



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2112

Introduced 2/20/2009, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Real Estate Timeshare Act of 1999. Provides a description of the Act's scope. Provides that a resale agent is a person who for another and for compensation, or with the intention or expectation of receiving compensation, either directly or indirectly, sells or offers to sell (instead of directly or through an employee or agent sells or offers to sell a timeshare). Provides definition of "managing entity lien". Provides that the minimum requirements of a timeshare sale listing agreement include the use, rental, or exchange of the unit while listed; designation of any rental fees recipient; disclosure of any relationship between the resale agent and any person receiving a benefit from use of the timeshare; any pre-sale fees; the resale agent's prior experience; commissions; and other items (instead of requiring only disclosure of the resale agent's compensation, certain terms of the use or rental of the timeshare, and the length of the term of the listing contract). Provides for disclosures, in addition to those required, to a prospective purchaser of a timeshare that include the status of assessments and real estate or personal property taxes and the location of documents about the timeshare. Provides that a timeshare resale agent shall be a licensed real estate broker unless exempt from licensure by the Real Estate License Act of 2000 or because of selling no more than 8 timeshares per year. Provides for a managing entity lien. Provides procedures, including notices and auctions, for the nonjudicial foreclosure against time share estates and the foreclosure of a lien or security interest on a timeshare use under the Act or under the Uniform Commercial Code. Repeals certain provisions of existing law regarding resale agent registration requirements. Makes other changes. Provides for severability of the amendatory provisions. Effective immediately.

LRB096 09414 AJO 19571 b

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 5. The Real Estate Timeshare Act of 1999 is amended  
5 by changing Sections 1-10, 1-15, 5-40, 5-45, 5-60, 10-5, and  
6 10-25 and by adding Sections 10-45, 10-50, and 10-55 as  
7 follows:

8 (765 ILCS 101/1-10)

9 Sec. 1-10. Scope of Act.

10 (a) This Act applies to all of the following:

11 (1) Timeshare plans with an accommodation or component  
12 site in Illinois.

13 (2) Timeshare plans without an accommodation or  
14 component site in Illinois, if those timeshare plans are  
15 sold or offered to be sold to any individual located within  
16 Illinois.

17 (3) Exchange programs as defined in this Act.

18 (4) Resale agents as defined in this Act.

19 (b) Exemptions. This Act does not apply to the following:

20 (1) Timeshare plans, whether or not an accommodation is  
21 located in Illinois, consisting of 7 or fewer timeshare  
22 periods, the use of which extends over any period of less  
23 than 3 years; or.

1           (2) Timeshare plans, whether or not an accommodation is  
2           located in Illinois, under which the prospective  
3           purchaser's total financial obligation will be less than  
4           \$1,500 during the entire term of the timeshare plan.

5           (Source: P.A. 91-585, eff. 1-1-00.)

6           (765 ILCS 101/1-15)

7           Sec. 1-15. Definitions. In this Act, unless the context  
8           otherwise requires:

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

16          "Acquisition agent" means a person who, directly or through  
17          the person's employees, agents, or independent contractors,  
18          induces or attempts to induce by means of a promotion or an  
19          advertisement any individual located within the State of  
20          Illinois to attend a sales presentation for a timeshare plan.

21          "Advertisement" means any written, oral, or electronic  
22          communication that is directed to or targeted to persons within  
23          the State of Illinois and contains a promotion, inducement, or  
24          offer to sell a timeshare plan, including but not limited to  
25          brochures, pamphlets, radio and television scripts, electronic

1 media, telephone and direct mail solicitations, and other means  
2 of promotion.

3 "Association" means the organized body consisting of the  
4 purchasers of interests in a timeshare plan.

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

8 "Commissioner" means the Commissioner of Banks and Real  
9 Estate, or a natural person authorized by the Commissioner, the  
10 Office of Banks and Real Estate Act, or this Act to act in the  
11 Commissioner's stead.

12 "Component site" means a specific geographic location  
13 where accommodations which are part of a multi-site timeshare  
14 plan are located. Separate phases of a single timeshare  
15 property in a specific geographic location and under common  
16 management shall be deemed a single component site.

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  
24 for disposition in the ordinary course of business.

25 "Dispose" or "disposition" means a voluntary transfer or  
26 assignment of any legal or equitable interest in a timeshare

1 plan, other than the transfer, assignment, or release of a  
2 security interest.

3 "Exchange company" means any person owning or operating, or  
4 both owning and operating, an exchange program.

5 "Exchange program" means any method, arrangement, or  
6 procedure for the voluntary exchange of timeshare interests or  
7 other property interests. The term does not include the  
8 assignment of the right to use and occupy accommodations to  
9 owners of timeshare interests within a single-site timeshare  
10 plan. Any method, arrangement, or procedure that otherwise  
11 meets this definition, wherein the purchaser's total  
12 contractual financial obligation exceeds \$3,000 per any  
13 individual, recurring timeshare period, shall be regulated as a  
14 timeshare plan in accordance with this Act.

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

18 "Managing entity lien" means a lien created pursuant to  
19 Section 10-45.

20 "Offer" means any inducement, solicitation, or other  
21 attempt, whether by marketing, advertisement, oral or written  
22 presentation, or any other means, to encourage a person to  
23 acquire a timeshare interest in a timeshare plan, other than as  
24 security for an obligation.

25 "Person" means a natural person, corporation, limited  
26 liability company, partnership, joint venture, association,

1 estate, trust, government, governmental subdivision or agency,  
2 or other legal entity, or any combination thereof.

3 "Promotion" means a plan or device, including one involving  
4 the possibility of a prospective purchaser receiving a  
5 vacation, discount vacation, gift, or prize, used by a  
6 developer, or an agent, independent contractor, or employee of  
7 any of the same on behalf of the developer, in connection with  
8 the offering and sale of timeshare interests in a timeshare  
9 plan.

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

14 "Purchase contract" means a document pursuant to which a  
15 person becomes legally obligated to sell, and a purchaser  
16 becomes legally obligated to buy, a timeshare interest.

17 "Resale agent" means a person who, for another and for  
18 compensation, or with the intention or expectation of receiving  
19 compensation, either directly or indirectly ~~directly or~~  
20 ~~through the person's employees or agents,~~ sells, or offers to  
21 sell, or advertises to sell within this State any a timeshare  
22 ~~interest previously sold to a purchaser or solicits an owner of~~  
23 ~~a timeshare~~ interest to list the owner's timeshare interest, or  
24 wherever located, for sale.

25 "Reservation system" means the method, arrangement, or  
26 procedure by which a purchaser, in order to reserve the use or

1 occupancy of any accommodation of a multi-site timeshare plan  
2 for one or more timeshare periods, is required to compete with  
3 other purchasers in the same multi-site timeshare plan,  
4 regardless of whether the reservation system is operated and  
5 maintained by the multi-site timeshare plan managing entity, an  
6 exchange company, or any other person. In the event that a  
7 purchaser is required to use an exchange program as the  
8 purchaser's principal means of obtaining the right to use and  
9 occupy accommodations, that arrangement shall be deemed a  
10 reservation system. When an exchange company utilizes a  
11 mechanism for the exchange of use of timeshare periods among  
12 members of an exchange program, that utilization is not a  
13 reservation system of a multi-site timeshare plan.

14 "Sales agent" means a person, other than a resale agent,  
15 who, directly or through the person's employees, agents, or  
16 independent contractors, sells or offers to sell timeshare  
17 interests in a timeshare plan to any individual located in the  
18 State of Illinois.

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 period" means the period or periods of time when  
6           the purchaser of a timeshare plan is afforded the opportunity  
7           to use the accommodations of a timeshare plan.

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

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

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

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

25                       (B) a "non-specific timeshare interest", which is  
26                       the right to use accommodations at more than one



1 component site created by or acquired through the  
2 timeshare plan's reservation system, but including no  
3 specific right to use any particular accommodations.

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

8 (Source: P.A. 91-585, eff. 1-1-00.)

9 (765 ILCS 101/5-40)

10 Sec. 5-40. Resale agent duties. ~~A Whether registered or~~  
11 ~~exempt from registration under Section 5-35, a~~ resale agent  
12 shall comply with all of the following:

13 (a) Prior to engaging in any resale activities on behalf of  
14 any owner of a timeshare interest or accepting anything of  
15 value from any owner of a timeshare interest, a resale agent  
16 shall enter into a listing agreement with that owner. Every  
17 listing agreement shall be in writing and signed by both the  
18 resale agent and the timeshare interest owner. The requirements  
19 of the written listing agreement shall be established by rule,  
20 but at a minimum the listing agreement shall disclose the  
21 following:

22 (1) The name and address of the resale agent and the  
23 timeshare interest owner.

24 (2) The term of the listing agreement.

25 (3) Whether the resale agent's rights under the listing

1 agreement are exclusive and, if the resale agent's rights  
2 are exclusive, the length of such exclusivity period.

3 (4) Whether any person other than the timeshare  
4 interest owner may use the timeshare during the period  
5 before the timeshare interest is resold.

6 (5) Whether any person other than the timeshare  
7 interest owner may rent or exchange the use of the  
8 timeshare interest during the term of the listing  
9 agreement.

10 (6) The name of any person who will receive any rents,  
11 profits, or other thing of value generated from the use of  
12 the timeshare interest during the period before the  
13 timeshare interest is resold.

14 (7) A detailed description of any relationship between  
15 the resale agent and any other person who receives any  
16 benefit from the use of the timeshare interest.

17 (8) A description of any fees or costs that relate to  
18 the listing or sale of the timeshare interest that the  
19 timeshare interest owner (or any other person) must pay to  
20 the resale agent or any third party. If the timeshare  
21 interest owner (or any other person) must pay a fee to the  
22 resale agent or any third party before the sale of the  
23 timeshare interest, the listing agreement must identify  
24 each of the following:

25 (A) The amount of each pre-sale fee and to whom  
26 such pre-sale fee must be paid.

1           (B) The time by which each pre-sale fee must be  
2           paid.

3           (C) A reasonable description of each pre-sale cost  
4           or fee.

5           (D) A description and the estimated amount of any  
6           other fees or costs associated with the listing or sale  
7           of the timeshare interest.

8           (E) The ratio or percentage of the number of  
9           listings of timeshare interests for sale versus the  
10           number of timeshare interests sold by the resale agent  
11           for each of the past 3 years.

12           (9) A description of the amount or percentage and  
13           procedures for paying any commissions due to the resale  
14           agent upon resale of the timeshare interest. ~~the method of~~  
15           ~~compensation, a definite date of termination, whether any~~  
16           ~~fees are non refundable, and whether the agreement permits~~  
17           ~~the timeshare resale agent or any other person to make any~~  
18           ~~use whatsoever of the owner's timeshare interest or receive~~  
19           ~~any rents or profits generated from such use of the~~  
20           ~~timeshare interest.~~

21           (b) A resale agent shall maintain records as required by  
22           rule. The records required to be maintained include, but are  
23           not limited to, all listing agreements, copies of disbursement  
24           authorizations in accordance with subsection (c), and resale  
25           contracts.

26           (c) A resale agent who collects any fees prior to a

1 transfer of an interest from any owner shall deposit the fees  
2 in an escrow account. Any fees that are to be paid to the  
3 resale agent prior to closing may be disbursed from the escrow  
4 account only upon receipt of a disbursement authorization,  
5 signed by the owner, in the following form:

6 "I, (name of owner), am the owner of a timeshare  
7 interest in (name of timeshare plan). I understand that for  
8 my protection I can require the entire fee to be held in  
9 escrow until the closing on the resale of my timeshare  
10 interest, but I am authorizing a release before the  
11 transfer in the following amount: (amount written in words)  
12 (\$ (amount in numbers)), for the following purpose or  
13 purposes (description of purpose or purposes). I  
14 understand that the resale agent is regulated by the Office  
15 of Banks and Real Estate under the Real Estate Timeshare  
16 Act of 1999. The Office of Banks and Real Estate requires  
17 the resale agent to obtain this disbursement authorization  
18 with my signature before disbursement of my funds."

19 (d) A resale agent shall utilize a purchase agreement that  
20 discloses to a purchaser of a timeshare interest all of the  
21 following:

22 (1) A legally sufficient description of the timeshare  
23 interest being purchased.

24 (2) The name and address of the managing entity of the  
25 timeshare property.

26 (3) The amount of the most recent ~~current year's~~

1 assessment for the common expenses allocated to the  
2 timeshare interest being purchased including the time  
3 period to which the assessment relates (e.g., monthly,  
4 quarterly, yearly) and the date on which it is due. If not  
5 included in the applicable common expense assessment, the  
6 amount of any real or personal property taxes allocated to  
7 the timeshare interest being purchased.

8 (3.5) Whether all assessments and real or personal  
9 property taxes that are due against the timeshare interest  
10 are paid in full and, if not, the amount owed and the  
11 consequences of failure to pay timely any assessment or  
12 real or personal property taxes.

13 (4) A complete and accurate disclosure of the terms and  
14 conditions of the purchase and closing, including the  
15 obligations of the owner, the purchaser, or both for  
16 closing costs and the title insurance.

17 (5) The entity responsible for providing notification  
18 to the managing entity of the timeshare plan and the  
19 applicable exchange company regarding any change in the  
20 ownership of the timeshare interest.

21 (6) A statement of the first year in which the  
22 purchaser is entitled to receive the actual use rights and  
23 occupancy of the timeshare interest, as determined by the  
24 managing entity of the timeshare plan and any exchange  
25 company.

26 (6.5) The name, address, telephone number, and website

1 (if applicable) where the governing documents of the  
2 association, if any, and the timeshare instrument may be  
3 obtained, together with the following disclosure:

4 "There are many important documents relating to  
5 the timeshare plan that you should review before  
6 purchasing a timeshare interest. These may include,  
7 but are not limited to, (a) the declaration of  
8 condominium, (b) the declaration of timeshare plan,  
9 (c) the reciprocal easement and cost sharing  
10 agreement, (d) the declaration of restrictions,  
11 covenants, and conditions, (e) the owners association  
12 articles and bylaws, (f) the current year's operating  
13 and reserve budgets, if any, for the owners  
14 association, and (g) any rules and regulations  
15 affecting the use of the timeshare property or other  
16 facility or amenity available for use by timeshare  
17 interest owners."

18 (7) In making the disclosures required by this  
19 subsection (d), the timeshare resale agent may rely upon  
20 information provided in writing by the owner or managing  
21 entity of the timeshare plan.

22 (8) The purchaser's 5-day cancellation period as  
23 required by Section 10-10.

24 (9) Any other information determined by the Office of  
25 Banks and Real Estate and established by rule.

26 (e) Unless exempt from licensure pursuant to the Real

1 Estate License Act of 2000 or its successor Act, a resale agent  
2 must be licensed as a real estate broker or salesperson  
3 pursuant to the Real Estate License Act of 2000 or its  
4 successor Act.

5 (f) A resale agent is exempt from the duties imposed by  
6 subsections (a)-(d) of this Section 5-40 if the resale agent  
7 offers an aggregate total no more than 8 timeshare interests  
8 per calendar year as a resale agent, regardless of (1) whether  
9 those timeshare interests are located in this State and (2)  
10 whether the resale agent offers all, or only some, of those  
11 timeshare interests, in this State.

12 (Source: P.A. 91-585, eff. 1-1-00.)

13 (765 ILCS 101/5-45)

14 Sec. 5-45. Amendment to registration information or public  
15 offering statement. The developer, resale agent, and exchange  
16 company shall amend or supplement their disclosure documents  
17 and registration information to reflect any material change in  
18 any information required by this Act or the rules implementing  
19 this Act. All such amendments, supplements, and changes shall  
20 be filed with the Office of Banks and Real Estate within 30 ~~20~~  
21 calendar days of the material change.

22 (Source: P.A. 91-585, eff. 1-1-00.)

23 (765 ILCS 101/5-60)

24 Sec. 5-60. Registration; offer or disposal of interest.

1       (a) A developer or ~~an~~ exchange company, ~~or resale agent,~~ or  
2 any of their agents, shall not sell, offer, or dispose of a  
3 timeshare interest unless all necessary registrations are  
4 filed and approved by the Office of Banks and Real Estate, or  
5 while an order revoking or suspending a registration is in  
6 effect.

7       (b) An applicant for registration under this Act shall  
8 submit the necessary information to complete the application,  
9 as required by the Office of Banks and Real Estate, within 6  
10 months from the date the initial registration application was  
11 received by the Office of Banks and Real Estate. If the  
12 applicant fails to submit the information necessary to complete  
13 the application as required by the Office of Banks and Real  
14 Estate within the six month period, said application shall be  
15 voided, and a new registration application with applicable fees  
16 must be submitted.

17       (Source: P.A. 91-585, eff. 1-1-00.)

18               (765 ILCS 101/10-5)

19               Sec. 10-5. Management and operation provisions.

20               (a) Before the first sale of a timeshare interest, the  
21 developer shall create or provide for a managing entity, which  
22 shall be either the developer, a separate manager or management  
23 firm, the board of directors of an owners' association, or some  
24 combination thereof.

25               (b) The duties of the managing entity include, but are not



1 limited to:

2 (1) Management and maintenance of all accommodations  
3 constituting the timeshare plan.

4 (2) Collection of all assessments as provided in the  
5 timeshare instrument.

6 (3) Providing to all purchasers each year an itemized  
7 annual budget, which shall include all estimated revenues  
8 and expenses.

9 (4) Maintenance of all books and records concerning the  
10 timeshare plan.

11 (5) Scheduling occupancy of accommodations, when  
12 purchasers are not entitled to use specific timeshare  
13 periods, so that all purchasers will be provided the  
14 opportunity to use and possession of the accommodations of  
15 the timeshare plan which they have purchased.

16 (6) Performing any other functions and duties that are  
17 necessary and proper to maintain the accommodations or that  
18 are required by the timeshare instrument.

19 (c) If ~~In the event~~ a developer, mortgagee, managing  
20 entity, or association does not pursue nonjudicial foreclosure  
21 as provided in Section 10-50 or 10-55 and instead forecloses  
22 against a timeshare interest pursuant to the Illinois Mortgage  
23 Foreclosure Law, files a complaint in a foreclosure proceeding  
24 ~~involving timeshare interests,~~ the developer, mortgagee,  
25 managing entity, or association may join in the same action  
26 multiple defendant obligors and junior interest holders of

1 separate timeshare interests, provided:

2 (1) the foreclosure proceeding involves a single  
3 timeshare plan;

4 (2) the foreclosure proceeding is filed by a single  
5 plaintiff;

6 (3) the default and remedy provisions in the written  
7 instruments on which the foreclosure proceeding is based  
8 are substantially the same for each defendant; and

9 (4) the nature of the defaults alleged is the same for  
10 each defendant.

11 (d) In any foreclosure proceeding involving multiple  
12 defendants filed under subsection (c), the court shall sever  
13 for separate trial any count of the complaint in which a  
14 defense or counterclaim is timely raised by a defendant.

15 (Source: P.A. 91-585, eff. 1-1-00.)

16 (765 ILCS 101/10-25)

17 Sec. 10-25. Liability; material misrepresentation.

18 (a) A developer or other person offering a timeshare plan  
19 may not do any of the following:

20 (1) Misrepresent a fact material to a purchaser's  
21 decision to buy a timeshare interest.

22 (2) Predict specific or immediate increases in the  
23 value of a timeshare interest represented over a period of  
24 time, excluding bona fide pending price increases by the  
25 developer.

1           (3) Materially misrepresent the qualities or  
2 characteristics of accommodations or the amenities  
3 available to the occupant of those accommodations.

4           (4) Misrepresent the length of time accommodations or  
5 amenities will be available to the purchaser of a timeshare  
6 interest.

7           (5) Misrepresent the conditions under which a  
8 purchaser of a timeshare interest may exchange the right of  
9 his or her occupancy for the right to occupy other  
10 accommodations.

11           (b) A developer or other person using a promotion in  
12 connection with the offering of a timeshare interest shall  
13 clearly disclose all of the following:

14           (1) That the purpose of the promotion is to sell  
15 timeshare interests, which shall appear in bold face or  
16 other conspicuous type.

17           (2) That any person whose name or address is obtained  
18 during the promotion may be solicited to purchase a  
19 timeshare interest.

20           (3) The name of each developer or other person trying  
21 to sell a timeshare interest through the promotion, and the  
22 name of each person paying for the promotion.

23           (4) The complete rules of the promotion.

24           (5) The method of awarding prizes, gifts, vacations,  
25 discount vacations, or other benefits under the promotion;  
26 a complete and fully detailed description, including

1 approximate retail value, of all prizes, gifts, or benefits  
2 under the promotion; the quantity of each prize, gift, or  
3 benefit to be awarded or conferred; and the date by which  
4 each prize, gift, or benefit will be awarded or conferred.

5 (6) Any other disclosures provided by rule.

6 (c) If a person represents that a prize, gift, or benefit  
7 will be awarded in connection with a promotion, the prize,  
8 gift, or benefit must be awarded or conferred in the manner  
9 represented, and on or before the date represented.

10 (d) A developer or other person using a promotion in  
11 connection with the offering of a timeshare interest shall  
12 provide the disclosures required by this Section in writing or  
13 electronically to the prospective purchaser at least once  
14 before the earlier of (1) a reasonable period before the  
15 scheduled sales presentation to ensure that the prospective  
16 purchaser receives the disclosures before leaving to attend the  
17 sales presentation or (2) the payment of any nonrefundable  
18 monies by the prospective purchaser in regard to the promotion.

19 (e) A developer or other person using a promotion in  
20 connection with the offering of a timeshare interest is not  
21 required to provide the disclosures required by this Section in  
22 every advertisement or other written, oral, or electronic  
23 communication provided or made to a prospective purchaser.

24 (Source: P.A. 91-585, eff. 1-1-00.)

25 (765 ILCS 101/10-45 new)

1       Sec. 10-45. Managing entity lien created.

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

5           (1) Assessments, which for purposes of this Act unless  
6 the timeshare instrument provides otherwise, shall include  
7 fees, charges, late charges, fines, collection costs, and  
8 interest charged in accordance with the timeshare  
9 instrument;

10           (2) Reasonable collection and attorneys fees and costs  
11 the managing entity incurs to collect assessments; and

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

15       (b) Managing entity liens pursuant to this Section are  
16 created and attached when the charges described in Section  
17 10-45(a) become due. If such amounts are payable in  
18 installments, the full amount of such charges is a managing  
19 entity lien from the time that the first installment thereof  
20 becomes due.

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

23           (1) In the case of a timeshare estate, records a notice  
24 of lien against the timeshare estate in the registry of  
25 deeds in the county where the timeshare estate is located,  
26 which notice of lien must identify each of the following:

1                   (A) The name of the timeshare estate owner;  
2                   (B) The name and address of the managing entity;  
3                   (C) The description of the timeshare estate in the  
4                   same manner required for recording a mortgage against a  
5                   timeshare estate; and

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

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

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

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

19                   (C) The address of the managing entity;

20                   (D) The timeshare use as the collateral; and

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

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

26                   (e) A managing entity lien against a timeshare estate, at

1 the managing entity's option, may (1) be foreclosed as provided  
2 in Section 10-50 or (2) be foreclosed in the same manner as a  
3 mortgage pursuant to the Illinois Mortgage Foreclosure Law.

4 (f) A managing entity lien against a timeshare use, at the  
5 managing entity's option, may (1) be foreclosed as provided in  
6 Section 10-55 or (2) be enforced in the same manner as a  
7 security interest pursuant to Article 9 of the Uniform  
8 Commercial Code.

9 (765 ILCS 101/10-50 new)

10 Sec. 10-50. Nonjudicial foreclosure against timeshare  
11 estates.

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

14 (1) The holder of a mortgage against a timeshare estate  
15 may foreclose or otherwise enforce a security interest  
16 pursuant to this Section 10-50; and

17 (2) The holder of a managing entity lien against a  
18 timeshare estate may foreclose such managing entity lien  
19 pursuant to this Section 10-50.

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

25 (1) Provide written notice of the default to the

1 timeshare estate owner at the last known address of the  
2 timeshare estate owner by (A) certified mail, return  
3 receipt requested and (B) first-class mail.

4 (2) Provide the timeshare estate owner an additional  
5 opportunity to cure for a period of at least 30 days  
6 following the later date of the mailing of the notices  
7 pursuant to Sections 10-50(b)(1)(A) and 10-50(b)(1)(B).

8 (c) If, the timeshare estate owner does not cure the  
9 default before the expiration of the additional cure period  
10 granted pursuant to Section 10-50(b)(2), the holder of the  
11 mortgage or managing entity lien may foreclose the mortgage or  
12 managing entity lien by conducting a public auction that  
13 complies with the following requirements:

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

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

25 (B) By sending written notice identifying the  
26 time, date, and place of the public auction to the last



1 known address of the owner of record of the timeshare  
2 estate at least 30 days before the date of the public  
3 auction by (i) certified mail, return receipt  
4 requested and (ii) first-class mail.

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

10 (2) The notices given pursuant to Section 10-50(c)(1)  
11 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 Section  
20 10-50(c)(1)(A) for foreclosing a mortgage against a  
21 timeshare estate must be printed in substantially the  
22 following form:

23 NOTICE OF SALE OF TIMESHARE ESTATE OR ESTATES UNDER SECTION  
24 10-50 OF THE ILLINOIS REAL ESTATE TIMESHARE ACT OF 1999

1 By virtue of 765 ILCS 101/10-50 and in execution of a certain  
 2 mortgage (or mortgages, if more than one) on the timeshare  
 3 estate (or estates, if more than one) given by the owner of the  
 4 timeshare estate (or owners, if more than one) set forth below  
 5 for breach of the conditions of said mortgage (or mortgages, if  
 6 more than one) and for the purpose of foreclosing, the same  
 7 will be sold at public auction starting at.....  
 8 on..... 20.. at....., Illinois, being all and  
 9 singular the premises described in said mortgage (or mortgages,  
 10 if more than one). (For each mortgage, list the name and  
 11 address of the timeshare estate owner, a general description of  
 12 the timeshare estate, and the book and page number of the  
 13 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 Section  
 2           10-50(c)(1)(A) for foreclosing a managing entity lien  
 3           against a timeshare estate must be printed in substantially  
 4           the following form:

5           NOTICE OF SALE OF TIMESHARE ESTATE OR ESTATES UNDER SECTION  
 6           10-50 OF THE ILLINOIS REAL ESTATE TIMESHARE ACT OF 1999

7           By virtue of the timeshare instrument of the  
 8           ..... (name and address of timeshare property)  
 9           and 765 ILCS 101/10-45 establishing a managing entity lien for  
 10           failure to pay assessments and other costs on the timeshare  
 11           estate (or estates, if more than one) held by the owner of the  
 12           timeshare estate (or owners, if more than one) listed below,  
 13           the timeshare estate (or estates, if more than one) and for the  
 14           purpose of foreclosing, the same will be sold at public auction  
 15           starting at ..... on ..... 20.. at .....,  
 16           Illinois. (For each timeshare estate, list the name and address  
 17           of the timeshare estate owner, a general description of the  
 18           timeshare estate, and the book and page number of the deed.)

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

1 they may be sold as a group.)

2 Other terms may be announced at the public auction.

3 Signed .....

4 Managing entity lienholder or authorized agent.

5 (6) Publishing and sending notices in compliance with  
6 this Section 10-50(c) constitutes sufficient public notice  
7 of the public auction.

8 (d) Public auctions pursuant to this Section 10-50 must be  
9 conducted as follows:

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

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

15 (3) Notwithstanding anything in the Auction License  
16 Act to the contrary, the auctioneer, in his or her  
17 discretion, may waive the reading of the names of the  
18 timeshare estate owners, if more than one, the description  
19 of the timeshare estates, if more than one, and the  
20 recording information of the applicable mortgages or  
21 managing entity liens (as the case may be), if more than  
22 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 10-50, the holder of the mortgage or managing entity  
22           lien must provide the purchaser with (1) a foreclosure deed or  
23           other appropriate instrument transferring the mortgage  
24           holder's or managing entity's interest in the timeshare estate  
25           and (2) an affidavit affirming that all requirements of the  
26           foreclosure pursuant to this Section 10-50 have been satisfied.

1       (f) The timeshare estate is considered sold, and the deed  
2 or other instrument transferring the timeshare estate must  
3 transfer the timeshare estate, subject to municipal or other  
4 taxes and any liens or encumbrances recorded before the  
5 recording of the mortgage or the managing entity lien  
6 foreclosed pursuant to this Section 10-50 (as the case may be),  
7 but not including such managing entity lien.

8       (g) The purchaser of a timeshare estate at a public auction  
9 pursuant to this Section 10-50 must record the foreclosure deed  
10 or other instrument with the appropriate recorder of deeds  
11 within 30 days after the date the foreclosing mortgage holder  
12 or managing entity (as the case may be) delivers the  
13 foreclosure deed or other instrument to the purchaser.

14       (h) If the holder of a mortgage or managing entity lien  
15 conducts a nonjudicial foreclosure pursuant to this Section  
16 10-50, the holder of the mortgage or managing entity lien  
17 forfeits its right to pursue a claim for any deficiency in the  
18 payment of the obligations of the timeshare estate owner  
19 resulting from the application of the proceeds of the sale to  
20 such obligations.

21       (i) For purposes of this Section 10-50, obligations to pay  
22 assessments secured by a lien established pursuant to a  
23 timeshare instrument before the effective date of this  
24 amendatory Act of the 96th General Assembly are considered  
25 managing entity liens.

26       (j) This Section 10-50 applies to the foreclosure of

1 mortgages and liens considered to be managing entity liens that  
2 arose before or after the effective date of this amendatory Act  
3 of the 96th General Assembly.

4 (765 ILCS 101/10-55 new)

5 Sec. 10-55. Foreclosure of lien or security interest on a  
6 timeshare use.

7 (a) Notwithstanding anything in the Illinois Mortgage  
8 Foreclosure Law or the Uniform Commercial Code to the contrary,  
9 the holder of a managing entity lien on a timeshare use created  
10 by Section 10-45, in the case of the failure to pay assessments  
11 when due, or a security interest against a timeshare use, in  
12 the case of a breach of the security agreement, may do either  
13 of the following:

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

20 (2) Nonjudicially foreclose in the same manner as  
21 authorized by Section 10-50 for holders of a mortgage or  
22 managing entity lien against a timeshare estate.

23 (b) All rights of redemption of a timeshare use owner are  
24 extinguished upon sale of a timeshare use as authorized by  
25 Section 10-55(a).

1       (c) The holder of the security interest or managing entity  
2       lien, the developer, the managing entity and the timeshare use  
3       owner are not precluded from bidding at the sale of the  
4       timeshare use pursuant to this Section 10-55 and may enter into  
5       agreements for the purchase of one or more timeshare uses  
6       following the completion of the sale proceedings.

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

10       (765 ILCS 101/5-35 rep.)

11       Section 10. The Real Estate Timeshare Act of 1999 is  
12       amended by repealing Section 5-35.

13       Section 97. Severability. The provisions of this Act are  
14       severable under Section 1.31 of the Statute on Statutes.

15       Section 99. Effective date. This Act takes effect upon  
16       becoming law.



1 INDEX

2 Statutes amended in order of appearance

3 765 ILCS 101/1-10

4 765 ILCS 101/1-15

5 765 ILCS 101/5-40

6 765 ILCS 101/5-45

7 765 ILCS 101/5-60

8 765 ILCS 101/10-5

9 765 ILCS 101/10-25

10 765 ILCS 101/10-45 new

11 765 ILCS 101/10-50 new

12 765 ILCS 101/10-55 new

13 765 ILCS 101/5-35 rep.