

BILL ANALYSIS

C.S.H.B. 1588
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that timeshare property owners are selling timeshare interests to several individuals with overlapping interest periods. C.S.H.B. 1588 seeks to provide an administrative remedy to resolve clouded title in timeshare interests and allow individuals to fully enjoy the property interest they purchase.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1588 amends the Property Code to authorize the owner of an applicable condominium unit, if a deed or other instrument has been recorded in the real property records asserting or purporting to convey a timeshare interest in the condominium unit, to bring an action in a district court in the county in which the condominium unit is located seeking a determination that the timeshare interest is invalid or void. The bill's provisions apply only to a condominium unit that is located on a barrier island that borders the Gulf of Mexico, is subject to a declaration creating a condominium regime to which the Condominium Act applies and a timeshare plan applicable to all or part of the condominium property, and that is located in a development in which the timeshare association has not paid any fees, dues, assessments, or other charges due to the condominium council of owners for a period of at least three years immediately preceding the filing of an action under the bill's provisions.

C.S.H.B. 1588 authorizes citation in the action to be served by publication in a newspaper in the county in which the condominium unit is located if the whereabouts or identity of the person asserting the timeshare interest or to whom the timeshare interest is purported to have been conveyed is unknown to the person bringing the action and prescribes the required contents of the published citation. The bill establishes that service by publication in the action is governed by the Texas Rules of Civil Procedure except to the extent of any conflict with these bill provisions.

C.S.H.B. 1588 makes a timeshare interest in a condominium unit void if the person bringing an action establishes that the following circumstances exist:

- the person bringing the action holds record title to the condominium unit;
- on the date the instrument asserting the timeshare interest or purporting to convey the

timeshare interest was filed for recording, the person bringing the action held record title to the condominium unit or record title to the condominium unit was held by a person other than the declarant who precedes the person bringing the action in the chain of title to the unit;

- the timeshare interest was not conveyed by the person bringing the action or any other person who follows the declarant in the chain of title to the unit;
- the person asserting the timeshare interest or to whom the timeshare interest is purported to have been conveyed has not paid any required assessments in connection with the timeshare interest for a period of at least three years immediately preceding the filing of the action; and
- at no time on or after the date the instrument was filed for recording has a person made an attempt to exercise the right to occupy the unit under the timeshare interest.

The bill establishes that the voiding of a timeshare interest under those circumstances does not preclude a determination that a timeshare interest is invalid or void under any other law.

C.S.H.B. 1588 authorizes the court in an action under the bill's provisions to enter a default judgment declaring that a timeshare interest is invalid or void if the person asserting the timeshare interest or to whom the timeshare interest was purported to have been conveyed was personally served with citation or was cited by publication and fails to timely appear and answer. The bill, notwithstanding Rule 329, Texas Rules of Civil Procedure, or any other law, and regardless of the manner of citation or whether the judgment is a default judgment or a judgment on the merits, requires a motion for a new trial in an action to be filed on or before the 30th day after the date the judgment is signed and makes the judgment final and unappealable on the 31st day after the date the judgment is signed.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1588 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter H, Chapter 221, Property Code, is amended by adding Section 221.078 to read as follows:

Sec. 221.078. ADMINISTRATIVE REMOVAL OF CLOUD OF TITLE. (a) A purchaser may petition the General Land Office to determine ownership of timeshare property for which the purchaser asserts a developer has issued overlapping timeshare interests.

(b) After receipt of the petition, the General Land Office shall provide notice of the hearing by certified mail to any other purchasers of the timeshare property. All costs of providing notice shall be borne by the petitioner. Notice shall be provided not

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision. (*But see SECTION 1 below.*)

later than the 30th day before the hearing date. If the address or identity of any purchaser is unknown, notice may be provided by publication in a newspaper in the county in which the timeshare property is located once each week for four consecutive weeks, with the final publication occurring not later than the 30th day before the date on which the hearing is scheduled. The publication must contain:

(1) a general description of the property involved;

(2) the county in which the property is located;

(3) the interest of the purchaser whose address or identity is unknown; and

(4) the name and address of the petitioning purchaser.

(c) After the hearing, the General Land Office shall issue an order determining the timeshare property's title.

(d) An order issued under Subsection (c) becomes final and unappealable on the 30th day after the date on which the order is issued unless before that day the petitioning purchaser or another person affected by the order appeals the order to the district court of the county where the timeshare property is located. An appeal under this subsection is by trial de novo. A final order under this section may be recorded.

(e) This section applies only to a timeshare property:

(1) whose association does not have any active banking accounts with which to conduct association business;

(2) whose purchasers have paid no association fees, dues, or charges for at least three years;

(3) subject to Chapter 81; and

(4) located in a first tier coastal county, as that term is defined in Section 2210.003, Insurance Code.

(f) The General Land Office shall adopt rules to implement this section.

SECTION 2. The General Land Office shall adopt rules under Section 221.078, Property Code, as added by this Act, as soon as practicable after the effective date of this Act.

No equivalent provision.

No equivalent provision. (But see SECTION

SECTION 1. Title 4, Property Code, is

1 above.)

amended by adding Chapter 30 to read as follows:

CHAPTER 30. ACTION TO DETERMINE VALIDITY OF CERTAIN TIMESHARE INTERESTS

Sec. 30.001. APPLICABILITY OF CHAPTER. This chapter applies only to a condominium unit that is:

(1) located on a barrier island that borders the Gulf of Mexico;

(2) subject to a declaration creating:

(A) a condominium regime to which Chapter 81 applies; and

(B) a timeshare plan applicable to all or part of the condominium property; and

(3) located in a development in which the timeshare association has not paid any fees, dues, assessments, or other charges due to the condominium council of owners for a period of at least three years immediately preceding the filing of an action under this chapter.

Sec. 30.002. ACTION AUTHORIZED. If a deed or other instrument has been recorded in the real property records asserting or purporting to convey a timeshare interest in a condominium unit to which this chapter applies, the condominium unit owner may bring an action under this chapter in a district court in the county in which the condominium unit is located seeking a determination that the timeshare interest is:

(1) invalid; or

(2) void under Section 30.004 or any other law.

Sec. 30.003. SERVICE BY PUBLICATION AUTHORIZED. (a) If the whereabouts or identity of the person asserting the timeshare interest or to whom the timeshare interest is purported to have been conveyed is unknown to the person bringing an action under this chapter, citation in the action may be served by publication in a newspaper in the county in which the condominium unit is located. Service by publication in the action is governed by the Texas Rules of Civil Procedure except to the extent of any conflict with this section.

(b) The published citation must contain:

(1) the physical address of the condominium unit;

(2) the county in which the condominium unit is located;

(3) the name of the person asserting the timeshare interest in the condominium unit or to whom the timeshare interest is purported to have been conveyed, as shown in the recorded instrument;

(4) a description of the timeshare interest asserted in or purported to be conveyed by the recorded instrument;

(5) the name and address of the person bringing the action; and

(6) a statement that the person bringing the action is seeking a determination that the timeshare interest is invalid or void.

Sec. 30.004. INTEREST VOID. (a) A timeshare interest in a condominium unit described by Section 30.001 is void if the person bringing an action establishes that:

(1) the person bringing the action holds record title to the condominium unit;

(2) on the date the instrument asserting the timeshare interest or purporting to convey the timeshare interest was filed for recording:

(A) the person bringing the action held record title to the condominium unit; or

(B) record title to the condominium unit was held by a person other than the declarant who precedes the person bringing the action in the chain of title to the unit;

(3) the timeshare interest was not conveyed by the person bringing the action or any other person who follows the declarant in the chain of title to the unit;

(4) the person asserting the timeshare interest or to whom the timeshare interest is purported to have been conveyed has not paid any required assessments in connection with the timeshare interest for a period of at least three years immediately preceding the filing of the action; and

(5) at no time on or after the date the instrument was filed for recording has a person made an attempt to exercise the right to occupy the unit under the timeshare interest.

(b) This section does not preclude a determination that a timeshare interest is invalid or void under any other law.

Sec. 30.005. DEFAULT JUDGMENT. In an action brought under this chapter, the court may enter a default judgment declaring that a timeshare interest is invalid or void if the person asserting the timeshare interest or to whom the timeshare interest was purported to have been conveyed:

(1) was personally served with citation or was cited by publication in accordance with Section 30.003; and

(2) fails to timely appear and answer.

Sec. 30.006. FINALITY OF JUDGMENT. Notwithstanding Rule 329, Texas Rules of Civil Procedure, or any other law, and regardless of the manner of citation or whether the judgment is a default judgment or a judgment on the merits:

(1) a motion for a new trial in an action under this chapter must be filed on or before the 30th day after the date the judgment is signed; and

(2) the judgment is final and unappealable on the 31st day after the date the judgment is signed.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.