

1 AN ACT concerning civil law.

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

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

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

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

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

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

1 for disposition in the ordinary course of business.

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

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

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

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

14 "Timeshare interest" means and includes either:

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

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

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

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

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

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

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

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

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

23 Section 5. Managing entity lien created.

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

1 a timeshare interest:

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

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

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

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

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

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

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

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

26 (C) the description of the timeshare estate in the

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

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

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

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

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

16 (C) the address of the managing entity;

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

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

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

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

25 (1) as provided in Section 10; or

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

1 Mortgage Foreclosure Law.

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

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

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

8 Section 10. Nonjudicial foreclosure against timeshare  
9 estates.

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

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

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

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

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

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

2 (B) first class mail.

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

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

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

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

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

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

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

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

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

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

14 and

15 (C) the terms of the public auction.

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

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

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



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

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

20 Other terms may be announced at the public auction.

21 Signed .....

22 Holder of mortgage or authorized agent."

1           (5) The public notice required by subparagraph (A) of  
 2           paragraph (1) of this subsection for foreclosing a managing  
 3           entity lien against a timeshare estate must be printed in  
 4           the following 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     the     timeshare     instrument     of     the  
 8           ..... (name and address of timeshare property)  
 9           and Section 5 of the Timeshare Lien and Security Interest Act  
 10          establishing a managing entity lien for failure to pay  
 11          assessments and other costs on the timeshare estate (or  
 12          estates, if more than one) held by the owner of the timeshare  
 13          estate (or owners, if more than one) listed below, the  
 14          timeshare estate (or estates, if more than one) and for the  
 15          purpose of foreclosing, the same will be sold at public auction  
 16          starting at ..... on ..... 20.. at .....,  
 17          Illinois. (For each timeshare estate, list the name and address  
 18          of the timeshare estate owner, a general description of the  
 19          timeshare estate, and the book and page number of the deed.)

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

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

4 Other terms may be announced at the public auction.

5 Signed .....

6 Managing entity lienholder or authorized agent."

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

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

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

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

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

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

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

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

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

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

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

26           (2) an affidavit affirming that all requirements of the

1 foreclosure pursuant to this Section have been satisfied.

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

9 (g) The purchaser of a timeshare estate at a public auction  
10 pursuant to this Section must record the foreclosure deed or  
11 other instrument with the appropriate recorder of deeds within  
12 30 days after the date the foreclosing mortgage holder or  
13 managing entity (as the case may be) delivers the foreclosure  
14 deed or other instrument to the purchaser.

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

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

26 (j) This Section applies to the foreclosure of mortgages

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

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

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

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

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

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

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

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

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