

**SUBJECT:** Separate statutory framework for timeshare associations

**COMMITTEE:** Business and Industry — favorable, without amendment

**VOTE:** 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman  
0 nays

**SENATE VOTE:** On final passage, April 18 — 31-0

**WITNESSES:** *(On House companion bill, HB 2944)*  
For — Stephany Madsen, American Resort Development Association;  
*(Registered, but did not testify:* Buster Brown and Jennifer Emerson,  
American Resort Development Association; Robert Floyd and Galt  
Graydon, Silverleaf Resorts; Daniel Gonzalez, Texas Association of  
Realtors; Mark Lehman, Texas Association of Realtors)  
  
Against — None  
  
On — *(Registered, but did not testify:* Beverly Rabenberg, Real Estate  
Commission)

**BACKGROUND:** Property Code, ch. 221, the Texas Timeshare Act, requires an instrument to be filed declaring and describing any timeshare in the state. Under the chapter, any person offering a timeshare interest is required to register with the Texas Real Estate Commission, which is empowered to adopt rules and take action against any developer in violation of the law.  
  
Property Code, ch. 202, governs restrictive covenants established and enforced by homeowners associations (HOAs). The chapter restricts HOAs from adopting or enforcing certain types of restrictive covenants. Property Code, ch 207, governs the disclosure of certain information by property associations.

**DIGEST:** SB 1372 would create the Texas Timeshare Owners’ Association Act, Property Code ch. 221, subch. I, which would govern timeshare associations and prevail over any conflicting or inconsistent legal provisions applicable to a timeshare owners’ association.

**Applicability.** The bill would apply to a timeshare plan and associated property regardless of when the plan was created. The bill would apply to a timeshare plan created before September 1, 2013, unless the timeshare instrument was amended before that date to provide for an exclusion.

The bill would remove timeshare associations from the requirements of Property Code ch. 202 and ch. 207, relating to property owners' associations. It also would exempt timeshares from state laws that require the provision of certain information upon the purchase of a home — specifically, the seller's disclosure and notice that a unit was subject to membership in a property owners' association. Rules governing declarant control in a condominium would not apply to a timeshare.

**Administration.** A timeshare owners' association could be governed by a board of directors, which could act on behalf of the association. The board could not act on behalf of the association to:

- amend the project instrument;
- terminate the timeshare plan;
- elect or remove board members; or
- determine the qualifications, powers, duties, or terms of office of board members.

Subject to the timeshare instrument, the board could appoint a member for the unexpired portion of the preceding board member's term.

**Board procedures.** The bill would establish processes for election and removal of board members, minimum quorum requirements, and voting. Under the bill:

- boards would have to include at least three members;
- members could be removed by a vote of two-thirds of the voting rights of people entitled to vote; and
- a quorum would be at least 10 percent of the voting interests of owners who were not delinquent in assessments.

If a quorum was not present at an association meeting to elect board members, the meeting would have to be reconvened within 90 days for the same purpose.

**Developer control.** A timeshare instrument could provide for a period of developer control of an association during which the developer or a designee could appoint and remove board members and other association officers. A period of control would expire by whichever came earlier:

- the 120th day after the date when 95 percent of the timeshare interests were conveyed to owners from the developer; or
- five years after the developer ceased to offer timeshare interests for sale in the ordinary course of business.

A timeshare instrument that provided for a shorter developer control period would take precedence.

During the period of developer control, the developer could determine all matters governing the association, including the occurrence of special or regular meetings of the members and the notice requirements and rules for those meetings.

A developer voluntarily could surrender the right to appoint and remove board members and officers during the period of control. A surrender instrument could retain for the developer veto rights of association decisions for the remainder of the designated control period.

Provisions governing the developer control period would apply to a timeshare plan created before September 1, 2013, only if the developer and an association agreed to the provisions.

**Voting.** The bill would place requirements on when and how long a proxy vote would be valid and would allow voting by mail.

If only one of multiple owners of a timeshare interest was present at an association meeting, that owner could cast all votes allocated to that timeshare interest. If more than one of the multiple owners were present, the votes allocated to that timeshare interest could be cast only in accordance with the agreement of a majority of the timeshare interest held by the multiple owners, unless the timeshare instrument expressly provided otherwise.

**Open meetings.** Following the period of developer control, all association and board meetings would be open to all members. Board members could meet in a closed session to consider specific matters listed in the bill.

An association meeting would have to be held each year after the developer control period. Special meetings could be called by a majority of the board, the president, or at the request of owners with at least 25 percent of the votes allocated to timeshare interests in the association. Unless a timeshare instrument stated otherwise, the association would mail notice of a meeting in a prescribed timeframe.

Associations would have to maintain a complete and current list of names and addresses of all timeshare owners. Except as otherwise authorized in law, an association could not provide an owner's name or other personally identifiable information to another owner without prior approval.

The bill would, with certain limits, require an association to mail materials to property owners upon request, provided the requestor provided sufficient payment for related costs.

**Effective date.** The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

SB 1372 would ensure that timeshare associations were not improperly subject to laws designed for residential homeowners' associations (HOAs).

The bill would establish a separate statutory structure for timeshare associations necessary to resolve lingering questions about the applicability of HOA laws brought about by sweeping legislation enacted in 2011. While timeshares have generally fallen outside of the scope of statutes governing HOAs, various changes made in 2011 have blurred this distinction. Some lawyers versed in timeshare law have expressed concern that, without a separate statute for timeshare associations, timeshare associations could fall under some of the new laws governing HOAs.

Timeshare associations are distinct from traditional HOAs in a number of respects, including the following:

- they are subject to the Texas Timeshare Act, which imposes requirements for detailed disclosures about the timeshare at the time of purchase and an annual timeshare fee and expense statement;
- each timeshare may be "owned" by as many as 52 owners, who each own the rights to a particular week of the year;

- timeshares cannot be used as primary homes under governing documents;
- timeshare assessment fees cover items not generally covered by HOAs, such as housekeeping costs and upkeep for unit furnishings; and
- timeshare owners tend to be less involved or interested in association proceedings, as they only use the unit on a temporary basis.

Laws designed for traditional HOAs do not squarely transfer to timeshare associations and may be detrimental to association operations. Timeshare associations have unique operations, in particular since most timeshare owners cannot be physically present for association meetings and tend to take little interest in association affairs, provided the property is adequately maintained and assessments remain reasonable.

SB 1372 would provide a legal tidying-up of statutes governing timeshares to house them all under the Texas Timeshare Act (Property Code, ch. 221) and in so doing create a basic but robust set of protections for timeshare owners. The bill would outline requirements for associations affairs in various areas, such as voting, open meetings, board proceedings, and the expiration of developer control. The limitations imposed would ensure that associations achieve basic standards while allowing for variation in specific practices across associations. The requirements would dovetail with the existing regulatory structures for timeshares, which includes registration with the Texas Real Estate Commission, to create a strong, unified statutory framework for timeshares and timeshare associations.

It would be a mistake to impose onto timeshare associations the more restrictive standards that apply to traditional HOAs. Governance of traditional HOAs has evolved in response to specific complaints in various HOAs around the state. Timeshares, being structured and operated differently from HOAs, have not been subject to the same controversies or problems. Applying HOA standards to timeshares, such as laws that prohibit associations from adopting instruments conditioning voting on being current in paying assessments, would needlessly restrict timeshares from adopting provisions that suit their particular purposes.

With the timeshare governing statutes clearly housed in a separate statute, the Legislature could return in future sessions to make any incremental changes necessary. The best approach at this juncture would be to adopt a

basic framework that would not place undue burdens on timeshare associations nor needlessly supersede association-level governing instruments that have proven adequate for all parties involved.

OPPONENTS  
SAY:

SB 1372 could use stronger protections for owners with a timeshare interest. There are several specific provisions in the bill that could leave open the door to bad practices, as has been the case with residential HOAs.

**Developer control.** SB 1372 would take a positive step in limiting developer control to 95 percent of units sold to owners *or* five years after units were offered in the ordinary course of business. However, the bill unfortunately would condition its board elections, open meetings, notice, and other provisions on the expiration of the developer control period, which could be up to five years. Five years would be a long time for timeshare owners to go without any representation in association proceedings.

**Voting.** Instead of establishing minimal standards for who may vote, SB 1372 would allow any “additional limitations” on the right to vote in timeshare instruments. Such limitations could include restrictions on the right to vote due to delinquencies on assessments or other fines. Similarly, the bill would define a quorum as 10 percent of voting interests of owners who are not delinquent on assessments. All property owners should have the right to vote and participate in board proceedings, irrespective of whether they are current on all dues.

Language in the bill governing proxy voting is unusual and potentially problematic. The bill would allow proxy voting for up to 25 months after when the proxy is executed, which is a longer timeframe than in other statutes governing the subject, and would provide that a proxy could state that it was “coupled with an interest and is irrevocable.” This language is unusual and potentially conflicts with other language requiring a proxy to state the date of termination.

**Notice.** The notice requirements for timeshare association meetings in the bill could be strengthened. Language in the bill would require notice to include “date, time, and place of the meeting,” but would not include the meeting agenda as a requirement. Providing notice of a meeting without an agenda would be of limited value to timeshare owners.

In addition, a provision in the bill states that the “failure of an owner to

receive actual notice of a board meeting does not affect the validity of any action taken at that meeting.” This provision would have the effect of significantly reducing owners’ recourse in the event that an association did not provide adequate notice of a meeting.

**NOTES:**

The House companion bill, HB 2944 by P. King, was left pending in the House Business and Industry Committee on April 16.