

By: King of Parker

H.B. No. 2944

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of timeshare owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Texas Timeshare Owners' Association Act.

SECTION 2. The following definition is added to Section 221.002 of the Property Code in alphabetical order, and the existing subsections contained in Section 221.002 are renumbered:

(6) "Board" means the governing body of a timeshare association designated in a project instrument to act on behalf of that association.

SECTION 3. Section 221.003(d) of the Property Code is amended to read as follows:

(d) A timeshare property subject to this chapter is not subject to ~~Chapter 209~~ the following provisions of the Property Code:

(1) Section 5.008;

(2) Section 5.012;

(3) Chapter 202;

(4) Chapter 207; and

(5) Chapter 209 unless an individual owner occupies a single timeshare property as the owner's primary residence 12 months of the year.

1 SECTION 4. Section 221.011 of the Property Code is amended
2 to read as follows:

3 (a) The developer of a timeshare plan any part of which is
4 located in this state must record the timeshare instrument in this
5 state. When a person expressly declares an intent to subject the
6 property to a timeshare plan through the recordation of a timeshare
7 instrument that sets forth the information provided in Subsections
8 (b) ~~and (c)~~, that property shall be established thenceforth as a
9 timeshare plan.

10 (b) The declaration made in a timeshare instrument recorded
11 under this section must include:

12 (1) a legal description of the timeshare property,
13 including a ground plan indicating the location of each existing or
14 proposed building included in the timeshare plan;

15 (2) a description of each existing or proposed
16 accommodation, including the location and square footage of each
17 unit and an interior floor plan of each existing or proposed
18 building;

19 (3) a description of any amenities furnished or to be
20 furnished to the purchaser;

21 (4) a statement of the fractional or percentage part
22 that each timeshare interest bears to the entire timeshare plan;

23 (5) if applicable, a statement that the timeshare
24 property is part of a multisite timeshare plan; and

25 (6) any additional provisions that are consistent with
26 this section.

27 (c) Unless set forth in other project instruments for the

1 property, the declaration made in the timeshare instrument recorded
2 under this section must also include those matters required by
3 Subchapter I of this chapter to be set forth in a project
4 instrument.

5 (d) Any timeshare interest created under this section is
6 subject to Section 1101.002(5), Occupations Code, but Sections
7 1101.351(a)(1) and (c), Occupations Code, do not apply to the acts
8 of an exchange company in exchanging timeshare periods.

9 SECTION 5. Section 221.025(c) of the Property Code is
10 amended to read as follows:

11 (c) A timeshare plan subject to Chapter 82 that complies
12 with this chapter is exempt from the requirements of Section
13 82.0675 relating to club membership and Section 82.103(c)-(e)
14 relating to declarant control.

15 SECTION 6. The reference in Section 221.071(a) of the
16 Property Code to Texas Deceptive Trade Practices-Consumer
17 Protection Act (Article 17.46 et seq., Business & Commerce Code) is
18 amended to read ~~Texas~~ Deceptive Trade Practices-Consumer
19 Protection Act (~~Article 17.46~~ Subchapter E, Chapter 17, Business &
20 Commerce Code).

21 SECTION 7. A new Subchapter I is added to the Texas
22 Timeshare Act, which subchapter will read as follows:

23 SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS

24 Section 221.081. POWERS OF BOARD AND LIMITATIONS. (a) An
25 association may be governed by a board of directors. Except as
26 provided in the project instrument, Subsection (b) of this section,
27 or other provisions of this chapter, the board may act in all

1 instances on behalf of the association.

2 (b) Except as expressly authorized in the project
3 instrument or otherwise permitted by the association, the board may
4 not act on behalf of the association to amend the project
5 instrument, terminate the timeshare plan, elect or remove members
6 of the board, or determine the qualifications, powers, duties, or
7 terms of office of directors. The board may fill vacancies in its
8 membership for the unexpired portion of any term, subject to the
9 project instrument.

10 Section 221.082. PERIOD OF DEVELOPER CONTROL. (a) Except as
11 otherwise provided in this section, the project instrument may
12 provide for a period of developer control of an association during
13 which the developer, or a person designated by the developer, may
14 appoint and remove the officers of the association and the members
15 of the board. Notwithstanding the period provided in the project
16 instrument, the period of developer control of the association
17 terminates no later than the earlier of:

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

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

25 (b) A developer may voluntarily surrender the right to
26 appoint and remove officers of the association and members of the
27 board during the period provided for in Subsection (a) by executing

1 a written instrument declaring the surrender and providing a copy
2 of the instrument to the owners. In the developer's surrender
3 instrument, the developer may require that, for the duration of the
4 period of the developer's control, specified actions of the
5 association or board as described in the project instrument be
6 approved by the developer before they become effective. The
7 developer's surrender instrument must be recorded.

8 (c) If the project instrument provides for a developer
9 control period of shorter duration than any period prescribed by
10 this section, the project instrument controls.

11 (d) During the period of developer control and subject to
12 the project instrument, the developer may determine all matters
13 governing the association, including whether there will be special
14 or regular meetings of the members and the notices and rules for any
15 such meetings.

16 Section 221.083. ELECTION OF DIRECTORS AND OFFICERS;
17 REMOVAL OF DIRECTORS. (a) No later than the termination of any
18 period of developer control, the owners, including the developer to
19 the extent of any developer-owned timeshare interests, must elect a
20 board of at least three members, which may include representatives
21 of the developer. The board will elect the officers of the
22 association. The board members and officers of the association take
23 office on election.

24 (b) Notwithstanding any provision of a project instrument
25 to the contrary, the owners, by a vote representing at least
26 two-thirds of all voting rights of persons present in person or by
27 proxy who are entitled to vote at any meeting of the owners at which

1 a quorum is present, may remove any member of the board, with or
2 without cause, other than a member appointed by the developer
3 during the period of developer control under Section 221.082 so
4 long as the developer remains in control of the association.

5 Section 221.084. QUORUM. (a) Unless the project instrument
6 provides for a higher quorum requirement, the percentage of voting
7 interests constituting a quorum at a meeting of the members of an
8 association is ten percent of the voting interests of owners who are
9 not delinquent in assessments, in person or by proxy. If a quorum is
10 not present at any meeting of the association at which members of
11 the board are to be elected, the meeting may be adjourned and
12 reconvened within ninety days for the sole purpose of electing
13 members of the board, and the quorum for the adjourned meeting will
14 be ten percent of the voting interests of owners who are not
15 delinquent in assessments, in person or by proxy, unless the
16 project instrument provides for a higher quorum requirement.

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

21 Section 221.085. VOTES. (a) If only one of the multiple
22 owners of a timeshare interest is present at a meeting of the
23 association, that owner is entitled to cast all the votes allocated
24 to that timeshare interest. If more than one of the multiple owners
25 are present, the votes allocated to that timeshare interest may be
26 cast only in accordance with the agreement of a majority in interest
27 of the multiple owners unless the timeshare instrument expressly

1 provides otherwise. There is a majority agreement if any one of the
2 multiple owners casts the votes allocated to that timeshare
3 interest without protest being made promptly to the person
4 presiding over the meeting by any of the other owners of the
5 timeshare interest.

6 (b) Votes allocated to a timeshare interest may be cast
7 pursuant to a proxy duly executed by an owner. A proxy must
8 expressly state its dates of execution and termination. An owner
9 may not revoke a proxy given pursuant to this section except by
10 actual notice of revocation to the person presiding over a meeting
11 of the association. A proxy is revoked on presentation of a later
12 dated proxy or other written revocation executed by the same owner.
13 A proxy terminates twenty-five months after its date of execution,
14 unless it specifies a shorter term or unless it states that it is
15 coupled with an interest and is irrevocable.

16 (c) The project instrument for a timeshare plan may
17 authorize votes of members of an association to be conducted by mail
18 on compliance with all of the following:

19 (1) mail ballots are mailed or sent to all members in
20 the manner prescribed for notices of special meetings pursuant to
21 Section 221.087;

22 (2) the period for return of mail ballots is at least
23 thirty days after the date the ballots are mailed or sent to
24 members; and

25 (3) the required minimum number of ballots that must
26 be returned by members for the vote to be effective is at least
27 equal to the quorum percentage prescribed in Section 221.084(a).

1 (d) Except as otherwise provided in the project instrument,
2 owners who are delinquent in assessments do not have the right to
3 cast votes. The right to cast votes is also subject to any
4 additional limitations provided in the project instrument.

5 (e) Only timeshare interests included in the timeshare plan
6 have voting rights.

7 Section 221.086. ASSOCIATION OPEN MEETINGS AND EXCEPTIONS.

8 (a) Notwithstanding any provision in the project instrument to the
9 contrary and except as provided in this section, after the period of
10 developer control under Section 221.082, all meetings of the
11 association and board are open to all members of the association and
12 all members so desiring must be permitted to attend and listen to
13 the deliberations and proceedings. Meetings will be conducted as
14 provided in the project instrument. The board may close to the
15 association members any portion of a meeting of the board if that
16 portion of the meeting is limited to consideration of one or more of
17 the following:

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

20 (2) pending or contemplated litigation;

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

25 (4) matters relating to the job performance of,
26 compensation of, health records of, or specific complaints against
27 an individual employee of the association, an individual employee

1 of the managing entity, or an individual employee of a contractor of
2 the association or managing entity who works under the direction of
3 the association or the managing entity.

4 (b) If a meeting is closed by the board pursuant to
5 Subsection (a)(1) or Subsection (a)(2) of this section, on final
6 resolution of any matter for which the board received legal advice
7 or that concerned pending or contemplated litigation, the board may
8 disclose information about that matter in an open meeting except
9 for matters that are required to remain confidential by the terms of
10 a settlement agreement or judgment.

11 Section 221.087. NOTICE. (a) A meeting of the members of the
12 association must be held at least once each year after the period of
13 developer control under Section 221.082. Special meetings of the
14 members of the association may be called by the president, by a
15 majority of the board, or by owners having at least twenty-five
16 percent of the votes in the association or any lower percentage
17 specified in the project instrument. Unless otherwise provided in
18 the project instrument, not fewer than thirty nor more than ninety
19 days in advance of any regular meeting of the owners, and not fewer
20 than ten nor more than sixty days in advance of any special meeting
21 of the owners, the association or managing entity must cause notice
22 of the meeting to be sent or provided to the mailing address of each
23 owner on record with the association. The notice of any meeting of
24 the owners must state the time and place of the meeting. The notice
25 of any special meeting of the owners must also state the purpose for
26 which the meeting is called. Notices of meetings may be in the form
27 of an annual or other list of upcoming meetings and need not be

1 specific to one meeting. The failure of any owner to receive actual
2 notice of a meeting of the owners does not affect the validity of
3 any action taken at that meeting.

4 (b) Unless otherwise provided in the project instrument,
5 for meetings of the board that are held after the termination of
6 developer control of the association, at least ten days in advance
7 of any meeting of the board, the association or managing entity must
8 cause notice of the meeting to be sent to the mailing address of
9 each owner on record with the association. Notice to owners of
10 meetings of the board is not required if emergency circumstances
11 require action by the board before notice can be given. Any notice
12 of a board meeting must state the time and place of the meeting.
13 Notices of meetings may be in the form of an annual or other list of
14 upcoming meetings and need not be specific to one meeting. The
15 failure of any owner to receive actual notice of a meeting of the
16 board does not affect the validity of any action taken at that
17 meeting.

18 (c) Notices may be in newsletters or similar mailings.
19 Mailing may occur by prepaid United States mail or electronic mail
20 for those owners who have provided electronic mail addresses or
21 another reasonable method selected by the board. The contrary
22 requirements of Section 221.087(a)-(b) and any other statutes
23 related to associations notwithstanding, notices to owners may also
24 be given by conspicuous disclosure on the association's website for
25 those owners who have consented to that alternative for notice,
26 which consent must be in writing and subject to revocation by each
27 owner at any time. An affidavit of notice by an officer of the

1 association or by the managing entity is prima facie evidence that
2 notice was given as prescribed by this section.

3 Section 221.088. LIST OF OWNERS. (a) The association or
4 other managing entity must maintain among its records a complete
5 list of the names and addresses of all owners of timeshare interests
6 in the timeshare plan. The association or other managing entity
7 must update this list no less frequently than quarterly. Neither
8 the association nor other managing entity may publish this owners'
9 list or provide a copy of it to any owner or to any third party,
10 except:

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

14 (2) as otherwise authorized or required by law.

15 (b) After the period of developer control under Section
16 221.082, the association or other managing entity must mail to
17 those persons listed on the owners' list prescribed by Subsection
18 (a) any materials provided by any owner, on the written request of
19 that owner, if the purpose of the mailing is to advance legitimate
20 association business, such as a proxy solicitation for any purpose,
21 including the recall of one or more board members elected by the
22 owners or the discharge of the managing entity. The use of any
23 proxies solicited in this manner must comply with the project
24 instrument and this chapter. A mailing requested for the purpose of
25 advancing legitimate association business must be made within
26 thirty days after receipt of a request from an owner.

27 (c) The board of the association or the managing entity is

1 responsible for determining the appropriateness of any mailing
2 requested pursuant to Subsection (b) and for establishing
3 reasonable procedures for the exercise of the rights provided in
4 this section. The association or other managing entity does not
5 have an obligation to mail items that the association or other
6 managing entity reasonably believes may be libelous or otherwise
7 actionable based on advice of legal counsel. The owner who requests
8 the mailing must reimburse the association or other managing entity
9 in advance for the actual costs in performing the mailing or a
10 proportionate share of actual costs if the mailing is included in a
11 mailing that includes other items.

12 (d) After the period of developer control under Section
13 221.082, if the requesting owner has complied with the reasonable
14 procedures established by the board or managing entity for mailing
15 requests, it is a violation of this chapter for the association or
16 other managing entity to refuse to mail any material requested by
17 the owner to be mailed, if the sole purpose of the materials is to
18 advance legitimate association business and the requesting owner
19 has either tendered to the association or managing entity payment
20 of the cost pursuant to Subsection (c) or has requested an invoice
21 for that cost and has not received an invoice within ten days after
22 delivering that request to the association or managing entity.

23 (e) Except as otherwise authorized or required by law, the
24 association or other managing entity may not furnish the name,
25 address, telephone number, or electronic mail address of any owner
26 to any other owner or authorized agent of an owner unless the owner
27 whose name, address, phone number, or electronic mail address is

1 requested first approves the disclosure in writing.

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

5 (b) Except for the amendment to Section 221.025(c) and new
6 Section 221.082, this Act also applies to timeshare plans,
7 timeshare property, and associations in this state that are
8 established at any time before the effective date of this Act,
9 unless the timeshare instrument is amended on or before September
10 1, 2013, to provide that this Act shall not apply.

11 (c) The amendment to Section 221.025(c) and new Section
12 221.082 shall not apply to timeshare plans, timeshare property, and
13 associations in this state that are established at any time before
14 the effective date of this Act, unless, as to either, the
15 association and the developer agree in writing to its application
16 and the timeshare instrument is amended to provide that it applies.
17 Otherwise, any existing developer control provisions contained in
18 the timeshare instrument shall govern, any other statutes related
19 to associations notwithstanding.

20 (d) Anything to the contrary notwithstanding:

21 (1) this chapter governs if there is a conflict
22 between this chapter and any other statute related to associations
23 subject to this chapter; and

24 (2) the provisions of the other chapters of the
25 Property Code relating to property owners' associations do not
26 apply to associations subject to this chapter.

27 SECTION 8. This Act takes effect September 1, 2013.