



Sen. Pamela J. Althoff

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LRB100 08926 HEP 40349 a

1 AMENDMENT TO HOUSE BILL 2723

2 AMENDMENT NO. _____. Amend House Bill 2723, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

7 Section 3. Definitions. As used in this Act:

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

15 "Assessment" means the share of funds required for the
16 payment of common expenses which is assessed from time to time

1 against each purchaser by the managing entity.

2 "Developer" means and includes any person or entity, other
3 than a sales agent, acquisition agent, or resale agent, who
4 creates a timeshare plan or is in the business of selling
5 timeshare interests, or employs agents to do the same, or any
6 person or entity who succeeds to the interest of a developer by
7 sale, lease, assignment, mortgage, or other transfer, but the
8 term includes only those persons who offer timeshare interests
9 for disposition in the ordinary course of business.

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

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

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

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

22 "Timeshare interest" means and includes either:

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

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

5 "Timeshare plan" means any arrangement, plan, scheme, or
6 similar device, other than an exchange program, whether by
7 membership agreement, sale, lease, deed, license, or
8 right-to-use agreement or by any other means, whereby a
9 purchaser, in exchange for consideration, receives ownership
10 rights in or the right to use accommodations for a period of
11 time less than a full year during any given year, but not
12 necessarily for consecutive years. A timeshare plan may be:

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

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

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

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

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

5 Section 5. Managing entity lien created.

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

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

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

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

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

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

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

6 (A) the name of the timeshare estate owner;

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

8 (C) the description of the timeshare estate in the
9 same manner required for recording a mortgage against a
10 timeshare estate; and

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

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

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

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

24 (C) the address of the managing entity;

25 (D) the timeshare use as the collateral; and

26 (E) the amount of the debt secured by the managing

1 entity lien.

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

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

7 (1) as provided in Section 10; or

8 (2) in the same manner as a mortgage under the Illinois
9 Mortgage Foreclosure Law.

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

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

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

16 Section 10. Nonjudicial foreclosure against timeshare
17 estates.

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

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

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

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

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

9 (A) certified mail, return receipt requested; or

10 (B) first class mail.

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

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

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

23 (A) By publishing notice of the public auction in
24 at least each of 3 successive weeks in a newspaper,
25 whether printed or electronic, of general circulation
26 in the county where the timeshare estate is located.

1 The first notice must be published no more than 30 days
2 before the date of the public auction, which 30-day
3 period shall be calculated by excluding the date of
4 publication of the first notice and the date of the
5 public auction.

6 (B) By sending written notice identifying the
7 time, date, and place of the public auction to the last
8 known address of the owner of record of the timeshare
9 estate at least 30 days before the date of the public
10 auction by: (i) certified mail, return receipt
11 requested; or (ii) first class mail.

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

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

20 (A) the name of the timeshare estate owner;

21 (B) a general description of the timeshare estate;

22 and

23 (C) the terms of the public auction.

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

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

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

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

20 TERMS OF SALE: (State the deposit amount to be paid by the
21 purchaser at the time and place of the sale and the times for
22 payment of the balance or the whole, as the case may be. The
23 timeshare estates, if more than one, must be sold in individual

1 lots unless there are no individual bidders, in which case,
2 they may be sold as a group.)

3 Other terms may be announced at the public auction.

4 Signed

5 Holder of mortgage or authorized agent."

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

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

12 By virtue of the timeshare instrument of the
13 (name and address of timeshare property)
14 and Section 5 of the Timeshare Lien and Security Interest Act
15 establishing a managing entity lien for failure to pay
16 assessments and other costs on the timeshare estate (or
17 estates, if more than one) held by the owner of the timeshare
18 estate (or owners, if more than one) listed below, the
19 timeshare estate (or estates, if more than one) and for the
20 purpose of foreclosing, the same will be sold at public auction

1 starting at on 20.. at,
 2 Illinois. (For each timeshare estate, list the name and address
 3 of the timeshare estate owner, a general description of the
 4 timeshare estate, and the book and page number of the deed.)

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

11 Other terms may be announced at the public auction.

12 Signed

13 Managing entity lienholder or authorized agent."

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

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

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

21 (2) The public auction must be open to the general

1 public and conducted by an auctioneer licensed pursuant to
2 the Auction License Act.

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

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

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

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

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

1 managing entity.

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

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

8 (2) an affidavit affirming that all requirements of the
9 foreclosure pursuant to this Section have been satisfied.

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

17 (g) The purchaser of a timeshare estate at a public auction
18 pursuant to this Section must record the foreclosure deed or
19 other instrument with the appropriate recorder of deeds within
20 30 days after the date the foreclosing mortgage holder or
21 managing entity (as the case may be) delivers the foreclosure
22 deed or other instrument to the purchaser.

23 (h) If the holder of a mortgage or managing entity lien
24 conducts a nonjudicial foreclosure pursuant to this Section,
25 the holder of the mortgage or managing entity lien forfeits its
26 right to pursue a claim for any deficiency in the payment of

1 the obligations of the timeshare estate owner resulting from
2 the application of the proceeds of the sale to such
3 obligations.

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

8 (j) This Section applies to the foreclosure of mortgages
9 and liens considered to be managing entity liens that arose
10 before or after the effective date of this Act.

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

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

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

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

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

7 (c) The holder of the security interest or managing entity
8 lien, the developer, the managing entity, and the timeshare use
9 owner are not precluded from bidding at the sale of the
10 timeshare use pursuant to this Section and may enter into
11 agreements for the purchase of one or more timeshare uses
12 following the completion of the sale proceedings.

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