

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN ASSEMBLY APRIL 28, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 634

Introduced by Assembly Member Calderon

February 24, 2015

An act to amend Section 11273 of the Business and Professions Code, relating to time-shares.

LEGISLATIVE COUNSEL'S DIGEST

AB 634, as amended, Calderon. Vacation ownership and time-shares: owners list.

The Vacation Ownership and Time-share Act of 2004 requires all records of a time-share plan maintained by a time-share association to be made available for inspection and copying by any member for a purpose reasonably related to membership in the association. Existing law requires the time-share association to maintain among its records a complete list of the names and addresses of all owners of time-share interests in the time-share plan, as specified. Existing law prohibits an association from publishing the owners list or providing a copy of it to any time-share interest owner or to any 3rd party or using or selling the list for commercial purposes, except as provided in the time-share instruments.

This bill would require the owner addresses in the list to be mailing addresses, and would prohibit the association from publishing the list of owners or providing a copy of it to any time-share interest owner or to any 3rd party or using or selling the list for commercial purposes, except to accomplish legitimate association business, as defined.

purposes. The bill would require the association to provide a copy of the list to an owner for a purpose reasonably related to membership in the association, except as specified. The bill would ~~require the association board or managing entity to mail to those persons listed on the owner's list a communication requested in writing by an owner, if the mailing would address legitimate association business.~~ require, if a time-share interest owner makes a request to communicate by mail with the membership of the association for a purpose reasonably related to membership in the association, the communication to be made within 30 days of receipt of the request and payment of actual costs in performing the mailing. The bill would require, if the purpose is not reasonably related, the board of administration of the association or the managing entity to notify the requesting owner of the rejection. The bill would authorize a court to summarily order the distribution of the requested communication if it is not distributed within 30 days after receipt of a request from an owner and payment of actual costs. The bill would also specify that certain provisions of the Nonprofit Mutual Benefit Corporation Law pertaining to the list of names, addresses, and voting rights of members of a nonprofit mutual benefit corporation do not apply to time-share associations under the Vacation Ownership and Time-share Act of 2004.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) In 2010, the court of appeal held that time-share association
- 4 membership lists containing personal information may be
- 5 distributed over the objection of many time-share owners.
- 6 (b) Time-share associations frequently have membership lists
- 7 in excess of 10,000 members.
- 8 (c) Membership lists on the open market are of substantial value,
- 9 particularly to unscrupulous parties that prey upon time-share
- 10 owners.
- 11 (d) Legislation is needed to protect the privacy of time-share
- 12 owners.
- 13 SEC. 2. Section 11273 of the Business and Professions Code
- 14 is amended to read:

1 11273. (a) ~~The~~ *Except as provided in subdivision (e), the books*
2 *of account, minutes of members and governing body meetings,*
3 *and all other records of the time-share plan maintained by the*
4 *association or the managing entity shall be made available for*
5 *inspection and copying by any member, or by his or her duly*
6 *appointed representative, at any reasonable time for a purpose*
7 *reasonably related to membership in the association.*

8 (b) The records shall be made available for inspection at the
9 office where the records are maintained. Upon receipt of an
10 authenticated written request from a member along with the fee
11 prescribed by the governing body to defray the costs of
12 reproduction, the managing entity or other custodian of records of
13 the association or the time-share plan shall prepare and transmit
14 to the member a copy of any and all records requested.

15 (c) The governing body shall establish reasonable rules with
16 respect to all of the following:

17 (1) Notice to be given to the managing entity or other custodian
18 of the records by the member desiring to make the inspection or
19 to obtain copies.

20 (2) Hours and days of the week when a personal inspection of
21 the records may be made.

22 (3) Payment of the cost of reproducing copies of records
23 requested by a member.

24 (d) Every governing body member shall have the absolute right
25 at any time to inspect all books, records, and documents of the
26 association and all real and personal properties owned and
27 controlled by the association.

28 (e) (1) The association shall maintain among its records a
29 complete list of the names and mailing addresses of all owners of
30 time-share interests in the time-share plan. The association shall
31 update this list no less frequently than every six months.
32 ~~Notwithstanding any other provision of this section, the~~ *The*
33 *association shall not publish this list of owners or provide a copy*
34 *of it to any time-share interest owner or to any third party, or use*
35 *or sell the list for commercial purposes, except as required to*
36 *accomplish legitimate association business as described in*
37 *paragraph (2). purposes. The association shall provide a copy of*
38 *the list to a member for a purpose reasonably related to*
39 *membership in the association. However, notwithstanding this*
40 *requirement, if the association reasonably believes that the*

1 *recipient of the list will use the list for another purpose or provide*
2 *a copy or disclose the contents to another party, the association*
3 *shall refuse to provide the member a copy of the list.*

4 (2) (A) If an owner of a time-share interest in the time-share
5 plan makes a request to the ~~owner's association~~ to communicate
6 by mail with the membership of the ~~association, the board of~~
7 ~~administration of the owners' association or the managing entity~~
8 ~~is responsible for determining whether the requested mailing~~
9 ~~pertains to legitimate association business as defined in paragraph~~
10 ~~(3). If association for a purpose reasonably related to membership~~
11 ~~in the association, and the board of administration of the~~
12 ~~association or the managing entity determines that the mailing~~
13 ~~pertains to legitimate association business, a purpose reasonably~~
14 ~~related to membership in the association, the requested mailing~~
15 ~~shall be made within 30 days after receipt of a request and payment~~
16 ~~by the owner of actual costs in accordance with subparagraph (B).~~
17 ~~If the board or managing entity determines that the requested~~
18 ~~mailing will not advance legitimate association business, does not~~
19 ~~pertain to a purpose reasonably related to membership in the~~
20 ~~association, the board or the managing entity shall, within 30 days~~
21 ~~after receipt of the request, notify the requesting owner in writing~~
22 ~~and shall indicate the reasons for the rejection.~~

23 (B) The owner who requests the mailing shall pay the association
24 in advance for the association's actual costs in performing the
25 mailing. The association shall make a good faith effort to minimize
26 the costs of the mailing, including the use of a less expensive
27 ~~delivery method with respect to those owners who have previously~~
28 ~~consented to the less expensive delivery method. method, including~~
29 *electronic delivery.*

30 (C) ~~If the requested mailing is a proxy solicitation to recall one~~
31 ~~or more board members elected by the owners or to discharge the~~
32 ~~manager or managing entity, and the board of administration or~~
33 ~~managing entity does not complete the requested mailing distribute~~
34 ~~the requested communication within 30 days after receipt of a~~
35 ~~request from an owner and payment of actual costs, the superior~~
36 ~~court in the county where the time-share plan is located may, upon~~
37 ~~application from the requesting owner, summarily order the~~
38 ~~requested mailing. distribution of the requested communication.~~
39 To the extent possible, the superior court shall dispose of an
40 application on an expedited basis. In the event the court orders the

1 ~~mailing, distribution of the requested communication,~~ it may order
2 the board or managing entity to pay the owner’s costs, including
3 attorney’s fees reasonably incurred to enforce the owner’s rights,
4 unless the board or the managing entity can prove it refused to
5 distribute the ~~materials~~ *communication* in good faith because of a
6 reasonable ~~doubt about whether~~ *belief that* the requested ~~mailing~~
7 ~~pertained to legitimate association business.~~ *communication did*
8 *not pertain to a purpose reasonably related to membership in the*
9 *association.*

10 ~~(D) The use of any proxies solicited by a mailing described in~~
11 ~~subparagraph (C) shall comply with the provisions of the~~
12 ~~time-share instrument and this chapter.~~

13 ~~(E)~~

14 (D) It is unlawful for the board of administration of the
15 association or managing entity to refuse to distribute a
16 communication requested by an owner if the requested ~~mailing~~
17 ~~would address legitimate association business.~~ *communication*
18 *would address a purpose reasonably related to membership in the*
19 *association.*

20 ~~(3) For the purposes of this section, “legitimate association~~
21 ~~business” includes, but is not limited to, a proxy solicitation for~~
22 ~~any purpose, including, but not limited to, the recall of one or more~~
23 ~~of the board members elected by the owners, the discharge of a~~
24 ~~manager or management entity, or disposition of time-share~~
25 ~~interests acquired by the association.~~

26 ~~(4)~~

27 (3) Section 8330 of the Corporations Code shall not apply to
28 time-share associations under this chapter.

29 (f) For single site time-share plans and component sites of a
30 multisite time-share plan located outside of the state, the association
31 shall be subject to the provisions set forth in this section. The
32 association must be in compliance with the applicable laws of the
33 state or jurisdiction in which the time-share property or component
34 site is located, and if a conflict exists between laws of the situs
35 state and the requirements set forth in this section, the law of the
36 situs state shall control. If the association and the time-share
37 instruments provide for the matters contained in this section, the
38 association shall be deemed to be in compliance with the
39 requirements of this section and neither the developer nor the

- 1 association shall be required to make revisions to the time-share
- 2 instruments in order to comply with the section.

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