

BILL ANALYSIS

S.B. 1372
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Timeshares are not and may not be used as primary homes under the timeshare instruments. They are generally used for one or two weeks per year for vacation accommodations. Timeshare associations perform functions similar to but not identical to traditional homeowners' associations (HOA) but timeshare owners have less engagement in association operations as they simply wish to enjoy their vacations. Timeshare owners do pay mandatory annual assessments, usually per week of their ownership and based on unit size (e.g., one-bedroom, two-bedroom, et cetera). The assessment usually includes expenses not covered by traditional HOAs, such as housekeeping services; reservation services; maintenance of unit interiors and furnishings; reserves for replacement of unit furniture, fixtures, and equipment; and real estate taxes.

Laws designed for traditional whole ownership associations are, at best, confusing for timeshare associations and, at worst, detrimental to the associations' operations. For example, a law in Nevada required association board members to reside on the property for at least three-quarters of the year, which would have meant there would be no qualified board members to serve. Timeshares in Texas are already governed by the Texas Timeshare Act (Chapter 221, Property Code) which provides for extensive disclosures to timeshare buyers and annual disclosures on timeshare association budget matters to the owners.

This bill creates a new subchapter in the Timeshare Act to add basic provisions for the governance of timeshare owners' associations and exclude timeshare associations from sections of the Property Code designed for whole ownership or primary home property associations. The bill does not affect or change any provisions in the Texas Property Code governing property owners' associations for subdivisions, condominiums, or other whole ownership property associations, but exempts certain timeshare associations. The extensive 2005 amendments to the Texas Timeshare Act previously exempted Texas timeshare associations from Chapter 209 of the Property Code.

S.B. 1372 amends current law relating to timeshare owners' associations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Requires this Act to be known as the Texas Timeshare Owners' Association Act.

SECTION 2. Amends Chapter 221, Property Code, by adding Subchapter I, as follows:

SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS

Sec. 221.081. **CONFLICTS OF LAW.** Provides that the provisions of this subchapter prevail over a conflicting or inconsistent provision of law applicable to timeshare owners' associations.

Sec. 221.082. **APPLICABILITY.** (a) Provides that this subchapter, except as provided by this section, applies to a timeshare plan and to the project instrument governing the timeshare property subject to the timeshare plan regardless of the date on which the timeshare plan was created.

(b) Provides that this subchapter, except as provided by Section 221.084(f), applies to a timeshare plan and to the project instrument governing the timeshare property subject to the timeshare plan created before September 1, 2013, unless the project instrument is amended before September 1, 2013, not provide that this subchapter does not apply.

Section 221.083. POWERS AND LIMITATIONS OF BOARD. (a) Authorizes a council or association composed of all persons who have purchased a timeshare interest (association) to be governed by a board of directors (board). Authorizes the board, except as provided in the timeshare document covering restrictions and covenants (project instrument), or this subchapter, to act in all instances on behalf of the association.

(b) Prohibits the board, except as expressly authorized in the project instrument or otherwise permitted by the association, from acting on behalf of the association to amend the project instrument, terminate the timeshare plan, elect or remove board members, or determine the qualifications, powers, duties, or terms of board members.

(c) Authorizes the board, subject to the project instrument, to appoint a member to fill a vacancy on the board and provides that the member appointed serves for the unexpired portion of the term of the predecessor board member.

Section 221.084. PERIOD OF DEVELOPER CONTROL. (a) Authorizes the project instrument, except as otherwise provided in this section, to provide for a period of developer control of an association during which the developer, or a person designated by the developer, is authorized to appoint and remove board members and officers of the association.

(b) Provides that, regardless of the period of developer control provided in the project instrument, that period expires not later than the earlier of:

(1) the 120th day after the date that at least 95 percent of the timeshare interests that were created by the timeshare instrument are conveyed to owners other than the developer; or

(2) the fifth anniversary of the date the developer ceased to offer timeshare interests for sale in the ordinary course of business under the timeshare plan or under another timeshare plan in which the timeshare interests are included, whichever date is later.

(c) Authorizes a developer to voluntarily surrender the developer's right to appoint and remove board members and officers of the association during the period of developer control by executing a written instrument stating that the developer's rights are surrendered and providing a copy of the instrument to the owners. Authorizes the developer to provide in the surrender instrument that, during the remaining period otherwise designated for developer control, specified actions of the association or board as described in the project instrument are effective only on approval of the developer. Requires that the surrender instrument be recorded in the real property records of the county in which the timeshare property is located.

(d) Provides that, if the project instrument provides for a developer control period of shorter duration than any period prescribed by this section, the project instrument controls.

(e) Authorizes the developer, during the period of developer control and subject to the project instrument, to determine all matters governing the association, including the occurrence of special or regular meetings of the members and the notice requirements and rules for those meetings.

(f) Provides that this section applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to

the timeshare plan only if the developer and the association agree to the application in writing and the project instrument is amended to provide for that application. Provides that, if the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwithstanding any other law.

Section 221.085. ELECTION OF INITIAL BOARD MEMBERS AND OFFICERS. (a) Requires the owners, including the developer to the extent of any developer-owned timeshare interests, not later than the termination, by expiration or surrender, of any period of developer control, to elect a board of at least three members. Authorizes the board to include one or more representatives of the developer.

(b) Requires the board to elect the officers of the association.

(c) Provides that the board members and officers of the association take office on election.

Sec. 221.086. REMOVAL OF BOARD MEMBERS. Authorizes the owners, by a vote of at least two-thirds of the voting rights of persons entitled to vote and voting in person or by proxy at any meeting of the owners, notwithstanding any provision of a project instrument to the contrary, to remove a member of the board, with or without cause, other than a member appointed by the developer during the period of developer control under Section 221.084, provided that the developer remains in control of the association.

Section 221.087. QUORUM. (a) Provides that, unless the project instrument provides for a larger quorum requirement, the percentage of voting interests constituting a quorum at a meeting of the members of an association is 10 percent of the voting interests of owners who are not delinquent in assessments, voting in person or by proxy.

(b) Authorizes the meeting, if a quorum is not present at any meeting of the association at which board members will be elected, to be adjourned and reconvened not later than the 90th day after the date of adjournment for the sole purpose of electing board members. Provides that, unless the project instrument provides for a larger quorum requirement, the quorum for the reconvened meeting is 10 percent of the voting interests of owners who are not delinquent in assessments, voting in person or by proxy.

(c) Provides that, unless the project instrument provides otherwise, a quorum of the board is considered present throughout a board meeting if the members entitled to cast a majority of the votes are present at the beginning of the meeting.

Section 221.088. VOTES. (a) Authorizes an owner, if only one of the multiple owners of a timeshare interest is present at a meeting of the association, to cast all votes allocated to that timeshare interest. Authorizes the votes allocated to that timeshare interest, if more than one of the multiple owners are present, to be cast only in accordance with the agreement of a majority of the timeshare interest held by the multiple owners unless the timeshare instrument expressly provides otherwise. Provides that, for purposes of this subsection, there is a majority agreement if any one of the multiple owners casts the votes allocated to that timeshare interest and no protest is made promptly to the person presiding over the meeting by any of the other owners of the timeshare interest.

(b) Authorizes votes allocated to a timeshare interest to be cast under a proxy duly executed by an owner. Requires a proxy to expressly state the dates of execution and termination. Authorizes an owner to only revoke a proxy given under this section by actual notice of revocation to the person presiding over a meeting of the association. Provides that a proxy is revoked on presentation of a later dated proxy or other written revocation executed by the same owner. Provides that a proxy terminates the 25th month after the date the proxy is executed, unless the proxy specifies a shorter period or states that the proxy is coupled with an interest and is irrevocable.

(c) Authorizes the project instrument for a timeshare plan to authorize votes of members of an association to be cast by mail only if mail ballots are mailed or sent to each member in the manner prescribed for a notice of a special meeting under Section 221.090; the period for return of mail ballots is not later than the 30th day after the date the ballots are mailed or sent to members; and the required minimum number of ballots that is required to be returned by members for the vote to be effective represents at least the percentage of voting interests required for a quorum as prescribed by Section 221.087(a).

(d) Provides that only timeshare interests included in the timeshare plan have voting rights.

(e) Provides that, unless the project instrument provides otherwise, owners who are delinquent in assessments do not have the right to cast a vote. Provides that the right to cast a vote is also subject to any additional limitations provided in the project instrument.

Section 221.089. OPEN MEETINGS; EXCEPTIONS. (a) Provides that, notwithstanding any provision in the project instrument to the contrary and except as provided in this section, after the period of developer control under Section 221.084, all meetings of the association and board are open to all members of the association and all members are required to be permitted to attend and listen to the deliberations and proceedings. Requires that meetings be conducted as provided in the project instrument. Authorizes the board to adjourn a board meeting and reconvene in a closed executive session to consider:

(1) legal advice from an attorney for the board or the association;

(2) pending or contemplated litigation;

(3) financial information about an individual member of the association, an individual employee of the association, an individual employee of the managing entity, or an individual employee of a contractor for the association or managing entity; or

(4) matters relating to the job performance of, compensation of, health records of, or specific complaints against an individual employee of the association, an individual employee of the managing entity, or an individual employee of a contractor of the association or managing entity who works under the direction of the association or the managing entity.

(b) Authorizes the board, if a board meeting is closed as provided by Subsection (a)(1) or (2), on final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, to disclose information about that matter in an open meeting, except to the extent that those matters are required to remain confidential by the terms of a settlement agreement or judgment.

Section 221.090. NOTICE. (a) Requires that a meeting of the members of the association be held annually after the termination of the period of developer control under Section 221.084. Authorizes special meetings of the members of the association to be called by the president, by a majority of the board, or by owners having at least 25 percent of the votes allocated to timeshare interests in the association or any lower percentage specified in the project instrument.

(b) Requires the association or managing entity, unless the project instrument provides otherwise, to send notice of the meeting to the mailing address of each owner on record with the association:

(1) not later than the 30th day or earlier than the 90th day before the date of an annual meeting; and

(2) not later than the 10th day or earlier than the 60th day before the date of a special meeting.

(c) Requires that the notice of a meeting of the owners state the date, time, and place of the meeting. Requires that the notice of a special meeting of the owners also state the purpose of the meeting. Authorizes a notice of a meeting to be included in a list of upcoming meetings sent to owners, and the list is not required to be specific to one meeting. Provides that the failure of an owner to receive actual notice of a meeting of the owners does not affect the validity of any action taken at that meeting.

(d) Requires the association or managing entity, unless the project instrument provides otherwise, to send notice of a board meeting held after the date the developer control period terminates to the mailing address of each owner on record with the association not later than the 10th day before the date of the meeting. Provides that notice to owners of a board meeting is not required if emergency circumstances require action by the board before notice can be given. Requires that a notice of a board meeting state the date, time, and place of the meeting. Authorizes a notice of a meeting to be included in a list of upcoming meetings sent to owners, and the list is not required to be specific to one meeting. Provides that the failure of an owner to receive actual notice of a board meeting does not affect the validity of any action taken at that meeting.

(e) Authorizes a notice to be provided in a newsletter or a similar mailing. Authorizes notice to be provided by prepaid United States mail, e-mail for those owners who have provided an e-mail address, or any other reasonable method selected by the board.

(f) Authorizes a notice to an owner, notwithstanding Subsections (a)-(d) or any other law related to notice by an association, to be provided by conspicuous disclosure on the association's website if the owner has consented to that alternative notice. Requires that consent to that alternative notice be in writing and authorizes that consent be revoked by the owner at any time.

(g) Provides that an affidavit of notice by an officer of the association or the managing entity is prima facie evidence that notice was provided under this section.

Section 221.091. DUTIES; LIST OF OWNERS. (a) Requires the association or managing entity of the association to maintain among its records a complete and current list of the names and addresses of all owners of timeshare interests in the timeshare plan. Requires the association or managing entity to update this list not less than quarterly.

(b) Prohibits the association or managing entity from publishing this owners list or providing a copy of the list to any owner or to any third party, except:

(1) as reasonably required to conduct legitimate association business; or

(2) as authorized or required by law.

(c) Requires the association or managing entity, on the termination of the period of developer control under Section 221.084 and on the written request of an owner, to send by first class mail to owners on the list described by Subsection (a) any materials provided by any owner if the purpose of the mailing is for legitimate association business, including a proxy solicitation for the recall of a board member elected by the owners, the discharge of the managing entity, or any other purpose. Requires that the use of the solicited proxies comply with the project instrument and this subchapter. Requires that materials required to be provided under this subsection be mailed not later than the 30th day after the date the request is received from an owner.

(d) Provides that the board or the managing entity is responsible for determining the appropriateness of a mailing requested under Subsection (c) and establishing reasonable procedures for exercising rights under this section. Provides that the association or managing entity does not have an obligation to mail an item that the board or managing entity reasonably believes based on advice of legal counsel may be libelous or otherwise actionable. Requires an owner who requests the mailing of materials under Subsection (c) to reimburse the association or managing entity in advance for the actual costs of performing the mailing or a proportionate share of actual costs if the mailing is included in a mailing with other items.

(e) Provides that, after the termination of the period of developer control under Section 221.084, it is a violation of this subchapter to refuse to mail material provided by a requesting owner who has complied with the reasonable procedures established by the board or managing entity, if:

(1) the sole purpose of the materials is to advance legitimate association business; and

(2) the requesting owner has:

(A) tendered to the association or managing entity payment of the cost under Subsection (d); or

(B) requested an invoice for that cost and has not received the invoice before the 10th day after the date the request was delivered to the association or managing entity.

(f) Prohibits the association or other managing entity, except as otherwise authorized or required by law, from furnishing the name, address, telephone number, or e-mail address of any owner to any other owner or authorized agent of an owner unless the owner whose name, address, phone number, or e-mail address is requested first approves the disclosure in writing.

SECTION 3. Amends Section 221.002, Property Code, by adding Subdivision (5-a) to define "board."

SECTION 4. Amends Section 221.003(d), Property Code, as follows:

(d) Provides that a timeshare property subject to this chapter is not subject to Section 5.008 (Seller's Disclosure of Property Condition) or Section 5.012 (Notice of Obligations Related to Membership in Property Owners' Association); Chapter 202 (Construction and Enforcement of Restrictive Covenants); Chapter 207 (Disclosure of Information by Property Owners' Associations); and Chapter 209 (Texas Residential Property Owners Protection Act), unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

SECTION 5. Amends Sections 221.011(a) and (b), Property Code, as follows:

(a) Requires that a property, when a person expressly declares an intent to subject the property to a timeshare plan through the recordation of a timeshare instrument that sets forth the information provided in Subsection (b), rather than in Subsections (b) and (c), be established thenceforth as a timeshare plan.

(b) Requires that the declaration made in a timeshare instrument recorded under this section include certain information, including provisions required by Subchapter I, unless the project instrument provides otherwise.

SECTION 6. Amends Section 221.025, Property Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Provides that a timeshare plan subject to Chapter 82 (Uniform Condominium Act) that complies with this chapter is exempt from the requirements of:

(1) Section 82.0675 (Restriction Relating to Club Membership) relating to club membership; and

(2) Sections 82.103 (c) (relating to declaration providing for a period of declarant control), (d) (relating to members of the board of directors elected by unit owners), and (e) (relating to requiring unit owners to elect the board of directors) relating to declarant control.

(c-1) Provides that the exemption provided by Subsection (c)(2) applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application of the exemption in writing and the project instrument is amended to provide for the application of the exemption. Provides that, if the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwithstanding any other law.

SECTION 7. Amends Section 221.071(a), Property Code, to provide that a developer or other person commits a false, misleading, or deceptive act or practice within the meaning of Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code, rather than within the meaning of Subsections (a) (relating to providing that false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to certain actions) and (b) (defining "false, misleading, or deceptive acts or practices") of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code), by engaging in certain acts.

SECTION 8. Effective date: September 1, 2013.

EFFECTIVE DATE

September 1, 2013.