

1-1 By: Hinojosa S.B. No. 1372  
 1-2 (In the Senate - Filed March 7, 2013; March 18, 2013, read  
 1-3 first time and referred to Committee on Business and Commerce;  
 1-4 April 4, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 4, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1372 By: Lucio

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to timeshare owners' associations.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. This Act shall be known as the Texas Timeshare  
 1-24 Owners' Association Act.  
 1-25 SECTION 2. Chapter 221, Property Code, is amended by adding  
 1-26 Subchapter I to read as follows:  
 1-27 SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS  
 1-28 Sec. 221.081. CONFLICTS OF LAW. The provisions of this  
 1-29 subchapter prevail over a conflicting or inconsistent provision of  
 1-30 law applicable to timeshare owners' associations.  
 1-31 Sec. 221.082. APPLICABILITY. (a) Except as provided by  
 1-32 this section, this subchapter applies to a timeshare plan and to the  
 1-33 project instrument governing the timeshare property subject to the  
 1-34 timeshare plan regardless of the date on which the timeshare plan  
 1-35 was created.  
 1-36 (b) Except as provided by Section 221.084(f), this  
 1-37 subchapter applies to a timeshare plan and to the project  
 1-38 instrument governing the timeshare property subject to the  
 1-39 timeshare plan created before September 1, 2013, unless the project  
 1-40 instrument is amended before September 1, 2013, to provide that  
 1-41 this subchapter does not apply.  
 1-42 Sec. 221.083. POWERS AND LIMITATIONS OF BOARD. (a) An  
 1-43 association may be governed by a board of directors. Except as  
 1-44 provided in the project instrument, or this subchapter, the board  
 1-45 may act in all instances on behalf of the association.  
 1-46 (b) Except as expressly authorized in the project  
 1-47 instrument or otherwise permitted by the association, the board may  
 1-48 not act on behalf of the association to:  
 1-49 (1) amend the project instrument;  
 1-50 (2) terminate the timeshare plan;  
 1-51 (3) elect or remove board members; or  
 1-52 (4) determine the qualifications, powers, duties, or  
 1-53 terms of office of board members.  
 1-54 (c) Subject to the project instrument, the board may appoint  
 1-55 a member to fill a vacancy on the board and the member appointed  
 1-56 serves for the unexpired portion of the term of the predecessor  
 1-57 board member.  
 1-58 Sec. 221.084. PERIOD OF DEVELOPER CONTROL. (a) Except as  
 1-59 otherwise provided in this section, the project instrument may  
 1-60 provide for a period of developer control of an association during

2-1 which the developer, or a person designated by the developer, may  
2-2 appoint and remove board members and officers of the association.

2-3 (b) Regardless of the period of developer control provided  
2-4 in the project instrument, that period expires not later than the  
2-5 earlier of:

2-6 (1) the 120th day after the date that at least 95  
2-7 percent of the timeshare interests that were created by the  
2-8 timeshare instrument are conveyed to owners other than the  
2-9 developer; or

2-10 (2) the fifth anniversary of the date the developer  
2-11 ceased to offer timeshare interests for sale in the ordinary course  
2-12 of business under the timeshare plan or under another timeshare  
2-13 plan in which the timeshare interests are included, whichever date  
2-14 is later.

2-15 (c) A developer may voluntarily surrender the developer's  
2-16 right to appoint and remove board members and officers of the  
2-17 association during the period of developer control by executing a  
2-18 written instrument stating that the developer's rights are  
2-19 surrendered and providing a copy of the instrument to the owners.  
2-20 The developer may provide in the surrender instrument that, during  
2-21 the remaining period otherwise designated for developer control,  
2-22 specified actions of the association or board as described in the  
2-23 project instrument are effective only on approval of the developer.  
2-24 The surrender instrument must be recorded in the real property  
2-25 records of the county in which the timeshare property is located.

2-26 (d) If the project instrument provides for a developer  
2-27 control period of shorter duration than any period prescribed by  
2-28 this section, the project instrument controls.

2-29 (e) During the period of developer control and subject to  
2-30 the project instrument, the developer may determine all matters  
2-31 governing the association, including the occurrence of special or  
2-32 regular meetings of the members and the notice requirements and  
2-33 rules for those meetings.

2-34 (f) This section applies to a timeshare plan created before  
2-35 September 1, 2013, and to the project instrument governing the  
2-36 timeshare property subject to the timeshare plan only if the  
2-37 developer and the association agree to the application in writing  
2-38 and the project instrument is amended to provide for that  
2-39 application. If the conditions provided by this subsection are not  
2-40 satisfied, a timeshare plan created before September 1, 2013, and  
2-41 the timeshare property subject to the timeshare plan are governed  
2-42 by any developer control provisions provided in the project  
2-43 instrument, notwithstanding any other law.

2-44 Sec. 221.085. ELECTION OF INITIAL BOARD MEMBERS AND  
2-45 OFFICERS. (a) Not later than the termination, by expiration or  
2-46 surrender, of any period of developer control, the owners,  
2-47 including the developer to the extent of any developer-owned  
2-48 timeshare interests, must elect a board of at least three members.  
2-49 The board may include one or more representatives of the developer.

2-50 (b) The board shall elect the officers of the association.

2-51 (c) The board members and officers of the association take  
2-52 office on election.

2-53 Sec. 221.086. REMOVAL OF BOARD MEMBERS. Notwithstanding  
2-54 any provision of a project instrument to the contrary, the owners,  
2-55 by a vote of at least two-thirds of the voting rights of persons  
2-56 entitled to vote and voting in person or by proxy at any meeting of  
2-57 the owners, may remove a member of the board, with or without cause,  
2-58 other than a member appointed by the developer during the period of  
2-59 developer control under Section 221.084, provided that the  
2-60 developer remains in control of the association.

2-61 Sec. 221.087. QUORUM. (a) Unless the project instrument  
2-62 provides for a larger quorum requirement, the percentage of voting  
2-63 interests constituting a quorum at a meeting of the members of an  
2-64 association is 10 percent of the voting interests of owners who are  
2-65 not delinquent in assessments, voting in person or by proxy.

2-66 (b) If a quorum is not present at any meeting of the  
2-67 association at which board members will be elected, the meeting may  
2-68 be adjourned and reconvened not later than the 90th day after the  
2-69 date of adjournment for the sole purpose of electing board members.

3-1 Unless the project instrument provides for a larger quorum  
 3-2 requirement, the quorum for the reconvened meeting is 10 percent of  
 3-3 the voting interests of owners who are not delinquent in  
 3-4 assessments, voting in person or by proxy.

3-5 (c) Unless the project instrument provides otherwise, a  
 3-6 quorum of the board is considered present throughout a board  
 3-7 meeting if the members entitled to cast a majority of the votes are  
 3-8 present at the beginning of the meeting.

3-9 Sec. 221.088. VOTES. (a) If only one of the multiple  
 3-10 owners of a timeshare interest is present at a meeting of the  
 3-11 association, that owner may cast all votes allocated to that  
 3-12 timeshare interest. If more than one of the multiple owners are  
 3-13 present, the votes allocated to that timeshare interest may be cast  
 3-14 only in accordance with the agreement of a majority of the timeshare  
 3-15 interest held by the multiple owners unless the timeshare  
 3-16 instrument expressly provides otherwise. For purposes of this  
 3-17 subsection, there is a majority agreement if any one of the multiple  
 3-18 owners casts the votes allocated to that timeshare interest and no  
 3-19 protest is made promptly to the person presiding over the meeting by  
 3-20 any of the other owners of the timeshare interest.

3-21 (b) Votes allocated to a timeshare interest may be cast  
 3-22 under a proxy duly executed by an owner. A proxy must expressly  
 3-23 state the dates of execution and termination. An owner may only  
 3-24 revoke a proxy given under this section by actual notice of  
 3-25 revocation to the person presiding over a meeting of the  
 3-26 association. A proxy is revoked on presentation of a later dated  
 3-27 proxy or other written revocation executed by the same owner. A  
 3-28 proxy terminates the 25th month after the date the proxy is  
 3-29 executed, unless the proxy specifies a shorter period or states  
 3-30 that the proxy is coupled with an interest and is irrevocable.

3-31 (c) The project instrument for a timeshare plan may  
 3-32 authorize votes of members of an association to be cast by mail only  
 3-33 if:

3-34 (1) mail ballots are mailed or sent to each member in  
 3-35 the manner prescribed for a notice of a special meeting under  
 3-36 Section 221.090;

3-37 (2) the period for return of mail ballots is not later  
 3-38 than the 30th day after the date the ballots are mailed or sent to  
 3-39 members; and

3-40 (3) the required minimum number of ballots that must  
 3-41 be returned by members for the vote to be effective represents at  
 3-42 least the percentage of voting interests required for a quorum as  
 3-43 prescribed by Section 221.087(a).

3-44 (d) Only timeshare interests included in the timeshare plan  
 3-45 have voting rights.

3-46 (e) Unless the project instrument provides otherwise,  
 3-47 owners who are delinquent in assessments do not have the right to  
 3-48 cast a vote. The right to cast a vote is also subject to any  
 3-49 additional limitations provided in the project instrument.

3-50 Sec. 221.089. OPEN MEETINGS; EXCEPTIONS.

3-51 (a) Notwithstanding any provision in the project instrument to the  
 3-52 contrary and except as provided in this section, after the period of  
 3-53 developer control under Section 221.084, all meetings of the  
 3-54 association and board are open to all members of the association and  
 3-55 all members must be permitted to attend and listen to the  
 3-56 deliberations and proceedings. Meetings must be conducted as  
 3-57 provided in the project instrument. The board may adjourn a board  
 3-58 meeting and reconvene in a closed executive session to consider:

3-59 (1) legal advice from an attorney for the board or the  
 3-60 association;

3-61 (2) pending or contemplated litigation;

3-62 (3) financial information about an individual member  
 3-63 of the association, an individual employee of the association, an  
 3-64 individual employee of the managing entity, or an individual  
 3-65 employee of a contractor for the association or managing entity; or

3-66 (4) matters relating to the job performance of,  
 3-67 compensation of, health records of, or specific complaints against  
 3-68 an individual employee of the association, an individual employee  
 3-69 of the managing entity, or an individual employee of a contractor of

4-1 the association or managing entity who works under the direction of  
4-2 the association or the managing entity.

4-3 (b) If a board meeting is closed as provided by Subsection  
4-4 (a)(1) or (2), the board, on final resolution of any matter for  
4-5 which the board received legal advice or that concerned pending or  
4-6 contemplated litigation, may disclose information about that  
4-7 matter in an open meeting, except to the extent that those matters  
4-8 are required to remain confidential by the terms of a settlement  
4-9 agreement or judgment.

4-10 Sec. 221.090. NOTICE. (a) A meeting of the members of the  
4-11 association must be held annually after the termination of the  
4-12 period of developer control under Section 221.084. Special  
4-13 meetings of the members of the association may be called by the  
4-14 president, by a majority of the board, or by owners having at least  
4-15 25 percent of the votes allocated to timeshare interests in the  
4-16 association or any lower percentage specified in the project  
4-17 instrument.

4-18 (b) Unless the project instrument provides otherwise, the  
4-19 association or managing entity must send notice of the meeting to  
4-20 the mailing address of each owner on record with the association:

4-21 (1) not later than the 30th day or earlier than the  
4-22 90th day before the date of an annual meeting; and

4-23 (2) not later than the 10th day or earlier than the  
4-24 60th day before the date of a special meeting.

4-25 (c) The notice of a meeting of the owners must state the  
4-26 date, time, and place of the meeting. The notice of a special  
4-27 meeting of the owners must also state the purpose of the meeting. A  
4-28 notice of a meeting may be included in a list of upcoming meetings  
4-29 sent to owners, and the list is not required to be specific to one  
4-30 meeting. The failure of an owner to receive actual notice of a  
4-31 meeting of the owners does not affect the validity of any action  
4-32 taken at that meeting.

4-33 (d) Unless the project instrument provides otherwise, the  
4-34 association or managing entity must send notice of a board meeting  
4-35 held after the date the developer control period terminates to the  
4-36 mailing address of each owner on record with the association not  
4-37 later than the 10th day before the date of the meeting. Notice to  
4-38 owners of a board meeting is not required if emergency  
4-39 circumstances require action by the board before notice can be  
4-40 given. A notice of a board meeting must state the date, time, and  
4-41 place of the meeting. A notice of a meeting may be included in a  
4-42 list of upcoming meetings sent to owners, and the list is not  
4-43 required to be specific to one meeting. The failure of an owner to  
4-44 receive actual notice of a board meeting does not affect the  
4-45 validity of any action taken at that meeting.

4-46 (e) A notice may be provided in a newsletter or a similar  
4-47 mailing. Notice may be provided by prepaid United States mail,  
4-48 e-mail for those owners who have provided an e-mail address, or any  
4-49 other reasonable method selected by the board.

4-50 (f) Notwithstanding Subsections (a)-(d) or any other law  
4-51 related to notice by an association, a notice to an owner may be  
4-52 provided by conspicuous disclosure on the association's website if  
4-53 the owner has consented to that alternative notice. Consent to that  
4-54 alternative notice must be in writing and may be revoked by the  
4-55 owner at any time.

4-56 (g) An affidavit of notice by an officer of the association  
4-57 or the managing entity is prima facie evidence that notice was  
4-58 provided under this section.

4-59 Sec. 221.091. DUTIES; LIST OF OWNERS. (a) The association  
4-60 or managing entity of the association must maintain among its  
4-61 records a complete and current list of the names and addresses of  
4-62 all owners of timeshare interests in the timeshare plan. The  
4-63 association or managing entity must update this list not less than  
4-64 quarterly.

4-65 (b) The association or managing entity may not publish the  
4-66 owners list or provide a copy of the list to any owner or to any  
4-67 third party, except:

4-68 (1) as reasonably required to conduct legitimate  
4-69 association business; or

5-1 (2) as authorized or required by law.

5-2 (c) On the termination of the period of developer control  
 5-3 under Section 221.084 and on the written request of an owner, the  
 5-4 association or managing entity shall send by first class mail to  
 5-5 owners on the list described by Subsection (a) any materials  
 5-6 provided by any owner if the purpose of the mailing is for  
 5-7 legitimate association business, including a proxy solicitation  
 5-8 for the recall of a board member elected by the owners, the  
 5-9 discharge of the managing entity, or any other purpose. The use of  
 5-10 the solicited proxies must comply with the project instrument and  
 5-11 this subchapter. Materials required to be provided under this  
 5-12 subsection must be mailed not later than the 30th day after the date  
 5-13 the request is received from an owner.

5-14 (d) The board or the managing entity is responsible for  
 5-15 determining the appropriateness of a mailing requested under  
 5-16 Subsection (c) and establishing reasonable procedures for  
 5-17 exercising rights under this section. The association or managing  
 5-18 entity does not have an obligation to mail an item that the board or  
 5-19 managing entity reasonably believes based on advice of legal  
 5-20 counsel may be libelous or otherwise actionable. An owner who  
 5-21 requests the mailing of materials under Subsection (c) must  
 5-22 reimburse the association or managing entity in advance for the  
 5-23 actual costs of performing the mailing or a proportionate share of  
 5-24 actual costs if the mailing is included in a mailing with other  
 5-25 items.

5-26 (e) After the termination of the period of developer control  
 5-27 under Section 221.084, it is a violation of this subchapter to  
 5-28 refuse to mail material provided by a requesting owner who has  
 5-29 complied with the reasonable procedures established by the board or  
 5-30 managing entity, if:

5-31 (1) the sole purpose of the materials is to advance  
 5-32 legitimate association business; and

5-33 (2) the requesting owner has:

5-34 (A) tendered to the association or managing  
 5-35 entity payment of the cost under Subsection (d); or

5-36 (B) requested an invoice for that cost and has  
 5-37 not received the invoice before the 10th day after the date the  
 5-38 request was delivered to the association or managing entity.

5-39 (f) Except as otherwise authorized or required by law, the  
 5-40 association or other managing entity may not furnish the name,  
 5-41 address, telephone number, or e-mail address of any owner to any  
 5-42 other owner or authorized agent of an owner unless the owner whose  
 5-43 name, address, phone number, or e-mail address is requested first  
 5-44 approves the disclosure in writing.

5-45 SECTION 3. Section 221.002, Property Code, is amended by  
 5-46 adding Subdivision (5-a) to read as follows:

5-47 (5-a) "Board" means the governing body of a timeshare  
 5-48 association designated in a project instrument to act on behalf of  
 5-49 the association.

5-50 SECTION 4. Subsection (d), Section 221.003, Property Code,  
 5-51 is amended to read as follows:

5-52 (d) A timeshare property subject to this chapter is not  
 5-53 subject to:

5-54 (1) Section 5.008 or 5.012;

5-55 (2) Chapter 202;

5-56 (3) Chapter 207; or

5-57 (4) Chapter 209, unless an individual timeshare owner  
 5-58 continuously occupies a single timeshare property as the owner's  
 5-59 primary residence 12 months of the year.

5-60 SECTION 5. Subsections (a) and (b), Section 221.011,  
 5-61 Property Code, are amended to read as follows:

5-62 (a) The developer of a timeshare plan any part of which is  
 5-63 located in this state must record the timeshare instrument in this  
 5-64 state. When a person expressly declares an intent to subject the  
 5-65 property to a timeshare plan through the recordation of a timeshare  
 5-66 instrument that sets forth the information provided in Subsection  
 5-67 [Subsections] (b) [and (c)], that property shall be established  
 5-68 thenceforth as a timeshare plan.

5-69 (b) The declaration made in a timeshare instrument recorded

6-1 under this section must include:

6-2 (1) a legal description of the timeshare property,  
6-3 including a ground plan indicating the location of each existing or  
6-4 proposed building included in the timeshare plan;

6-5 (2) a description of each existing or proposed  
6-6 accommodation, including the location and square footage of each  
6-7 unit and an interior floor plan of each existing or proposed  
6-8 building;

6-9 (3) a description of any amenities furnished or to be  
6-10 furnished to the purchaser;

6-11 (4) a statement of the fractional or percentage part  
6-12 that each timeshare interest bears to the entire timeshare plan;

6-13 (5) if applicable, a statement that the timeshare  
6-14 property is part of a multisite timeshare plan; ~~and~~

6-15 (6) any additional provisions that are consistent with  
6-16 this section; and

6-17 (7) unless the project instrument provides otherwise,  
6-18 provisions required by Subchapter I.

6-19 SECTION 6. Section 221.025, Property Code, is amended by  
6-20 amending Subsection (c) and adding Subsection (c-1) to read as  
6-21 follows:

6-22 (c) A timeshare plan subject to Chapter 82 that complies  
6-23 with this chapter is exempt from the requirements of:

6-24 (1) Section 82.0675 relating to club membership; and

6-25 (2) Sections 82.103(c)-(e) relating to declarant  
6-26 control.

6-27 (c-1) The exemption provided by Subsection (c)(2) applies  
6-28 to a timeshare plan created before September 1, 2013, and to the  
6-29 project instrument governing the timeshare property subject to the  
6-30 timeshare plan only if the developer and the association agree to  
6-31 the application of the exemption in writing and the project  
6-32 instrument is amended to provide for the application of the  
6-33 exemption. If the conditions provided by this subsection are not  
6-34 satisfied, a timeshare plan created before September 1, 2013, and  
6-35 the timeshare property subject to the timeshare plan are governed  
6-36 by any developer control provisions provided in the project  
6-37 instrument, notwithstanding any other law.

6-38 SECTION 7. Subsection (a), Section 221.071, Property Code,  
6-39 is amended to read as follows:

6-40 (a) A developer or other person commits a false, misleading,  
6-41 or deceptive act or practice within the meaning of Subchapter E,  
6-42 Chapter 17 [Subsections (a) and (b) of Section 17.46 of the Texas  
6-43 Deceptive Trade Practices-Consumer Protection Act (Article 17.46  
6-44 et seq.], Business & Commerce Code[+], by engaging in any of the  
6-45 following acts:

6-46 (1) failing to disclose information concerning a  
6-47 timeshare interest required by Subchapter D;

6-48 (2) making false or misleading statements of fact  
6-49 concerning the characteristics of accommodations or amenities  
6-50 available to a consumer;

6-51 (3) predicting specific or immediate increases in the  
6-52 value of a timeshare interest without a reasonable basis for such  
6-53 predictions;

6-54 (4) making false or misleading statements of fact  
6-55 concerning the duration that accommodations or amenities will be  
6-56 available to a consumer;

6-57 (5) making false or misleading statements of fact  
6-58 concerning the conditions under which a purchaser of a timeshare  
6-59 interest may exchange the right to occupy a unit for the right to  
6-60 occupy a unit in the same or another timeshare property;

6-61 (6) representing that a prize, gift, or other benefit  
6-62 will be awarded in connection with a promotion with the intent not  
6-63 to award that prize, gift, or benefit in the manner represented;

6-64 (7) failing to provide a copy of the purchase contract  
6-65 to the purchaser at the time the contract is signed by the  
6-66 purchaser;

6-67 (8) failing to provide the annual statement as  
6-68 required by Section 221.074(a); or

6-69 (9) exceeding a one-to-one purchaser-to-accommodation

7-1 ratio for a timeshare plan during a consecutive 12-month period, as  
7-2 determined under Subsection (c).

7-3 SECTION 8. This Act takes effect September 1, 2013.

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