

By: Hinojosa

S.B. No. 1372

A BILL TO BE ENTITLED

AN ACT

relating to timeshare owners' associations.

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

SECTION 1. This Act shall be known as the Texas Timeshare Owners' Association Act.

SECTION 2. Chapter 221, Property Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS

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

Sec. 221.082. APPLICABILITY. (a) Except as provided by this section, this subchapter 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) Except as provided by Section 221.084(f), this subchapter 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, to provide that this subchapter does not apply.

Sec. 221.083. POWERS AND LIMITATIONS OF BOARD. (a) An association may be governed by a board of directors. Except as

1 provided in the project instrument, or this subchapter, the board
2 may act in all instances on behalf of the association.

3 (b) Except as expressly authorized in the project
4 instrument or otherwise permitted by the association, the board may
5 not act on behalf of the association to:

- 6 (1) amend the project instrument;
7 (2) terminate the timeshare plan;
8 (3) elect or remove board members; or
9 (4) determine the qualifications, powers, duties, or
10 terms of office of board members.

11 (c) Subject to the project instrument, the board may appoint
12 a member to fill a vacancy on the board and the member appointed
13 serves for the unexpired portion of the term of the predecessor
14 board member.

15 Sec. 221.084. PERIOD OF DEVELOPER CONTROL. (a) Except as
16 otherwise provided in this section, the project instrument may
17 provide for a period of developer control of an association during
18 which the developer, or a person designated by the developer, may
19 appoint and remove board members and officers of the association.

20 (b) Regardless of the period of developer control provided
21 in the project instrument, that period expires not later than the
22 earlier of:

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

- 27 (2) the fifth anniversary of the date the developer

1 ceased to offer timeshare interests for sale in the ordinary course
2 of business under the timeshare plan or under another timeshare
3 plan in which the timeshare interests are included, whichever date
4 is later.

5 (c) A developer may voluntarily surrender the developer's
6 right to appoint and remove board members and officers of the
7 association during the period of developer control by executing a
8 written instrument stating that the developer's rights are
9 surrendered and providing a copy of the instrument to the owners.
10 The developer may provide in the surrender instrument that, during
11 the remaining period otherwise designated for developer control,
12 specified actions of the association or board as described in the
13 project instrument are effective only on approval of the developer.
14 The surrender instrument must be recorded in the real property
15 records of the county in which the timeshare property is located.

16 (d) If the project instrument provides for a developer
17 control period of shorter duration than any period prescribed by
18 this section, the project instrument controls.

19 (e) During the period of developer control and subject to
20 the project instrument, the developer may determine all matters
21 governing the association, including the occurrence of special or
22 regular meetings of the members and the notice requirements and
23 rules for those meetings.

24 (f) This section applies to a timeshare plan created before
25 September 1, 2013, and to the project instrument governing the
26 timeshare property subject to the timeshare plan only if the
27 developer and the association agree to the application in writing

1 and the project instrument is amended to provide for that
2 application. If the conditions provided by this subsection are not
3 satisfied, a timeshare plan created before September 1, 2013, and
4 the timeshare property subject to the timeshare plan are governed
5 by any developer control provisions provided in the project
6 instrument, notwithstanding any other law.

7 Sec. 221.085. ELECTION OF INITIAL BOARD MEMBERS AND
8 OFFICERS. (a) Not later than the termination, by expiration or
9 surrender, of any period of developer control, the owners,
10 including the developer to the extent of any developer-owned
11 timeshare interests, must elect a board of at least three members.
12 The board may include one or more representatives of the developer.

13 (b) The board shall elect the officers of the association.

14 (c) The board members and officers of the association take
15 office on election.

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

24 Sec. 221.087. QUORUM. (a) Unless the project instrument
25 provides for a larger quorum requirement, the percentage of voting
26 interests constituting a quorum at a meeting of the members of an
27 association is 10 percent of the voting interests of owners who are

1 not delinquent in assessments, voting in person or by proxy.

2 (b) If a quorum is not present at any meeting of the
3 association at which board members will be elected, the meeting may
4 be adjourned and reconvened not later than the 90th day after the
5 date of adjournment for the sole purpose of electing board members.
6 Unless the project instrument provides for a larger quorum
7 requirement, the quorum for the reconvened meeting is 10 percent of
8 the voting interests of owners who are not delinquent in
9 assessments, voting in person or by proxy.

10 (c) Unless the project instrument provides otherwise, a
11 quorum of the board is considered present throughout a board
12 meeting if the members entitled to cast a majority of the votes are
13 present at the beginning of the meeting.

14 Sec. 221.088. VOTES. (a) If only one of the multiple
15 owners of a timeshare interest is present at a meeting of the
16 association, that owner may cast all votes allocated to that
17 timeshare interest. If more than one of the multiple owners are
18 present, the votes allocated to that timeshare interest may be cast
19 only in accordance with the agreement of a majority of the timeshare
20 interest held by the multiple owners unless the timeshare
21 instrument expressly provides otherwise. For purposes of this
22 subsection, there is a majority agreement if any one of the multiple
23 owners casts the votes allocated to that timeshare interest and no
24 protest is made promptly to the person presiding over the meeting by
25 any of the other owners of the timeshare interest.

26 (b) Votes allocated to a timeshare interest may be cast
27 under a proxy duly executed by an owner. A proxy must expressly

1 state the dates of execution and termination. An owner may only
2 revoke a proxy given under this section by actual notice of
3 revocation to the person presiding over a meeting of the
4 association. A proxy is revoked on presentation of a later dated
5 proxy or other written revocation executed by the same owner. A
6 proxy terminates the 25th month after the date the proxy is
7 executed, unless the proxy specifies a shorter period or states
8 that the proxy is coupled with an interest and is irrevocable.

9 (c) The project instrument for a timeshare plan may
10 authorize votes of members of an association to be cast by mail only
11 if:

12 (1) mail ballots are mailed or sent to each member in
13 the manner prescribed for a notice of a special meeting under
14 Section 221.090;

15 (2) the period for return of mail ballots is not later
16 than the 30th day after the date the ballots are mailed or sent to
17 members; and

18 (3) the required minimum number of ballots that must
19 be returned by members for the vote to be effective represents at
20 least the percentage of voting interests required for a quorum as
21 prescribed by Section 221.087(a).

22 (d) Only timeshare interests included in the timeshare plan
23 have voting rights.

24 (e) Unless the project instrument provides otherwise,
25 owners who are delinquent in assessments do not have the right to
26 cast a vote. The right to cast a vote is also subject to any
27 additional limitations provided in the project instrument.

1 Sec. 221.089. OPEN MEETINGS; EXCEPTIONS.

2 (a) Notwithstanding any provision in the project instrument to the
3 contrary and except as provided in this section, after the period of
4 developer control under Section 221.084, all meetings of the
5 association and board are open to all members of the association and
6 all members must be permitted to attend and listen to the
7 deliberations and proceedings. Meetings must be conducted as
8 provided in the project instrument. The board may adjourn a board
9 meeting and reconvene in a closed executive session to consider:

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

12 (2) pending or contemplated litigation;

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

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

23 (b) If a board meeting is closed as provided by Subsection
24 (a)(1) or (2), the board, on final resolution of any matter for
25 which the board received legal advice or that concerned pending or
26 contemplated litigation, may disclose information about that
27 matter in an open meeting, except to the extent that those matters

1 are required to remain confidential by the terms of a settlement
2 agreement or judgment.

3 Sec. 221.090. NOTICE. (a) A meeting of the members of the
4 association must be held annually after the termination of the
5 period of developer control under Section 221.084. Special
6 meetings of the members of the association may be called by the
7 president, by a majority of the board, or by owners having at least
8 25 percent of the votes allocated to timeshare interests in the
9 association or any lower percentage specified in the project
10 instrument.

11 (b) Unless the project instrument provides otherwise, the
12 association or managing entity must send notice of the meeting to
13 the mailing address of each owner on record with the association:

14 (1) not later than the 30th day or earlier than the
15 90th day before the date of an annual meeting; and

16 (2) not later than the 10th day or earlier than the
17 60th day before the date of a special meeting.

18 (c) The notice of a meeting of the owners must state the
19 date, time, and place of the meeting. The notice of a special
20 meeting of the owners must also state the purpose of the meeting. A
21 notice of a meeting may be included in a list of upcoming meetings
22 sent to owners, and the list is not required to be specific to one
23 meeting. The failure of an owner to receive actual notice of a
24 meeting of the owners does not affect the validity of any action
25 taken at that meeting.

26 (d) Unless the project instrument provides otherwise, the
27 association or managing entity must send notice of a board meeting

1 held after the date the developer control period terminates to the
2 mailing address of each owner on record with the association not
3 later than the 10th day before the date of the meeting. Notice to
4 owners of a board meeting is not required if emergency
5 circumstances require action by the board before notice can be
6 given. A notice of a board meeting must state the date, time, and
7 place of the meeting. A notice of a meeting may be included in a
8 list of upcoming meetings sent to owners, and the list is not
9 required to be specific to one meeting. The failure of an owner to
10 receive actual notice of a board meeting does not affect the
11 validity of any action taken at that meeting.

12 (e) A notice may be provided in a newsletter or a similar
13 mailing. Notice may be provided by prepaid United States mail,
14 e-mail for those owners who have provided an e-mail address, or any
15 other reasonable method selected by the board.

16 (f) Notwithstanding Subsections (a)-(d) or any other law
17 related to notice by an association, a notice to an owner may be
18 provided by conspicuous disclosure on the association's website if
19 the owner has consented to that alternative notice. Consent to that
20 alternative notice must be in writing and may be revoked by the
21 owner at any time.

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

25 Sec. 221.091. DUTIES; LIST OF OWNERS. (a) The association
26 or managing entity of the association must maintain among its
27 records a complete and current list of the names and addresses of

1 all owners of timeshare interests in the timeshare plan. The
2 association or managing entity must update this list not less than
3 quarterly.

4 (b) The association or managing entity may not publish the
5 owners list or provide a copy of the list to any owner or to any
6 third party, except:

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

9 (2) as authorized or required by law.

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

22 (d) The board or the managing entity is responsible for
23 determining the appropriateness of a mailing requested under
24 Subsection (c) and establishing reasonable procedures for
25 exercising rights under this section. The association or managing
26 entity does not have an obligation to mail an item that the board or
27 managing entity reasonably believes based on advice of legal

1 counsel may be libelous or otherwise actionable. An owner who
2 requests the mailing of materials under Subsection (c) must
3 reimburse the association or managing entity in advance for the
4 actual costs of performing the mailing or a proportionate share of
5 actual costs if the mailing is included in a mailing with other
6 items.

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

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

14 (2) the requesting owner has:

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

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

20 (f) Except as otherwise authorized or required by law, the
21 association or other managing entity may not furnish the name,
22 address, telephone number, or e-mail address of any owner to any
23 other owner or authorized agent of an owner unless the owner whose
24 name, address, phone number, or e-mail address is requested first
25 approves the disclosure in writing.

26 SECTION 3. Section 221.002, Property Code, is amended by
27 adding Subdivision (5-a) to read as follows:

1 (5-a) "Board" means the governing body of a timeshare
2 association designated in a project instrument to act on behalf of
3 the association.

4 SECTION 4. Subsection (d), Section 221.003, Property Code,
5 is amended to read as follows:

6 (d) A timeshare property subject to this chapter is not
7 subject to:

8 (1) Section 5.008 or 5.012;

9 (2) Chapter 202;

10 (3) Chapter 207; or

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

14 SECTION 5. Subsections (a) and (b), Section 221.011,
15 Property Code, are amended to read as follows:

16 (a) The developer of a timeshare plan any part of which is
17 located in this state must record the timeshare instrument in this
18 state. When a person expressly declares an intent to subject the
19 property to a timeshare plan through the recordation of a timeshare
20 instrument that sets forth the information provided in Subsection
21 ~~[Subsections]~~ (b) ~~[and (c)]~~, that property shall be established
22 thenceforth as a timeshare plan.

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

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

1 (2) a description of each existing or proposed
2 accommodation, including the location and square footage of each
3 unit and an interior floor plan of each existing or proposed
4 building;

5 (3) a description of any amenities furnished or to be
6 furnished to the purchaser;

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

9 (5) if applicable, a statement that the timeshare
10 property is part of a multisite timeshare plan; ~~and~~

11 (6) any additional provisions that are consistent with
12 this section; and

13 (7) unless the project instrument provides otherwise,
14 provisions required by Subchapter I.

15 SECTION 6. Section 221.025, Property Code, is amended by
16 amending Subsection (c) and adding Subsection (c-1) to read as
17 follows:

18 (c) A timeshare plan subject to Chapter 82 that complies
19 with this chapter is exempt from the requirements of:

20 (1) Section 82.0675 relating to club membership; and

21 (2) Sections 82.103(c)-(e) relating to declarant
22 control.

23 (c-1) The exemption provided by Subsection (c)(2) applies
24 to a timeshare plan created before September 1, 2013, and to the
25 project instrument governing the timeshare property subject to the
26 timeshare plan only if the developer and the association agree to
27 the application of the exemption in writing and the project

1 instrument is amended to provide for the application of the
2 exemption. If the conditions provided by this subsection are not
3 satisfied, a timeshare plan created before September 1, 2013, and
4 the timeshare property subject to the timeshare plan are governed
5 by any developer control provisions provided in the project
6 instrument, notwithstanding any other law.

7 SECTION 7. Subsection (a), Section 221.071, Property Code,
8 is amended to read as follows:

9 (a) A developer or other person commits a false, misleading,
10 or deceptive act or practice within the meaning of Subchapter E,
11 Chapter 17 [~~Subsections (a) and (b) of Section 17.46 of the Texas~~
12 ~~Deceptive Trade Practices-Consumer Protection Act (Article 17.46~~
13 ~~et seq.~~], Business & Commerce Code[+], by engaging in any of the
14 following acts:

15 (1) failing to disclose information concerning a
16 timeshare interest required by Subchapter D;

17 (2) making false or misleading statements of fact
18 concerning the characteristics of accommodations or amenities
19 available to a consumer;

20 (3) predicting specific or immediate increases in the
21 value of a timeshare interest without a reasonable basis for such
22 predictions;

23 (4) making false or misleading statements of fact
24 concerning the duration that accommodations or amenities will be
25 available to a consumer;

26 (5) making false or misleading statements of fact
27 concerning the conditions under which a purchaser of a timeshare

1 interest may exchange the right to occupy a unit for the right to
2 occupy a unit in the same or another timeshare property;

3 (6) representing that a prize, gift, or other benefit
4 will be awarded in connection with a promotion with the intent not
5 to award that prize, gift, or benefit in the manner represented;

6 (7) failing to provide a copy of the purchase contract
7 to the purchaser at the time the contract is signed by the
8 purchaser;

9 (8) failing to provide the annual statement as
10 required by Section 221.074(a); or

11 (9) exceeding a one-to-one purchaser-to-accommodation
12 ratio for a timeshare plan during a consecutive 12-month period, as
13 determined under Subsection (c).

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