

## **BILL ANALYSIS**

Senate Research Center

S.B. 1372  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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.

As proposed, S.B. 1372 amends current law relating to the powers and duties of timeshare owners' associations.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION \_\_\_\_\_. Authorizes this Act to be cited as the Texas Timeshare Owners' Association Act.

SECTION 1. Amends Section 221.002, Property Code, to define "board" for this section.

SECTION 2. Amends Section 221.003(d), Property Code, as follows:

(d) Provides that a timeshare property subject to this chapter is not subject to the following provisions of the Property Code: Section 5.008 (Seller's Disclosure of Property Condition); 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 owner occupies a single timeshare property as the owner's primary residence 12 months of the year.

SECTION 3. Amends Section 221.011, Property Code, as follows:

- (a) Makes nonsubstantive changes.
- (b) Makes no change to this subsection.
- (c) Requires that the declaration made in the timeshare instrument recorded under this section, unless set forth in other project instruments for the property, also include those matters required by Subchapter I of this chapter to be set forth in a project instrument.
- (d) Creates this subsection from existing Subsection (c). Makes no further changes to this subsection.

SECTION 4. Amends Section 221.025(c), Property Code, to provide that a timeshare plan subject to Chapter 82 (Uniform Condominium Act) that complies with this chapter is exempt from the requirements of Section 82.0675 (Restriction Relating to Club Membership) relating to club membership and 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.

SECTION 5. Provides that the reference in Section 221.071(a) (relating to a developer committing a deceptive act by engaging in certain acts), Property Code, to Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code) is amended to read Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

SECTION 6. Adds Subchapter I to the Texas Timeshare Act, as follows:

#### SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS

Section 221.081. POWERS OF BOARD AND LIMITATIONS. (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), Subsection (b) of this section, or other provisions of this chapter, 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 members of the board, or determine the qualifications, powers, duties, or terms of office of directors. Authorizes the board to fill vacancies in its membership for the unexpired portion of any term, subject to the project instrument.

Section 221.082. 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 the officers of the association and the members of the board. Provides that, notwithstanding the period provided in the project instrument, the period of developer control of the association terminates no later than the earlier of:

(1) one hundred twenty days after conveyance of ninety-five percent of the timeshare interests that were created by the timeshare instrument to owners other than the developer; or

(2) five years after the developer has ceased to offer timeshare interests for sale in the ordinary course of business, under either the timeshare plan itself or another timeshare plan in which the timeshare interests are included, whichever is later.

(b) Authorizes a developer to voluntarily surrender the right to appoint and remove officers of the association and members of the board during the period provided for in Subsection (a) by executing a written instrument declaring the surrender and providing a copy of the instrument to the owners. Authorizes the developer, in the developer's surrender instrument, to require that, for the duration of the period of the developer's control, specified actions of the association or board as described in the project instrument be approved by the developer before they become effective. Requires that the developer's surrender instrument be recorded.

(c) 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.

(d) Authorizes the developer, during the period of developer control and subject to the project instrument, to determine all matters governing the association, including whether there will be special or regular meetings of the members and the notices and rules for any such meetings.

**Section 221.083. ELECTION OF DIRECTORS AND OFFICERS; REMOVAL OF DIRECTORS.** (a) Requires the owners, including the developer to the extent of any developer-owned timeshare interest, no later than the termination of any period of developer control, to elect a board of at least three members, which is authorized to include representatives of the developer. Provides that the board will elect the officers of the association. Provides that the board members and officers of the association take office on election.

(b) Authorizes the owners, by a vote representing at least two-thirds of all voting rights of persons present in person or by proxy who are entitled to vote at any meeting of the owners at which a quorum is present, notwithstanding any provision of a project instrument to the contrary, to remove any member of the board, with or without cause, other than a member appointed by the developer during the period of developer control under Section 221.082 so long as the developer remains in control of the association.

**Section 221.084. QUORUM.** (a) Provides that, unless the project instrument provides for a higher quorum requirement, the percentage of voting interests constituting a quorum at a meeting of the members of an association is ten percent of the voting interests of owners who are not delinquent in assessments, in person or by proxy. Authorizes the meeting, if a quorum is not present at any meeting of the association at which members of the board are to be elected, to be adjourned and reconvened within ninety days for the sole purpose of electing members of the board, and the quorum for the adjourned meeting will be ten percent of the voting interests of owners who are not delinquent in assessments, in person or by proxy, unless the project instrument provides for a higher quorum requirement.

(b) Provides that, unless the project instrument provides otherwise, a quorum will be deemed to be present throughout a meeting of an association's board if persons entitled to cast a majority of the votes on that board are present at the beginning of the meeting.

Section 221.085. VOTES. (a) Provides that, if only one of the multiple owners of a timeshare interest is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that timeshare interest. Authorizes the votes allocated to that time share, if more than one of the multiple owners are present, to be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the timeshare instrument expressly provides otherwise. Provides that there is a majority agreement if any one of the multiple owners casts the votes allocated to that timeshare interest without protest being 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 pursuant to a proxy duly executed by an owner. Requires a proxy to expressly state its dates of execution and termination. Prohibits an owner from revoking a proxy given pursuant to this section except 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 twenty-five months after its date of execution, unless it specifies a shorter term or unless it states that it 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 conducted by mail on compliance with all of the following: mail ballots are mailed or sent to all members in the manner prescribed for notices of special meetings pursuant to Section 221.087; the period for return of mail ballots is at least thirty days 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 is at least equal to the quorum percentage prescribed in Section 221.084(a).

(d) Provides that, except as otherwise provided in the project instrument, owners who are delinquent in assessments do not have the right to cast votes. Provides that the right to cast votes is also subject to any additional limitations provided in the project instrument.

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

Section 221.086. ASSOCIATION OPEN MEETINGS AND 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 221.082, all meetings of the association and board are open to all members of the association and all members so desiring are required to be permitted to attend and listen to the deliberations and proceedings. Provides that meetings will be conducted as provided in the project instrument. Authorizes the board to close to the association members any portion of a meeting of the board if that portion of the meeting is limited to consideration of one or more of the following:

(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 meeting is closed by the board pursuant to Subsection (a)(1) or Subsection (a)(2) of this section, 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 for matters that are required to remain confidential by the terms of a settlement agreement or judgment.

Section 221.087. NOTICE. (a) Requires that a meeting of the members of the association be held at least once each year after the period of developer control under Section 221.082. 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 twenty-five percent of the votes in the association or any lower percentage specified in the project instrument. Requires the association or managing entity, that not fewer than thirty nor more than ninety days in advance of any regular meeting of the owners, and not fewer than ten nor more than sixty days in advance of any special meeting of the owners, unless otherwise provided in the project instrument, to cause notice of the meeting to be sent or provided to the mailing address of each owner on record with the association. Requires that the notice of any meeting of the owners state the time and place of the meeting. Requires that the notice of any special meeting of the owners also state the purpose for which the meeting is called. Authorizes notices of meetings to be in the form of an annual or other list of upcoming meetings and need not be specific to one meeting. Provides that the failure of any owner to receive actual notice of a meeting of the owners does not affect the validity of any action taken at that meeting.

(b) Requires the association or managing entity, unless otherwise provided in the project instrument, for meetings of the board that are held after the termination of developer control of the association, at least ten days in advance of any meeting of the board, to cause notice of the meeting to be sent to the mailing address of each owner on record with the association. Provides that notice to owners of meetings of the board is not required if emergency circumstances require action by the board before notice can be given. Requires that any notice of a board meeting state the time and place of the meeting. Authorizes notices of meetings to be in the form of an annual or other list of upcoming meetings and need not be specific to one meeting. Provides that the failure of any owner to receive actual notice of a meeting of the board does not affect the validity of any action taken at that meeting.

(c) Authorizes notices to be in newsletters or similar mailings. Authorizes mailing to occur by prepaid United States mail or electronic mail for those owners who have provided electronic mail addresses or another reasonable method selected by the board. Authorizes the notice to owners, the contrary requirements of Section 221.087(a)-(b) and any other statutes related to associations notwithstanding, to also be given by conspicuous disclosure on the association's website for those owners who have consented to that alternative for notice, which consent is required to be in writing and subject to revocation by each owner at any time. Provides that an affidavit of notice by an officer of the association or by the managing entity is prima facie evidence that notice was given as prescribed by this section.

Section 221.088. LIST OF OWNERS. (a) Requires the association or other managing entity to maintain among its records a complete list of the names and addresses of all owners of timeshare interests in the timeshare plan. Requires the association or other managing entity to update this list no less frequently than quarterly. Prohibits the association or other managing entity from publishing this owners' list or provide a copy of it to any owner or to any third party, except:

(1) for disclosure to a third party reasonably required for the association or other managing entity to conduct legitimate association business, or

(2) as otherwise authorized or required by law.

(b) Requires the association or other managing entity, after the period of developer control under Section 221.082, to mail to those persons listed on the owners' list prescribed by Subsection (a) any materials provided by any owner, on the written request of that owner, if the purpose of the mailing is to advance legitimate association business, such as a proxy solicitation for any purpose, including the recall of one or more board members elected by the owners or the discharge of the managing entity. Requires that the use of any proxies solicited in this manner comply with the project instrument and this chapter. Requires that a mailing requested for the purpose of advancing legitimate association business be made within thirty days after receipt of a request from an owner.

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

(d) Provides that, after the period of developer control under Section 221.082, if the requesting owner has complied with the reasonable procedures established by the board or managing entity for mailing requests, it is a violation of this chapter for the association or other managing entity to refuse to mail any material requested by the owner to be mailed, if the sole purpose of the materials is to advance legitimate association business and the requesting owner has either tendered to the association or managing entity payment of the cost pursuant to Subsection (c) or has requested an invoice for that cost and has not received an invoice within ten days after delivering that request to the association or managing entity.

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

Section 221.089. APPLICATION. (a) Provides that this Act applies to all timeshare plans, timeshare property, and associations in this state that are established on or after the effective date of this Act.

(b) Provides that, except for the amendment to Section 221.025(c) and new Section 221.082, this Act also applies to timeshare plans, timeshare property, and associations in this state that are established at any time before the effective date of this Act, unless the timeshare instrument is amended on or before September 1, 2013, to provide that this Act shall not apply.

(c) Provides that the amendment to Section 221.025(c) and new Section 221.082 shall not apply to timeshare plans, timeshare property, and associations in this state that are established at any time before the effective date of this Act, unless, as to either, the association and the developer agree in writing to its application and the timeshare instrument is amended to provide that it applies. Requires,

otherwise, any existing developer control provisions contained in the timeshare instrument to govern, any other statutes related to associations notwithstanding.

(d) Provides that, anything to the contrary notwithstanding, this chapter governs if there is a conflict between this chapter and any other statute related to associations subject to this chapter and the provisions of the other chapters of the Property Code relating to property owners' associations do not apply to associations subject to this chapter.

SECTION 7. Effective date: September 1, 2013.