 Orlando Florida 32801  
 Phone: 407-540-7932

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

Adopted  
w/out objection

COUNCIL/COMMITTEE AMENDMENT

3-22-10

Bill No. HB 1411 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	<input checked="" type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Dorworth offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

9 721.07 Public offering statement.—Prior to offering any  
10 timeshare plan, the developer must submit a filed public  
11 offering statement to the division for approval as prescribed by  
12 s. 721.03, s. 721.55, or this section. Until the division  
13 approves such filing, any contract regarding the sale of that  
14 timeshare plan is subject to cancellation by the purchaser  
15 pursuant to s. 721.10.

16 (5) Every filed public offering statement for a timeshare  
17 plan which is not a multisite timeshare plan shall contain the  
18 information required by this subsection. The division is

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1411 (2010)

Amendment No. 1

19 authorized to provide by rule the method by which a developer  
20 must provide such information to the division.

21 (jj) The following statement in conspicuous type:

22  
23 The managing entity has a lien against each timeshare  
24 interest to secure the payment of assessments, ad  
25 valorem assessments, tax assessments, and special  
26 assessments. Your failure to make any required  
27 payments may result in the judicial or trustee  
28 foreclosure of an assessment lien and the loss of your  
29 timeshare interest. If the managing entity initiates a  
30 trustee procedure, you shall have the option to object  
31 to the use of the trustee foreclosure procedure and  
32 the managing entity may only proceed by filing a  
33 judicial foreclosure action.

34  
35 Section 2. Subsections (2) and (3) of section 721.16,  
36 Florida Statutes, are amended to read:

37 721.16 Liens for overdue assessments; liens for labor  
38 performed on, or materials furnished to, a timeshare unit.—

39 (2) The managing entity may bring a judicial an action in  
40 its name to foreclose a lien under subsection (1) in the manner  
41 a mortgage of real property is foreclosed and may also bring an  
42 action to recover a money judgment for the unpaid assessments  
43 without waiving any claim of lien. As an alternative to  
44 initiating a judicial action, the managing entity may initiate a  
45 trustee procedure to foreclose an assessment lien under s.  
46 721.855.

Amendment No. 1

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

65 Section 3. Part III of chapter 721, Florida Statutes,  
66 entitled "Foreclosure of Liens on Timeshare Estates," is renamed  
67 "Foreclosure of Liens on Timeshare Interests."

68 Section 4. Section 721.81, Florida Statutes, is amended to  
69 read:

70 721.81 Legislative purpose.—The purposes of this part are  
71 to:

72 (1) Recognize that timeshare interests estates are parcels  
73 of real property used for vacation experience rather than for

Amendment No. 1

74 homestead or investment purposes and that there are numerous  
75 timeshare interests estates in this the state.

76 (2) Recognize that the economic health and efficient  
77 operation of the vacation ownership industry are in part  
78 dependent upon the availability of an efficient and economical  
79 process for all timeshare interest foreclosures foreclosure.

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

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

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

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

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



Amendment No. 1

102 Section 5. Section 721.82, Florida Statutes, is amended to  
103 read:

104 721.82 Definitions.—As used in this part, the term:

105 (1) "Amounts secured by the lien" means all amounts  
106 secured by an assessment lien or mortgage lien, including, but  
107 not limited to, all past due amounts, accrued interest, late  
108 fees, taxes, advances for the payment of taxes, insurance and  
109 maintenance of the timeshare interest, and any fees or costs  
110 incurred by the lienholder or trustee, including any reasonable  
111 attorney's fees, trustee's fees, and costs incurred in  
112 connection with the default.

113 (2)-(1) "Assessment lien" means:

114 (a) A lien for delinquent assessments as provided in ss.  
115 721.16, 718.116, and 719.108, and 721.16 as to timeshare  
116 condominiums; or

117 (b) A lien for unpaid ad valorem assessments, tax  
118 assessments, taxes and special assessments as provided in s.  
119 192.037(8).

120 (3)-(2) "Junior interestholder" means any person who has a  
121 lien or interest of record against a timeshare interest estate  
122 in the county or counties in which the timeshare interest estate  
123 is located, which is inferior to the mortgage lien or assessment  
124 lien being foreclosed under this part.

125 (4)-(3) "Lienholder" means a holder of an assessment lien  
126 or a holder of a mortgage lien, as applicable. A receiver  
127 appointed under s. 721.26 is a lienholder for purposes of  
128 foreclosure of assessment liens under this part.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1411 (2010)

Amendment No. 1

129 ~~(5)~~<sup>(4)</sup> "Mortgage" has the same meaning set forth in s.  
130 697.01.

131 ~~(6)~~<sup>(5)</sup> "Mortgage lien" means a security interest in a  
132 timeshare interest estate created by a mortgage encumbering the  
133 timeshare interest estate.

134 ~~(7)~~<sup>(6)</sup> "Mortgagee" means a person holding a mortgage lien.

135 ~~(8)~~<sup>(7)</sup> "Mortgagor" means a person granting a mortgage lien  
136 or a person who has assumed the obligation secured by a mortgage  
137 lien.

138 ~~(9)~~<sup>(8)</sup> "Notice address" means:

139 (a) As to an assessment lien, the address of the ~~current~~  
140 owner of a timeshare interest estate as reflected by the books  
141 and records of the timeshare plan under ss. 721.13(4) and  
142 721.15(7).

143 (b) As to a mortgage lien:

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

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

153 (c) As to a junior interestholder, the address as set  
154 forth in the recorded instrument creating the junior lien  
155 ~~interest~~ or interest lien, or in any recorded amendment  
156 ~~supplement~~ thereto changing the address, or in any written

Amendment No. 1

157 notification by the junior interestholder to the foreclosing  
158 lienholder changing the ~~of such change in~~ address.

159 ~~(10)(9)~~ "Obligor" means the mortgagor, the person subject  
160 to an assessment lien, or the record owner of the timeshare  
161 interest estate.

162 (11) "Permitted delivery service" means any nationally  
163 recognized common carrier delivery service or international  
164 airmail service that allows for return receipt service.

165 ~~(12)(10)~~ "Registered agent" means an agent duly appointed  
166 by the obligor under s. 721.84 for the purpose of accepting all  
167 notices and service of process under this part. A registered  
168 agent may be an individual resident in this state whose business  
169 office qualifies as a registered office, or a domestic or  
170 foreign corporation or a not-for-profit corporation as defined  
171 in chapter 617 authorized to transact business or to conduct its  
172 affairs in this state, whose business office qualifies as a  
173 registered office. A registered agent for any obligor may not be  
174 the lienholder or the attorney for the lienholder.

175 ~~(13)(11)~~ "Registered office" means the street address of  
176 the business office of the registered agent appointed under s.  
177 721.84, located in this state.

178 (14) "Trustee" means an attorney who is a member in good  
179 standing of The Florida Bar or his or her law firm, or a title  
180 insurer authorized to transact business in this state under s.  
181 624.401, appointed as trustee or as substitute trustee in  
182 accordance with s. 721.855 or s. 721.856. A receiver appointed  
183 under s. 721.26 may act as a trustee under s. 721.855. A trustee  
184 must be independent as required by s. 721.05(20).

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185 Section 6. Section 721.83, Florida Statutes, is amended to  
186 read:

187 721.83 Consolidation of judicial foreclosure actions.—

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

192 (a) The foreclosure proceeding involves a single timeshare  
193 property.

194 (b) The foreclosure proceeding is filed by a single  
195 plaintiff.

196 (c) The default and remedy provisions in the written  
197 instruments on which the foreclosure proceeding is based are  
198 substantially the same for each defendant.

199 (d) The nature of the defaults alleged is the same for  
200 each defendant.

201 (e) No more than 15 timeshare interests ~~estates~~, without  
202 regard to the number of defendants, are joined within the same  
203 consolidated foreclosure action.

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

208 (3) A consolidated timeshare foreclosure action shall be  
209 considered a single action, suit, or proceeding for the payment  
210 of filing fees and service charges pursuant to general law. In  
211 addition to the payment of such filing fees and service charges,  
212 an additional filing fee of up to \$10 for each timeshare

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213 interest estate joined in that action shall be paid to the clerk  
214 of court.

215 Section 7. Section 721.85, Florida Statutes, is amended to  
216 read:

217 721.85 Service to notice address or on registered agent.—

218 (1) Service of process for a foreclosure proceeding  
219 involving a timeshare interest estate may be made by any means  
220 recognized by law. In addition, substituted service on an  
221 obligor ~~a party~~ who has appointed a registered agent under s.  
222 721.84 may be made on such registered agent at the registered  
223 office. Also, when using s. 48.194 where in rem or quasi in rem  
224 relief only is sought, such service of process provisions are  
225 modified in connection with a foreclosure proceeding against a  
226 timeshare interest estate to provide that:

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

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

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

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

243 Section 8. Section 721.855, Florida Statutes, is created  
244 to read:

245 721.855 Procedure for the trustee foreclosure of  
246 assessment liens.—The provisions of this section establish a  
247 trustee foreclosure procedure for assessment liens.

248 (1) APPOINTMENT OF TRUSTEE.—

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

258 (b) The recorded notice of appointment of trustee or  
259 notice of substitution of trustee shall contain the name and  
260 address of the trustee or substitute trustee, the name and  
261 address of the lienholder, and the name and address of the  
262 timeshare plan.

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

265 (a) Before initiating the trustee foreclosure procedure  
266 against any timeshare interest in a given timeshare plan, the  
267 managing entity shall inform owners of timeshare interests in

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

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

285 (c)1. In order to initiate the trustee foreclosure  
286 procedure against a timeshare interest, the lienholder shall  
287 deliver an affidavit to the trustee that identifies the obligor,  
288 the notice address of the obligor, the timeshare interest, the  
289 date that the notice of the intent to file a lien was given, if  
290 applicable, the official records book and page number where the  
291 claim of lien is recorded, and the name and notice address of  
292 any junior interestholder. The affidavit shall be accompanied by  
293 a title search of the timeshare interest identifying any junior  
294 interestholders of record, and the effective date of the title

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295 search must be a date that is within 60 calendar days before the  
296 date of the affidavit.

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

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

305 (3) OBLIGOR'S RIGHTS.--

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

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



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

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

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

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

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

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

343 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.--

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

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351 1. The notice of default and intent to foreclose shall  
352 identify the obligor, the notice address of the obligor, the  
353 legal description of the timeshare interest, the nature of the  
354 default, the amounts secured by the lien, and a per diem amount  
355 to account for further accrual of the amounts secured by the  
356 lien and shall state the method by which the obligor may cure  
357 the default, including the period of time following the date of  
358 the notice of default and intent to foreclose within which the  
359 obligor may cure the default.

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

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

371  
372 If you fail to cure the default as set forth in this  
373 notice or take other appropriate action with regard to  
374 this foreclosure matter, you risk losing ownership of  
375 your timeshare interest through the trustee  
376 foreclosure procedure established in section 721.855,  
377 Florida Statutes. You may choose to sign and send to  
378 the trustee the enclosed objection form, exercising

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379 your right to object to the use of the trustee  
380 foreclosure procedure. Upon the trustee's receipt of  
381 your signed objection form, the foreclosure of the  
382 lien with respect to the default specified in this  
383 notice shall be subject to the judicial foreclosure  
384 procedure only. You have the right to cure your  
385 default in the manner set forth in this notice at any  
386 time before the trustee's sale of your timeshare  
387 interest. If you do not object to the use of the  
388 trustee foreclosure procedure, you will not be subject  
389 to a deficiency judgment even if the proceeds from the  
390 sale of your timeshare interest are insufficient to  
391 offset the amounts secured by the lien.

392  
393 4. The trustee shall also mail a copy of the notice of  
394 default and intent to foreclose, without the objection form, to  
395 the notice address of any junior interestholder by certified  
396 mail, registered mail, or permitted delivery service, return  
397 receipt requested, and by first class mail or permitted delivery  
398 service, postage prepaid.

399 5. Notice under this paragraph is considered perfected  
400 upon the trustee receiving the return receipt bearing the  
401 signature of the obligor or junior interestholder, as  
402 applicable, within 30 calendar days after the trustee sent the  
403 notice under this paragraph. Notice under this paragraph is not  
404 perfected if the notice is returned as undeliverable within 30  
405 calendar days after the trustee sent the notice, if the trustee  
406 cannot ascertain from the receipt that the obligor or junior

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407 interestholder, as applicable, is the person who signed the  
408 receipt, or if the receipt from the obligor or junior  
409 interestholder, as applicable, is returned or refused within 30  
410 calendar days after the trustee sent the notice.

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

421 1. If the trustee's diligent search and inquiry produces  
422 an address different from the notice address, the trustee shall  
423 mail a copy of the notice by certified mail, registered mail, or  
424 permitted delivery service, return receipt requested, and by  
425 first class mail or permitted delivery service, postage prepaid  
426 to the new address. Notice under this subparagraph is considered  
427 perfected upon the trustee receiving the return receipt bearing  
428 the signature of the obligor or junior interestholder, as  
429 applicable, within 30 calendar days after the trustee sent the  
430 notice under this paragraph. Notice under this subparagraph is  
431 not perfected if the trustee cannot ascertain from the receipt  
432 that the obligor or junior interestholder, as applicable, is the  
433 person who signed the receipt or the receipt from the obligor or  
434 junior interestholder, as applicable, is returned refused.

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435 Unless the trustee perfects notice under this subparagraph, the  
436 trustee shall perfect service in the manner set forth in  
437 paragraph (c).

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

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

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

461 (e) If notice is perfected under subparagraph (b)1., the  
462 trustee shall execute an affidavit in recordable form setting

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463 forth the manner in which notice was perfected and attach the  
464 affidavit to the certificate of compliance set forth in  
465 subsection (9). The affidavit shall state the nature of the  
466 notice, the dates on which the notice was mailed, the name and  
467 addresses on the envelopes containing the notice, the manner in  
468 which the notices were mailed, the fact that a signed receipt  
469 from the certified mail, registered mail, or permitted delivery  
470 service was not timely received, and the name and address on the  
471 envelopes containing the notice.

472 (f) If notice is perfected under paragraph (c), the  
473 trustee shall execute an affidavit in recordable form setting  
474 forth the manner in which notice was perfected and attach the  
475 affidavit to the certificate of compliance set forth in  
476 subsection (9). The affidavit shall state the nature of the  
477 notice, the date on which the notice was mailed, the name and  
478 address on the envelope containing the notice, the manner in  
479 which the notice was mailed, the fact that a signed receipt from  
480 the certified or registered mail or the permitted delivery  
481 service was not timely received, the date on which a copy of the  
482 notice was mailed again by first class mail with the return  
483 address of the trustee on the envelope, and the name and address  
484 on the envelope containing the notice. The envelopes from the  
485 attempts to mail notice, if available, shall also be attached to  
486 the affidavit.

487 (g) If notice is perfected by publication under paragraph  
488 (d), the trustee shall execute an affidavit in recordable form  
489 setting forth the manner in which notice was perfected and  
490 attach the affidavit to the certificate of compliance set forth

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491 in subsection (7). The affidavit shall include all the  
492 information contained in either paragraph (d) or paragraph (e),  
493 as applicable, shall state that the notice was perfected by  
494 publication after diligent search and inquiry was made for the  
495 current address for the person, and shall include a statement  
496 that notice was perfected by publication, and shall set forth  
497 the information required by s. 49.041 in the case of a natural  
498 person, or s. 49.051 in the case of a corporation, whichever is  
499 applicable. No other action of the trustee is necessary to  
500 perfect notice.

501 (6) NOTICE OF SALE.-

502 (a) The notice of sale shall set forth:

- 503 1. The name and notice addresses of the obligor and any  
504 junior interestholder.
- J5 2. The legal description of the timeshare interest.
- 506 3. The name and address of the trustee.
- 507 4. A description of the default that is the basis for the  
508 foreclosure.
- 509 5. The official records book and page numbers where the  
510 claim of lien is recorded.
- 511 6. The amounts secured by the lien and a per diem amount  
512 to account for further accrual of the amounts secured by the  
513 lien.
- 514 7. The date, location, and starting time of the trustee's  
515 sale.
- 516 8. The right of and the method by which the obligor may  
517 cure the default or the right of any junior interestholder to

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518 redeem its interest up to the date the trustee issues the  
519 certificate of sale in accordance with paragraph (8)(f).

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

525 (c) Subsequent to the date of recording of the notice of  
526 sale, no notice is required to be given to any person claiming  
527 an interest in the timeshare interest except as provided in this  
528 section. The recording of the notice of sale has the same force  
529 and effect as the filing of a lis pendens in a judicial  
530 proceeding under s. 48.23.

531 (d)1. The trustee shall publish the notice of sale in a  
532 newspaper of general circulation in the county or counties in  
533 which the timeshare interest is located at least once a week for  
534 2 consecutive weeks before the date of the sale. The last  
535 publication shall occur at least 5 calendar days before the  
536 sale.

537 2. The trustee may group an unlimited number of notices of  
538 sale in the same publication, provided that all of the notices  
539 of sale pertain to the same timeshare plan.

540 (7) MANNER OF SALE.—

541 (a) The sale of a timeshare interest by the trustee in a  
542 public auction shall be held in the county in which the  
543 timeshare interest is located, on the date, location, and  
544 starting time designated in the notice of sale, which shall be  
545 after 9:00 a.m. but before 4:00 p.m. on a business day not less



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546 than 30 calendar days after the recording of the notice of sale.  
547 The trustee's sale may occur online at a specific website on the  
548 Internet or in any other manner used by the clerk of the court  
549 for a judicial foreclosure sales procedure in the county or  
550 counties in which the timeshare interest is located.

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

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

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

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

570 (f) On the date of the sale the trustee shall issue to the  
571 highest bidder a certificate of sale stating that a foreclosure  
572 conforming to the requirements of this section has occurred,  
573 including the time, location, and date of the sale, that the

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574 timeshare interest was sold, the amounts secured by the lien,  
575 and the amount of the highest bid. A copy of the certificate of  
576 sale shall be mailed by certified mail, registered mail, or  
577 permitted delivery service, return receipt requested, to all  
578 persons entitled to receive a notice of sale under subsection  
579 (6).

580 (g) Before a sale conducted under this subsection (7), a  
581 junior interestholder may pursue adjudication by court, by  
582 interpleader, or otherwise respecting any matter that is  
583 disputed by the junior interestholder.

584 (8) EFFECT OF TRUSTEE'S SALE.--

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

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

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

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

613       (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.-

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

617       1. Confirm delivery of the notice of default and intent to  
618 foreclose and attach the affidavit required under subsection  
619 (5).

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

624       3. Confirm that the notice of sale was published as  
625 required under paragraph (6)(d) and attach an affidavit of  
626 publication for the notice of sale.

627       4. Confirm that the notice of sale was mailed under  
628 paragraph (6)(b) together with a list of the parties to whom the  
629 notice of sale was mailed.

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

635        (10) TRUSTEE'S DEED.-

636        (a) The trustee's deed shall include the name and address  
637 of the trustee, the name and address of the highest bidder, the  
638 name of the former owner, a legal description of the timeshare  
639 interest, and the name and address of the preparer of the  
640 trustee's deed. The trustee's deed shall recite that the  
641 certificate of compliance was recorded, and shall contain no  
642 warranties of title from the trustee. The certificate of  
643 compliance shall be attached as an exhibit to the trustee's  
644 deed.

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

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

653        (c)1. The certificate of compliance and trustee's deed  
654 together are presumptive evidence of the truth of the matters  
655 set forth in them, and no action to set aside the sale and void  
656 the trustee's deed may be filed or otherwise pursued against any  
657 person acquiring the timeshare interest for value.

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

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

668 (11) DISPOSITION OF PROCEEDS OF SALE.—

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

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

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

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

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

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

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

698 (13) APPLICATION.—This section applies to any default  
699 giving rise to the imposition of an assessment lien which occurs  
700 after the effective date of this section. An amendment to a  
701 timeshare instrument is not required to permit a managing entity  
702 lienholder to use the trustee foreclosure procedures of this  
703 section. If a timeshare instrument contains any provision that  
704 prevents the use of the trustee foreclosure procedures, an  
705 amendment to the timeshare instrument permitting the use of the  
706 trustee foreclosure procedure set forth in this section may be  
707 adopted by a majority of those present and voting at a duly  
708 called meeting of the owners' association at which at least 15  
709 percent of the voting interests are present in person or by  
710 proxy.

711 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
712 PROCEDURE.—An action for actual damages for a material violation  
713 of this section may be brought by an obligor against the

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714 lienholder for the failure to follow the trustee foreclosure  
715 procedure contained in this section.

716 Section 9. Section 721.856, Florida Statutes, is created  
717 to read:

718 721.856 Procedure for the trustee foreclosure of mortgage  
719 liens.—The provisions of this section establish a trustee  
720 foreclosure procedure for mortgage liens.

721 (1) APPOINTMENT OF TRUSTEE.—

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

730 (b) The recorded notice of appointment of trustee or  
731 notice of substitution of trustee shall contain the name and  
732 address of the trustee or substitute trustee, the name and  
733 address of the lienholder, and the name and address of the  
734 timeshare plan.

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

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

741

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742 If the mortgagor fails to make timely payments under  
743 the obligation secured by this mortgage, or is  
744 otherwise deemed in uncured default of this mortgage,  
745 the lien against the mortgagor's timeshare interest  
746 created by this mortgage may be foreclosed in  
747 accordance with either a judicial foreclosure  
748 procedure or a trustee foreclosure procedure and may  
749 result in the loss of your timeshare interest. If the  
750 mortgagee initiates a trustee foreclosure procedure,  
751 the mortgagor shall have the option to object and the  
752 mortgagee may proceed only by filing a judicial  
753 foreclosure action.

754  
755 (b)1. In order to initiate a trustee foreclosure procedure  
756 against a timeshare interest, the lienholder shall deliver an  
757 affidavit to the trustee that identifies the obligor, the notice  
758 address of the obligor, the timeshare interest, the official  
759 records book and page number where the mortgage is recorded, and  
760 the name and notice address of any junior interestholder. The  
761 affidavit shall be accompanied by a title search of the  
762 timeshare interest identifying any junior interestholders of  
763 record, and the effective date of the title search must be a  
764 date that is within 60 calendar days before the date of the  
765 affidavit.

766 2. The affidavit shall also state the facts that establish  
767 that the obligor has defaulted in the obligation to make a  
768 payment under a specified provision of the mortgage or is



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769 otherwise deemed in uncured default under a specified provision  
770 of the mortgage.

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

775 (3) OBLIGOR'S RIGHTS.-

776 (a) The obligor may object to the lienholder's use of the  
777 trustee's foreclosure procedure for a specific default any time  
778 before the sale of the timeshare interest under subsection (8)  
779 by delivering a written objection to the trustee using the  
780 objection form provided for in subsection (5). If the trustee  
781 receives the written objection from the obligor, the trustee may  
782 not proceed with the trustee foreclosure procedure as to the  
783 default specified in the notice of default and intent to  
784 foreclose under subsection (5), and the lienholder may proceed  
785 thereafter only with a judicial foreclosure action as to that  
786 specified default.

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

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

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

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

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

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

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

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

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

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

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824 1. The notice of default and intent to foreclose shall  
825 identify the obligor, the notice address of the obligor, the  
826 legal description of the timeshare interest, the nature of the  
827 default, the amounts secured by the lien, and a per diem amount  
828 to account for further accrual of the amounts secured by the  
829 lien and shall state the method by which the obligor may cure  
830 the default, including the period of time following the date of  
831 the notice of default and intent to foreclose within which the  
832 obligor may cure the default.

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

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

844  
845 If you fail to cure the default as set forth in this  
846 notice or take other appropriate action with regard to  
847 this foreclosure matter, you risk losing ownership of  
848 your timeshare interest through the trustee  
849 foreclosure procedure established in section 721.856,  
850 Florida Statutes. You may choose to sign and send to  
851 the trustee the enclosed objection form, exercising

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852 your right to object to the use of the trustee  
853 foreclosure procedure. Upon the trustee's receipt of  
854 your signed objection form, the foreclosure of the  
855 lien with respect to the default specified in this  
856 notice shall be subject to the judicial foreclosure  
857 procedure only. You have the right to cure your  
858 default in the manner set forth in this notice at any  
859 time before the trustee's sale of your timeshare  
860 interest. If you do not object to the use of the  
861 trustee foreclosure procedure, you will not be subject  
862 to a deficiency judgment even if the proceeds from the  
863 sale of your timeshare interest are insufficient to  
864 offset the amounts secured by the lien.

865  
866 4. The trustee shall also mail a copy of the notice of  
867 default and intent to foreclose, without the objection form, to  
868 the notice address of any junior interestholder by certified  
869 mail, registered mail, or permitted delivery service, return  
870 receipt requested, and by first class mail or permitted delivery  
871 service, postage prepaid.

872 5. Notice under this paragraph is considered perfected  
873 upon the trustee receiving the return receipt bearing the  
874 signature of the obligor or junior interestholder, as  
875 applicable, within 30 calendar days after the trustee sent the  
876 notice under this paragraph. Notice under this paragraph is not  
877 perfected if the notice is returned as undeliverable within 30  
878 calendar days after the trustee sent the notice, if the trustee  
879 cannot ascertain from the receipt that the obligor or junior

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880 interestholder, as applicable, is the person who signed the  
881 receipt, or if the receipt from the obligor or junior  
882 interestholder, as applicable, is returned or refused within 30  
883 calendar days after the trustee sent the notice.

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

894 1. If the trustee's diligent search and inquiry produces  
895 an address different from the notice address, the trustee shall  
896 mail a copy of the notice by certified mail, registered mail, or  
897 permitted delivery service, return receipt requested, and by  
898 first class mail or permitted delivery service, postage prepaid  
899 to the new address. Notice under this subparagraph is considered  
900 perfected upon the trustee receiving the return receipt bearing  
901 the signature of the obligor or junior interestholder, as  
902 applicable, within 30 calendar days after the trustee sent the  
903 notice under this paragraph. Notice under this subparagraph is  
904 not perfected if the trustee cannot ascertain from the receipt  
905 that the obligor or junior interestholder, as applicable, is the  
906 person who signed the receipt or the receipt from the obligor or  
907 junior interestholder, as applicable, is returned refused.

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908 Unless the trustee perfects notice under this subparagraph, the  
909 trustee shall perfect service in the manner set forth in  
910 paragraph (c).

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

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

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

934 (e) If notice is perfected under subparagraph (b)1., the  
935 trustee shall execute an affidavit in recordable form setting

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936 forth the manner in which notice was perfected and attach the  
937 affidavit to the certificate of compliance set forth in  
938 subsection (9). The affidavit shall state the nature of the  
939 notice, the dates on which the notice was mailed, the name and  
940 addresses on the envelopes containing the notice, the manner in  
941 which the notices were mailed, the fact that a signed receipt  
942 from the certified mail, registered mail, or permitted delivery  
943 service was not timely received, and the name and address on the  
944 envelopes containing the notice.

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

959 (6) NOTICE OF SALE.-

960 (a) The notice of sale shall set forth:

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

963 2. The legal description of the timeshare interest.

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- 964        3. The name and address of the trustee.
- 965        4. A description of the default that is the basis for the  
966 foreclosure.
- 967        5. The official records book and page numbers where the  
968 mortgage is recorded.
- 969        6. The amounts secured by the lien and a per diem amount  
970 to account for further accrual of the amounts secured by the  
971 lien.
- 972        7. The date, location, and starting time of the trustee's  
973 sale.
- 974        8. The right of and the method by which the obligor may  
975 cure the default or the right of any junior interestholder to  
976 redeem its interest up to the date the trustee issues the  
977 certificate of sale in accordance with paragraph (8)(f).
- 978        (b) The trustee shall send a copy of the notice of sale  
979 within 3 business days following the date it is submitted for  
980 recording, by first class mail, postage prepaid, to the notice  
981 addresses of the obligor and any junior interestholder.
- 982        (c) Subsequent to the date of recording of the notice of  
983 sale, no notice is required to be given to any person claiming  
984 an interest in the timeshare interest except as provided in this  
985 section. The recording of the notice of sale has the same force  
986 and effect as the filing of a lis pendens in a judicial  
987 proceeding under s. 48.23.
- 988        (d)1. The trustee shall publish the notice of sale in a  
989 newspaper of general circulation in the county or counties in  
990 which the timeshare interest is located at least once a week for  
991 two consecutive weeks before the date of the sale. The last



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992 publication shall occur at least 5 calendar days before the  
993 sale.

994 2. The trustee may group an unlimited number of notices of  
995 sale in the same publication, provided that all of the notices  
996 of sale pertain to the same timeshare plan.

997 (7) MANNER OF SALE.-

998 (a) The sale of a timeshare interest by the trustee in a  
999 public auction shall be held in the county in which the  
1000 timeshare interest is located, on the date, location, and  
1001 starting time designated in the notice of sale, which shall be  
1002 after 9:00 a.m. but before 4:00 p.m. on a business day not less  
1003 than 30 calendar days after the recording of the notice of sale.  
1004 The trustee's sale may occur online at a specific website on the  
1005 Internet or in any other manner used by the clerk of the court  
1006 for a judicial foreclosure sales procedure in the county or  
1007 counties in which the timeshare interest is located.

1008 (b) The trustee shall conduct the sale and act as the  
1009 auctioneer.

1010 (c) The lienholder and any person other than the trustee  
1011 may bid at the sale. In lieu of participating in the sale, the  
1012 lienholder may send the trustee written bidding instructions  
1013 that the trustee shall announce as appropriate during the sale.

1014 (d) The trustee may postpone the sale from time to time.  
1015 In such case, notice of postponement must be given by the  
1016 trustee at the date, time, and location contained in the notice  
1017 of sale. The notice of sale for the postponed sale shall be  
1018 mailed under paragraph (6) (b), recorded under paragraph (4) (f),  
1019 and published under paragraph (6) (d). The effective date of the

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1020 initial notice of sale for purposes of paragraph (4) (b) is not  
1021 affected by a postponed sale.

1022 (e) The highest bidder of the timeshare interest shall pay  
1023 the price bid to the trustee in cash or certified funds on the  
1024 day of the sale. If the lienholder is the highest bidder, the  
1025 lienholder shall receive a credit up to the amount set forth in  
1026 the notice of sale as required under subparagraph (6) (a) 6.

1027 (f) On the date of the sale and upon receipt of the cash  
1028 or certified funds due from the highest bidder, the trustee  
1029 shall issue to the highest bidder a certificate of sale stating  
1030 that a foreclosure conforming to the requirements of this  
1031 section has occurred, including the time, location, and date of  
1032 the sale, that the timeshare interest was sold, the amounts  
1033 secured by the lien, and the amount of the highest bid. A copy  
1034 of the certificate of sale shall be mailed by certified mail,  
1035 registered mail, or permitted delivery service, return receipt  
1036 requested, to all persons entitled to receive a notice of sale  
1037 under subsection (6).

1038 (g) Before a sale conducted under this subsection (7), a  
1039 junior interestholder may pursue adjudication by court, by  
1040 interpleader, or otherwise respecting any matter that is  
1041 disputed by the junior interestholder.

1042 (8) EFFECT OF TRUSTEE'S SALE.-

1043 (a) A sale conducted under subsection (7) forecloses and  
1044 terminates all interests of any person to whom notice is given  
1045 under paragraph (4) (e) and paragraph (6) (b), and of any other  
1046 person claiming by, through, or under any such person, in the  
1047 affected timeshare interest. A failure to give notice to any

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1048 person entitled to notice does not affect the validity of the  
1049 sale as to the interests of any person properly notified. A  
1050 person entitled to notice but not given notice has the rights of  
1051 a person not made a defendant in a judicial foreclosure.

1052 (b) On the issuance of a certificate of sale under  
1053 paragraph (7)(f), all rights of redemption that have been  
1054 foreclosed under this section shall terminate.

1055 (c) A sale conducted under subsection (7) releases the  
1056 obligor's liability for all amounts secured by the lien. The  
1057 lienholder has no right to any deficiency judgment against the  
1058 obligor after a sale of the obligor's timeshare interest under  
1059 this section.

1060 (d) The issuance and recording of the trustee's deed is  
1061 presumed valid and may be relied upon by third parties without  
1062 actual knowledge of any irregularities in the foreclosure  
1063 proceedings. If for any reason there is an irregularity in the  
1064 foreclosure proceedings, a purchaser becomes subrogated to all  
1065 the rights of the lienholder to the indebtedness that it secured  
1066 to the extent necessary to reforeclose the mortgage lien in  
1067 order to correct the irregularity, and becomes entitled to an  
1068 action de novo for the foreclosure of such mortgage lien. Any  
1069 subsequent reforeclosure required to correct an irregularity may  
1070 be conducted under this section.

1071 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1072 (a) Within 10 calendar days after the trustee conducts a  
1073 sale, the trustee shall execute and acknowledge a certificate of  
1074 compliance which shall:

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1075 1. Confirm delivery of the notice of default and intent to  
1076 foreclose and attach the affidavit required under subsection  
1077 (5);

1078 2. State that the default was not cured, that the trustee  
1079 did not receive any written objection under paragraph (3)(a),  
1080 and that the timeshare interest was not redeemed under paragraph  
1081 (3)(b);

1082 3. State that the trustee is in possession of the original  
1083 promissory note executed by the mortgagor and secured by the  
1084 mortgage lien;

1085 4. Confirm that the notice of sale was published as  
1086 required under paragraph (6)(d) and attach an affidavit of  
1087 publication for the notice of sale; and

1088 5. Confirm that the notice of sale was mailed under  
1089 paragraph (6)(b) together with a list of the parties to whom the  
1090 notice of sale was mailed.

1091 (b) In furtherance of the execution and recording of the  
1092 certificate of compliance required under this subsection, the  
1093 trustee is entitled to rely upon an affidavit or certification  
1094 from the lienholder as to the facts and circumstances of default  
1095 and failure to cure the default.

1096 (10) TRUSTEE'S DEED.—

1097 (a) The trustee's deed shall include the name and address  
1098 of the trustee, the name and address of the highest bidder, the  
1099 name of the former owner, a legal description of the timeshare  
1100 interest, and the name and address of the preparer of the  
1101 trustee's deed. The trustee's deed shall recite that the  
1102 certificate of compliance was recorded, and shall contain no

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1103 warranties of title from the trustee. The certificate of  
1104 compliance shall be attached as an exhibit to the trustee's  
1105 deed.

1106 (b) Ten calendar days after a sale, absent the prior  
1107 filing and service on the trustee of a judicial action to enjoin  
1108 issuance of the trustee's deed to the timeshare interest, the  
1109 trustee shall:

1110 1. Cancel the original promissory note executed by the  
1111 mortgagor and secured by the mortgage lien.

1112 2. Issue a trustee's deed to the highest bidder.

1113 3. Record the trustee's deed in the official records of  
1114 the county or counties in which the timeshare interest is  
1115 located.

1116 (c)1. The certificate of compliance and trustee's deed  
1117 together are presumptive evidence of the truth of the matters  
1118 set forth in them, and no action to set aside the sale and void  
1119 the trustee's deed may be filed or otherwise pursued against any  
1120 person acquiring the timeshare interest for value.

1121 2. The trustee's deed conveys to the highest bidder all  
1122 rights, title, and interest in the timeshare interest that the  
1123 former owner had, or had the power to convey together with all  
1124 rights, title, and interest that the former owner or his or her  
1125 successors in interest acquired after the execution of the  
1126 mortgage.

1127 3. The issuance and recording of a trustee's deed shall  
1128 have the same force and effect as the issuance and recording of  
1129 a certificate of title by the clerk of the court in a judicial  
1130 foreclosure action.

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1131 (11) DISPOSITION OF PROCEEDS OF SALE.--

1132 (a) The trustee shall apply the proceeds of the sale as  
1133 follows:

1134 1. To the expenses of the sale, including compensation of  
1135 the trustee.

1136 2. To the amount owed and set forth in the notice as  
1137 required under subparagraph (6) (a) 6.

1138 3. If there are junior interestholders, the trustee may  
1139 file an action in interpleader, pay the surplus to a court of  
1140 competent jurisdiction, name the competing junior  
1141 interestholders, and ask the court to determine the proper  
1142 distribution of the surplus. In any interpleader action, the  
1143 trustee shall recover reasonable attorney's fees and costs.

1144 4. If there are no junior interestholders, or if all  
1145 junior interestholders have been paid, any surplus shall be paid  
1146 to the former owner. If the trustee is unable to locate the  
1147 former owner 1 year after the sale, the surplus, if any, shall  
1148 be deposited with the Chief Financial Officer under chapter 717.

1149 (b) In disposing of the proceeds of the sale, the trustee  
1150 may rely on the information provided in the affidavit of the  
1151 lienholder under paragraph (2) (c) and, in the event of a dispute  
1152 or uncertainty over such claims, the trustee has the discretion  
1153 to submit the matter to adjudication by court, by interpleader,  
1154 or otherwise and shall recover reasonable attorney's fees and  
1155 costs.

1156 (12) JUDICIAL FORECLOSURE ACTIONS.--The trustee foreclosure  
1157 procedure established in this section does not impair or  
1158 otherwise affect the lienholder's continuing right to bring a

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1159 judicial foreclosure action, in lieu of using the trustee  
1160 foreclosure procedure, with respect to any mortgage lien.

1161 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
1162 PROCEDURE.—An action for actual damages for a material violation  
1163 of this section may be brought by an obligor against the  
1164 lienholder for the failure to follow the trustee foreclosure  
1165 procedure contained in this section.

1166 Section 10. Subsections (1) and (4) of section 721.86,  
1167 Florida Statutes, are amended to read:

1168 721.86 Miscellaneous provisions.—

1169 (1) In the event of a conflict between the provisions of  
1170 this part and the other provisions of this chapter, chapter 702,  
1171 or other applicable law, the provisions of this part shall  
1172 prevail. The procedures in this part must be given effect in the  
1173 context of any foreclosure proceedings against timeshare  
1174 interests ~~estates~~ governed by this chapter, chapter 702, chapter  
1175 718, or chapter 719.

1176 (4) In addition to assessment liens and mortgage liens  
1177 arising after the effective date of this part, except as  
1178 provided in s. 721.855(13), the provisions of this part apply to  
1179 all assessment liens and mortgage liens existing prior to the  
1180 effective date of this act regarding which a foreclosure  
1181 proceeding has not yet commenced.

1182 Section 11. Subsection (2) of section 721.20, Florida  
1183 Statutes, is amended to read:

1184 721.20 Licensing requirements; suspension or revocation of  
1185 license; exceptions to applicability; collection of advance fees  
1186 for listings unlawful.—

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1187 (2) Solicitors who engage only in the solicitation of  
1188 prospective purchasers and any purchaser who refers no more than  
1189 20 people to a developer or managing entity per year or who  
1190 otherwise provides testimonials on behalf of a developer or  
1191 managing entity are exempt from the provisions of chapter 475.

1192 Section 12. This act shall take effect upon becoming a  
1193 law.

1194  
1195  
1196

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**T I T L E A M E N D M E N T**

1197  
1198 Remove the entire title and insert:

1199 An act relating to timeshares; amending s. 721.07, F.S.;  
1200 providing lien disclosure requirements for filed public offering  
1201 statements for certain timeshare plans; amending s. 721.16,  
1202 F.S.; authorizing a managing entity to bring judicial action or  
1203 a trustee procedure to foreclose certain liens under specified  
1204 conditions; renaming part III of chapter 721, F.S.; amending s.  
1205 721.81, F.S.; revising and providing legislative purposes of the  
1206 part; amending s. 721.82 F.S.; revising and providing  
1207 definitions; amending s. 721.83, F.S.; revising application to  
1208 apply to judicial foreclosure actions; amending s. 721.85, F.S.;  
1209 conforming provisions to changes made by this act; creating s.  
1210 721.855, F.S.; establishing procedure for the trustee  
1211 foreclosure of assessment liens; providing for the appointment  
1212 of a trustee; providing recording requirements for such liens;  
1213 providing procedures for the initiation of a trustee foreclosure  
1214 procedure against a timeshare interest; providing procedures for



COUNCIL/COMMITTEE AMENDMENT

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1215 an obligor's objection to the trustee foreclosure procedure;  
1216 providing conditions to a trustee's exercise of power of sale;  
1217 providing requirements for a notice of default and intent to  
1218 sell; providing requirements for a notice of sale; providing  
1219 requirements for the sale by auction of foreclosed encumbered  
1220 timeshare interests; providing requirements for a trustee's  
1221 certificate of compliance; providing for the effect of a  
1222 trustee's sale; providing requirements for a trustee's deed;  
1223 providing for the disposition of proceeds of the sale; providing  
1224 that the trustee foreclosure procedure does not impair or  
1225 otherwise affect the right to bring certain actions; providing  
1226 application; providing for actions for failure to follow the  
1227 trustee foreclosure procedure; creating s. 721.856, F.S.;  
1228 establishing procedure for the trustee foreclosure of mortgage  
1229 liens; providing for the appointment of a trustee; providing  
1230 recording requirements for such liens; providing procedures for  
1231 the initiation of a trustee foreclosure procedure against a  
1232 timeshare interest; providing procedures for an obligor's  
1233 objection to the trustee foreclosure procedure; providing  
1234 conditions to a trustee's exercise of power of sale; providing  
1235 requirements for a notice of default and intent to sell;  
1236 providing requirements for a notice of sale; providing  
1237 requirements for a trustee's certificate of compliance;  
1238 providing requirements for the sale by auction of foreclosed  
1239 encumbered timeshare interests; providing for the effect of a  
1240 trustee's sale; providing requirements for a trustee's deed;  
1241 providing for the disposition of proceeds of the sale; providing  
1242 that the trustee foreclosure procedure does not impair or

COUNCIL/COMMITTEE AMENDMENT

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1243 otherwise affect the right to bring certain actions; providing  
1244 for actions for failure to follow the trustee foreclosure  
1245 procedure; amending s. 721.86, F.S.; providing for priority of  
1246 application in case of conflict; providing an effective date.

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1431 : Adult Guardianship**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 14</b>		<b>Total Nays: 0</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1433 : Pub. Rec./Petitions to Determine Incapacity**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 14</b>		<b>Total Nays: 0</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1435 : Pub. Rec./Reports of Examining Committee Members**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 14</b>		<b>Total Nays: 0</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1497 : Civil Citations**

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores			X		
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin				X	
H. Marlene O'Toole	X				
Ralph Poppell			X		
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 11</b>		<b>Total Nays: 0</b>			

**Appearances:**

Civil Citations  
 Nancy Daniels (State Employee) - Proponent  
 Florida Public Defender Association  
 Leon County Courthouse 301 South Monroe Street  
 Tallahassee Florida 32301  
 Phone: 850-606-1010

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1523 : Homeowner Relief**

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman		X			
Anitere Flores	X				
James Frishe		X			
Audrey Gibson		X			
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto		X			
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 10</b>		<b>Total Nays: 4</b>			

**Appearances:**

Homeowner Relief

Pete Dunbar (Lobbyist) - Opponent  
 Real Property Section of the Florida Bar  
 215 South Monroe  
 Tallahassee Florida 32301  
 Phone: 222-3533

Homeowner Relief

Edward Grunewald - Opponent  
 JFCFEJ A Legal Aid Organization  
 2121 Delta Boulevard  
 Tallahassee Florida 32303  
 Phone: 850-701-3980

Homeowner Relief

Alice Vickers (Lobbyist) - Opponent  
 Florida Legal Services  
 2425 Torreya Drive  
 Tallahassee Florida 32303  
 Phone: 850-385-7900

Homeowner Relief

William Large (Lobbyist) - Information Only  
 FI Justice Reform Institute  
 210 South Monroe Street  
 Tallahassee Florida 32301  
 Phone: 850-222-0170

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**AMENDED**

**Location:** Reed Hall (102 HOB)

Homeowner Relief

David Daniel (Lobbyist) - Proponent

Florida Chamber of Commerce

136 South Bronough Street

Tallahassee Florida 32301

Phone: 521-1250

Homeowner Relief

Anthony DiMarco (Lobbyist) - Proponent

Florida Bankers Association

1001 Thomasville Road

Tallahassee Florida

Phone: 850-224-2265

**Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM**



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1523 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	<u>Y</u>	(Y/N)
ADOPTED AS AMENDED	<u>—</u>	(Y/N)
ADOPTED W/O OBJECTION	<u>—</u>	(Y/N)
FAILED TO ADOPT	<u>—</u>	(Y/N)
WITHDRAWN	<u>—</u>	(Y/N)
OTHER	<u>—</u>	

*Adopted*  
*3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Soto offered the following:

4  
5 **Amendment**

6 Between lines 778 and 779, insert:

7 (3) A debtor who is an owner of homestead residential real  
8 property subject to foreclosure under this chapter may object to  
9 such foreclosure and request that a judicial foreclosure occur  
10 in accordance with ch. 702. The objection must be sent by the  
11 debtor to the secured creditor via United States mail within 90  
12 days after the notice of foreclosure is given to that debtor. An  
13 objection is timely sent if it is postmarked by the 90th day  
14 after the notice of foreclosure is given to that debtor. If the  
15 foreclosing creditor receives a timely objection from the  
16 debtor, the foreclosing creditor shall discontinue foreclosure  
17 under this chapter and must file a judicial foreclosure action  
18 in accordance with ch. 702 in order to foreclose upon the  
19 homestead residential real property of the debtor.

**COMMITTEE MEETING REPORT**  
**Civil Justice & Courts Policy Committee**

**3/22/2010 3:15:00PM**

**Location:** Reed Hall (102 HOB)

**AMENDED**

**HB 1599 : Support Obligations**

*Favorable With Committee Substitute*

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
<b>Total Yeas: 14</b>		<b>Total Nays: 0</b>			

Committee meeting was reported out: Monday, March 22, 2010 8:17:34PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1599 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	<u>Y</u>	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted  
w/out  
objection  
3-22-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy  
2 Committee

3 Representative(s) Ambler offered the following:

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**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (5) is added to section 222.25,  
Florida Statutes, to read:

222.25 Other individual property of natural persons exempt  
from legal process.—The following property is exempt from  
attachment, garnishment, or other legal process:

(5) Alimony, support, or separate maintenance that has  
already been received, to the extent reasonably necessary for  
the support of the debtor or any dependent of the debtor.

Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

An act relating to support obligations; amending s. 222.25,  
F.S.; providing that alimony, support, or separate maintenance  
already received is exempt from creditor claims if necessary for  
the support of the person or a dependent; providing an effective  
date.