

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. APPLICABILITY. (a) Except as provided by this section, this subchapter applies to a timeshare plan, the project instrument governing the timeshare property subject to the timeshare plan, and the association related to the timeshare plan, regardless of the date on which the timeshare plan was created.

(b) Except as provided by Section 221.083(f), this subchapter applies to a timeshare plan, the project instrument governing the timeshare property subject to the timeshare plan, and the association related 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. 221.082. POWERS AND LIMITATIONS OF BOARD. (a) An association may be governed by a board of directors. Except as provided in the project instrument, or this chapter, the board may act in all instances on behalf of the association.

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

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

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

13 Sec. 221.083. PERIOD OF DEVELOPER CONTROL. (a) Except as
14 otherwise provided in this section, the project instrument may
15 provide for a period of developer control of an association during
16 which the developer, or a person designated by the developer, may
17 appoint and remove board members and officers of the association.

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

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

25 (2) the fifth anniversary of the date the developer
26 ceased to offer timeshare interests for sale in the ordinary course
27 of business under the timeshare plan or under another timeshare

1 plan in which the timeshare interests are included, whichever date
2 is later.

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

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

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

22 (f) This section applies to a timeshare plan created before
23 September 1, 2013, and to the project instrument governing the
24 timeshare property subject to the timeshare plan only if the
25 developer and the association agree to the application in writing
26 and the project instrument is amended to provide for that
27 application. If the conditions provided by this subsection are not

1 satisfied, a timeshare plan created before September 1, 2013, and
2 the timeshare property subject to the timeshare plan are governed
3 by any developer control provisions provided in the project
4 instrument, notwithstanding any other law.

5 Sec. 221.084. ELECTION OF INITIAL BOARD MEMBERS AND
6 OFFICERS. (a) Not later than the termination, by expiration or
7 surrender, of any period of developer control, the owners,
8 including the developer to the extent of any developer-owned
9 timeshare interests, must elect a board of at least three members.
10 The board may include one or more representatives of the developer.

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

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

14 Sec. 221.085. REMOVAL OF BOARD MEMBERS. Notwithstanding
15 any provision of a project instrument to the contrary, the owners,
16 by a vote of at least two-thirds of the voting rights of persons
17 entitled to vote and voting in person or by proxy at any meeting of
18 the owners, may remove a member of the board, with or without cause,
19 other than a member appointed by the developer during the period of
20 developer control under Section 221.083, provided that the
21 developer remains in control of the association.

22 Sec. 221.086. QUORUM. (a) Unless the project instrument
23 provides for a larger quorum requirement, the percentage of voting
24 interests constituting a quorum at a meeting of the members of an
25 association is 10 percent of the voting interests of owners who are
26 not delinquent in assessments, voting in person or by proxy.

27 (b) If a quorum is not present at any meeting of the

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

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

12 Sec. 221.087. VOTES. (a) If only one of the multiple
13 owners of a timeshare interest is present at a meeting of the
14 association, that owner may cast all votes allocated to that
15 timeshare interest. If more than one of the multiple owners are
16 present, the votes allocated to that timeshare interest may be cast
17 only in accordance with the agreement of a majority of the timeshare
18 interest held by the multiple owners unless the timeshare
19 instrument expressly provides otherwise. For purposes of this
20 subsection, there is a majority agreement if any one of the multiple
21 owners casts the votes allocated to that timeshare interest and no
22 protest is made promptly to the person presiding over the meeting by
23 any of the other owners of the timeshare interest.

24 (b) Votes allocated to a timeshare interest may be cast
25 under a proxy duly executed by an owner. A proxy must expressly
26 state the dates of execution and termination. An owner may only
27 revoke a proxy given under this section by actual notice of

1 revocation to the person presiding over a meeting of the
2 association. A proxy is revoked on presentation of a later dated
3 proxy or other written revocation executed by the same owner. A
4 proxy terminates the 25th month after the date the proxy is
5 executed, unless the proxy specifies a shorter period or states
6 that the proxy is coupled with an interest and is irrevocable.

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

10 (1) mail ballots are mailed or sent to each member in
11 the manner prescribed for a notice of a special meeting under
12 Section 221.089;

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

16 (3) the required minimum number of ballots that must
17 be returned by members for the vote to be effective represents at
18 least the percentage of voting interests required for a quorum as
19 prescribed by Section 221.086(a).

20 (d) Only timeshare interests included in the timeshare plan
21 have voting rights.

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

26 Sec. 221.088. OPEN MEETINGS; EXCEPTIONS.

27 (a) Notwithstanding any provision in the project instrument to the

1 contrary and except as provided in this section, after the period of
2 developer control under Section 221.083, all meetings of the
3 association and board are open to all members of the association and
4 all members must be permitted to attend and listen to the
5 deliberations and proceedings. Meetings must be conducted as
6 provided in the project instrument. The board may adjourn a board
7 meeting and reconvene in a closed executive session to consider:

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

10 (2) pending or contemplated litigation;

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

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

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

1 Sec. 221.089. NOTICE. (a) A meeting of the members of the
2 association must be held annually after the termination of the
3 period of developer control under Section 221.083. Special
4 meetings of the members of the association may be called by the
5 president, by a majority of the board, or by owners having at least
6 25 percent of the votes allocated to timeshare interests in the
7 association or any lower percentage specified in the project
8 instrument.

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

12 (1) not later than the 30th day or earlier than the
13 90th day before the date of an annual meeting; and

14 (2) not later than the 10th day or earlier than the
15 60th day before the date of a special meeting.

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

24 (d) Unless the project instrument provides otherwise, the
25 association or managing entity must send notice of a board meeting
26 held after the date the developer control period terminates to the
27 mailing address of each owner on record with the association not

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

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

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

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

23 Sec. 221.090. DUTIES; LIST OF OWNERS. (a) The association
24 or managing entity of the association must maintain among its
25 records a complete and current list of the names and addresses of
26 all owners of timeshare interests in the timeshare plan. The
27 association or managing entity must update this list not less than

1 quarterly.

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

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

7 (2) as authorized or required by law.

8 (c) On the termination of the period of developer control
9 under Section 221.083 and on the written request of an owner, the
10 association or managing entity shall send by first class mail to
11 owners on the list described by Subsection (a) any materials
12 provided by any owner if the purpose of the mailing is for
13 legitimate association business, including a proxy solicitation
14 for the recall of a board member elected by the owners or the
15 discharge of the managing entity. The use of the solicited proxies
16 must comply with the project instrument and this chapter.
17 Materials required to be provided under this subsection must be
18 mailed not later than the 30th day after the date the request is
19 received from an owner.

20 (d) The board or the managing entity is responsible for
21 determining the appropriateness of a mailing requested under
22 Subsection (c) and establishing reasonable procedures for
23 exercising rights under this section. The association or managing
24 entity does not have an obligation to mail an item that the board or
25 managing entity reasonably believes based on advice of legal
26 counsel may be libelous or otherwise actionable. An owner who
27 requests the mailing of materials under Subsection (c) must

1 reimburse the association or managing entity in advance for the
2 actual costs of performing the mailing or a proportionate share of
3 actual costs if the mailing is included in a mailing with other
4 items.

5 (e) After the termination of the period of developer control
6 under Section 221.083, it is a violation of this subchapter to
7 refuse to mail material provided by a requesting owner who has
8 complied with the reasonable procedures established by the board or
9 managing entity, if:

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

12 (2) the requesting owner has:

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

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

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

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

26 (5-a) "Board" means the governing body of a timeshare
27 association designated in a project instrument to act on behalf of

1 the association.

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

4 (d) A timeshare property subject to this chapter is not
5 subject to:

6 (1) Section 5.008 or 5.012;

7 (2) Chapter 202;

8 (3) Chapter 207; or

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

12 SECTION 5. Subchapter A, Chapter 221, Property Code, is
13 amended by adding Section 221.004 to read as follows:

14 Sec. 221.004. CONFLICTS OF LAW. (a) The provisions of
15 this chapter prevail over a conflicting or inconsistent provision
16 of law applicable to timeshare owners' associations.

17 (b) Provisions of this code relating to property owners'
18 associations do not apply to an association subject to this
19 chapter.

20 SECTION 6. Subsections (a) and (b), Section 221.011,
21 Property Code, are amended to read as follows:

22 (a) The developer of a timeshare plan any part of which is
23 located in this state must record the timeshare instrument in this
24 state. When a person expressly declares an intent to subject the
25 property to a timeshare plan through the recordation of a timeshare
26 instrument that sets forth the information provided in Subsection
27 [Subsections] (b) [~~and (c)~~], that property shall be established

1 thenceforth as a timeshare plan.

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

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

7 (2) a description of each existing or proposed
8 accommodation, including the location and square footage of each
9 unit and an interior floor plan of each existing or proposed
10 building;

11 (3) a description of any amenities furnished or to be
12 furnished to the purchaser;

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

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

17 (6) any additional provisions that are consistent with
18 this section; and

19 (7) the provisions required by Subchapter I to be
20 included in a project instrument unless the provisions are included
21 in one or more other project instruments.

22 SECTION 7. Section 221.025, Property Code, is amended by
23 amending Subsection (c) and adding Subsection (c-1) to read as
24 follows:

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

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

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

3 (c-1) The exemption provided by Subsection (c)(2) applies
4 to a timeshare plan created before September 1, 2013, and to the
5 project instrument governing the timeshare property subject to the
6 timeshare plan only if the developer and the association agree to
7 the application of the exemption in writing and the project
8 instrument is amended to provide for the application of the
9 exemption. If the conditions provided by this subsection are not
10 satisfied, a timeshare plan created before September 1, 2013, and
11 the timeshare property subject to the timeshare plan are governed
12 by any developer control provisions provided in the project
13 instrument, notwithstanding any other law.

14 SECTION 8. Section 221.071, Property Code, is amended by
15 adding Subsection (e) to read as follows:

16 (e) A person, other than an owner of a timeshare interest
17 who purchased the interest from a developer for the person's own
18 personal use and occupancy, commits a false, misleading, or
19 deceptive act or practice within the meaning of Sections 17.46(a)
20 and (b), Business & Commerce Code, and an unconscionable action or
21 course of action as defined by Section 17.45, Business & Commerce
22 Code, by knowingly participating, for consideration or with the
23 expectation of consideration, in any plan or scheme a purpose of
24 which is to transfer a timeshare interest to a transferee who does
25 not have the ability, means, or intent to pay all assessments and
26 taxes for the timeshare interest. An association or other managing
27 entity does not commit an act or action as described by this

1 subsection by performing administrative acts and collecting fees or
2 expenses as customary or required by law or under the project
3 instruments in connection with a transfer by an owner of a timeshare
4 interest in the timeshare property.

5 SECTION 9. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1372 passed the Senate on April 18, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 20, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1372 passed the House, with amendments, on May 16, 2013, by the following vote: Yeas 142, Nays 2, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor