

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Timeshare Lien and Security Interest Act.

Section 3. Definitions. As used in this Act:

"Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals, or any unit or berth on a commercial cruise line ship, which is included in the offering of a timeshare plan.

"Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity.

"Developer" means and includes any person or entity, other than a sales agent, acquisition agent, or resale agent, who creates a timeshare plan or is in the business of selling timeshare interests, or employs agents to do the same, or any person or entity who succeeds to the interest of a developer by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests

for disposition in the ordinary course of business.

"Managing entity" means the person who undertakes the duties, responsibilities, and obligations of the management of a timeshare plan.

"Managing entity lien" means a lien created pursuant to Section 5.

"Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare plan other than as security for an obligation.

"Timeshare instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

"Timeshare interest" means and includes either:

(1) a "timeshare estate", which is the right to occupy a timeshare property, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof; or

(2) a "timeshare use", which is the right to occupy a timeshare property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a timeshare property.

"Timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, or right-to-use agreement or by any other means, whereby a

purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, but not necessarily for consecutive years. A timeshare plan may be:

(1) a "single-site timeshare plan", which is the right to use accommodations at a single timeshare property; or

(2) a "multi-site timeshare plan", which includes:

(A) a "specific timeshare interest", which is the right to use accommodations at a specific timeshare property, together with use rights in accommodations at one or more other component sites created by or acquired through the timeshare plan's reservation system; or

(B) a "non-specific timeshare interest", which is the right to use accommodations at more than one component site created by or acquired through the timeshare plan's reservation system, but including no specific right to use any particular accommodations.

"Timeshare property" means one or more accommodations subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.

Section 5. Managing entity lien created.

(a) A managing entity has a lien on a timeshare interest for any of the following respectively levied or imposed against

a timeshare interest:

(1) assessments, which, unless the timeshare instrument provides otherwise, include fees, charges, late charges, fines, collection costs, and interest charged in accordance with the timeshare instrument;

(2) reasonable collection and attorney's fees and costs the managing entity incurs to collect assessments; and

(3) taxes, interest, penalties, late payment fees, or fines in accordance with applicable law or the timeshare instrument.

(b) Managing entity liens pursuant to this Section are created and attached when the charges described in subsection (a) become due. If such amounts are payable in installments, the full amount of such charges is a managing entity lien from the time that the first installment thereof becomes due.

(c) Managing entity liens pursuant to this Section are perfected on the date that the managing entity:

(1) In the case of a timeshare estate, records a notice of lien against the timeshare estate in the office of the recorder in the county where the timeshare estate is located, which notice of lien must identify each of the following:

(A) the name of the timeshare estate owner;

(B) the name and address of the managing entity;

(C) the description of the timeshare estate in the

same manner required for recording a mortgage against a timeshare estate; and

(D) the amount of the debt secured by the managing entity lien.

(2) In the case of a timeshare use, files a notice of lien against the timeshare use in the filing office of the Illinois Secretary of State pursuant to Article 9 of the Uniform Commercial Code, which notice of lien, in addition to any other filing requirements imposed by Article 9 of the Uniform Commercial Code, must identify each of the following:

(A) the name of the timeshare use owner as the debtor;

(B) the name of the managing entity as the secured party;

(C) the address of the managing entity;

(D) the timeshare use as the collateral; and

(E) the amount of the debt secured by the managing entity lien.

(d) The managing entity must send a copy of the recorded or filed notice of lien on the timeshare interest, as the case may be, to the last known address of the timeshare interest owner.

(e) A managing entity lien against a timeshare estate, at the managing entity's option, may be foreclosed:

(1) as provided in Section 10; or

(2) in the same manner as a mortgage under the Illinois

Mortgage Foreclosure Law.

(f) A managing entity lien against a timeshare use, at the managing entity's option, may:

(1) be foreclosed as provided in Section 15; or

(2) be enforced in the same manner as a security interest pursuant to Article 9 of the Uniform Commercial Code.

Section 10. Nonjudicial foreclosure against timeshare estates.

(a) Notwithstanding anything in the Illinois Mortgage Foreclosure Law or other applicable law to the contrary:

(1) the holder of a mortgage against a timeshare estate may foreclose or otherwise enforce a security interest pursuant to this Section; and

(2) the holder of a managing entity lien against a timeshare estate may foreclose the managing entity lien pursuant to this Section.

(b) Upon default, and after all applicable cure periods identified in the mortgage (if the default is under a mortgage) or the timeshare instrument (if the default is under a managing entity lien) have expired, the holder of the mortgage or managing entity lien must:

(1) Provide written notice of the default to the timeshare estate owner at the last known address of the timeshare estate owner by:

- (A) certified mail, return receipt requested; or
- (B) first class mail.

(2) Provide the timeshare estate owner an additional opportunity to cure for a period of 30 days following the later date of the mailing of the notices sent pursuant to paragraph (1) of this subsection.

(c) If the timeshare estate owner does not cure the default before the expiration of the additional cure period granted pursuant to paragraph (2) of subsection (b), the holder of the mortgage or managing entity lien may foreclose the mortgage or managing entity lien by conducting a public auction that complies with the following requirements:

(1) The holder of the mortgage or managing entity lien must provide notice of the public auction as follows:

(A) By publishing notice of the public auction in at least each of 3 successive weeks in a newspaper, whether printed or electronic, of general circulation in the county where the timeshare estate is located. The first notice must be published no more than 30 days before the date of the public auction, which 30-day period shall be calculated by excluding the date of publication of the first notice and the date of the public auction.

(B) By sending written notice identifying the time, date, and place of the public auction to the last known address of the owner of record of the timeshare

estate at least 30 days before the date of the public auction by: (i) certified mail, return receipt requested; or (ii) first class mail.

(C) By sending notice by certified mail, return receipt requested, or first class mail, at least 30 days before the date of the public auction, identifying the time, date, and place of the public auction to all persons known to have a lien against the timeshare estate.

(2) The notices given pursuant to paragraph (1) of this subsection must also contain:

(A) the name of the timeshare estate owner;

(B) a general description of the timeshare estate;

and

(C) the terms of the public auction.

(3) If more than one timeshare estate is to be included in the public auction, all such timeshare estates may be combined into one notice of public auction.

(4) The public notice required by subparagraph (A) of paragraph (1) of this subsection for foreclosing a mortgage against a timeshare estate must be printed in the following or a substantially similar form:

"NOTICE OF SALE OF TIMESHARE ESTATE OR ESTATES UNDER SECTION 10
OF THE TIMESHARE LIEN AND SECURITY INTEREST ACT

By virtue of Section 10 of the Timeshare Lien and Security Interest Act and in execution of a certain mortgage (or mortgages, if more than one) on the timeshare estate (or estates, if more than one) given by the owner of the timeshare estate (or owners, if more than one) set forth below for breach of the conditions of said mortgage (or mortgages, if more than one) and for the purpose of foreclosing, the same will be sold at public auction starting at on 20.. at, Illinois, being all and singular the premises described in said mortgage (or mortgages, if more than one). (For each mortgage, list the name and address of the timeshare estate owner, a general description of the timeshare estate, and the book and page number of the mortgage.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The timeshare estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case, they may be sold as a group.)

Other terms may be announced at the public auction.

Signed

Holder of mortgage or authorized agent."

(5) The public notice required by subparagraph (A) of paragraph (1) of this subsection for foreclosing a managing entity lien against a timeshare estate must be printed in the following or a substantially similar form:

"NOTICE OF SALE OF TIMESHARE ESTATE OR ESTATES UNDER SECTION 10 OF THE TIMESHARE LIEN AND SECURITY INTEREST ACT

By virtue of the timeshare instrument of the (name and address of timeshare property) and Section 5 of the Timeshare Lien and Security Interest Act establishing a managing entity lien for failure to pay assessments and other costs on the timeshare estate (or estates, if more than one) held by the owner of the timeshare estate (or owners, if more than one) listed below, the timeshare estate (or estates, if more than one) and for the purpose of foreclosing, the same will be sold at public auction starting at on 20.. at, Illinois. (For each timeshare estate, list the name and address of the timeshare estate owner, a general description of the timeshare estate, and the book and page number of the deed.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The

timeshare estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case, they may be sold as a group.)

Other terms may be announced at the public auction.

Signed

Managing entity lienholder or authorized agent."

(6) Publishing and sending notices in compliance with this subsection constitutes sufficient public notice of the public auction.

(d) Public auctions pursuant to this Section must be conducted as follows:

(1) The public auction must take place within the county where the timeshare estate is located.

(2) The public auction must be open to the general public and conducted by an auctioneer licensed pursuant to the Auction License Act.

(3) The auctioneer, in his or her discretion, may waive the reading of the names of the timeshare estate owners, if more than one, the description of the timeshare estates, if more than one, and the recording information of the applicable mortgages or managing entity liens (as the case may be), if more than one.

(4) All rights of redemption of the timeshare estate owner are extinguished upon sale of a timeshare estate at the public auction.

(5) The holder of the mortgage or managing entity lien, the developer, the managing entity, and the timeshare estate owner are not precluded from bidding at the public auction.

(6) The successful purchaser at the public auction is not required to complete the purchase of the timeshare estate if the timeshare estate, at the time the auctioneer accepts the successful bid, is subject to liens or other encumbrances, other than those identified in the notice of public auction and those identified at the auction before the auctioneer opens bidding on the applicable timeshare estate.

(7) The purchaser at the public auction takes title to the timeshare estate free and clear of any outstanding assessments owed by the prior timeshare estate owner to the managing entity.

(e) Upon the sale of a timeshare estate pursuant to this Section, the holder of the mortgage or managing entity lien must provide the purchaser with:

(1) a foreclosure deed or other appropriate instrument transferring the mortgage holder's or managing entity's interest in the timeshare estate; and

(2) an affidavit affirming that all requirements of the

foreclosure pursuant to this Section have been satisfied.

(f) The timeshare estate is considered sold and the deed or other instrument transferring the timeshare estate must transfer the timeshare estate, subject to municipal or other taxes and any liens or encumbrances recorded before the recording of the mortgage or the managing entity lien foreclosed pursuant to this Section (as the case may be), but not including such managing entity lien.

(g) The purchaser of a timeshare estate at a public auction pursuant to this Section must record the foreclosure deed or other instrument with the appropriate recorder of deeds within 30 days after the date the foreclosing mortgage holder or managing entity (as the case may be) delivers the foreclosure deed or other instrument to the purchaser.

(h) If the holder of a mortgage or managing entity lien conducts a nonjudicial foreclosure pursuant to this Section, the holder of the mortgage or managing entity lien forfeits its right to pursue a claim for any deficiency in the payment of the obligations of the timeshare estate owner resulting from the application of the proceeds of the sale to such obligations.

(i) For purposes of this Section, obligations to pay assessments secured by a lien established pursuant to a timeshare instrument before the effective date of this Act are considered managing entity liens.

(j) This Section applies to the foreclosure of mortgages

and liens considered to be managing entity liens that arose before or after the effective date of this Act.

Section 15. Foreclosure of lien or security interest on a timeshare use.

(a) Notwithstanding anything in the Illinois Mortgage Foreclosure Law or the Uniform Commercial Code to the contrary, the holder of a managing entity lien created by Section 5 on a timeshare use, in the case of the failure to pay assessments when due, or a security interest against a timeshare use, in the case of a breach of the security agreement, may do either of the following:

(1) enforce the security interest pursuant to Part 6 of Article 9 of the Uniform Commercial Code, including (without limitation) accepting the timeshare use in full or partial satisfaction of the timeshare use owner's obligation pursuant to Section 9-620 of the Uniform Commercial Code; or

(2) nonjudicially foreclose in the same manner as authorized by Section 10 for holders of a mortgage or managing entity lien against a timeshare estate.

(b) All rights of redemption of a timeshare use owner are extinguished upon sale of a timeshare use as authorized by subsection (a) of Section 10.

(c) The holder of the security interest or managing entity lien, the developer, the managing entity, and the timeshare use

owner are not precluded from bidding at the sale of the timeshare use pursuant to this Section and may enter into agreements for the purchase of one or more timeshare uses following the completion of the sale proceedings.

(d) The purchaser at the public auction takes title to the timeshare use free and clear of any outstanding assessments owed by the prior timeshare use owner to the managing entity.