

By: Turner of Harris

H.B. No. 3128

A BILL TO BE ENTITLED

AN ACT

relating to service of process on condominium unit owners and
condominium unit owners' associations in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 82.002(c), Property Code, is amended to
read as follows:

(c) This section and the following sections apply to a
condominium in this state for which the declaration was recorded
before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053,
82.054, 82.102(a)(1)-(7) and (12)-(22), 82.108, 82.111, 82.113,
82.114, 82.116, 82.118, 82.157, and 82.161. The definitions
prescribed by Section 82.003 apply to a condominium in this state
for which the declaration was recorded before January 1, 1994, to
the extent the definitions do not conflict with the declaration.
The sections listed in this subsection apply only with respect to
events and circumstances occurring on or after January 1, 1994, and
do not invalidate existing provisions of the declaration, bylaws,
or plats or plans of a condominium for which the declaration was
recorded before January 1, 1994.

SECTION 2. Subchapter C, Chapter 82, Property Code, is
amended by adding Section 82.118 to read as follows:

Sec. 82.118. SERVICE OF PROCESS ON UNIT OWNERS. (a) A unit
owner of a condominium located wholly or partly in a municipality
with a population of more than 1.9 million may be served with

1 process by the municipality or the municipality's agent for a
2 judicial or administrative proceeding initiated by the
3 municipality and directly related to the unit owner's property
4 interest in the condominium by serving the unit owner at the unit
5 owner's last known address, according to the records of the
6 appraisal district in which the condominium is located, by any
7 means permitted by Rule 21a, Texas Rules of Civil Procedure.

8 (b) Notwithstanding Subsection (a), a unit owner may not
9 offer proof in the judicial or administrative proceeding, or in a
10 subsequent related proceeding, that otherwise proper service by
11 mail of the notice was not received not later than three days after
12 the date the notice was deposited in a post office or official
13 depository under the care and custody of the United States Postal
14 Service.

15 SECTION 3. Section 82.153(a), Property Code, is amended to
16 read as follows:

17 (a) A condominium information statement must contain or
18 accurately disclose:

19 (1) the name and principal address of the declarant
20 and of the condominium;

21 (2) a general description of the condominium that
22 includes the types of units and the maximum number of units;

23 (3) the minimum and maximum number of additional
24 units, if any, that may be included in the condominium;

25 (4) a brief narrative description of any development
26 rights reserved by a declarant and of any conditions relating to or
27 limitations upon the exercise of development rights;

1 (5) copies of the declaration, articles of
2 incorporation of the association, the bylaws, any rules of the
3 association, and amendments to any of them, and copies of leases and
4 contracts, other than loan documents, that are required by the
5 declarant to be signed by purchasers at closing;

6 (6) a projected or pro forma budget for the
7 association that complies with Subsection (b) for the first fiscal
8 year of the association following the date of the first conveyance
9 to a purchaser, identification of the person who prepared the
10 budget, and a statement of the budget's assumptions concerning
11 occupancy and inflation factors;

12 (7) a general description of each lien, lease, or
13 encumbrance on or affecting the title to the condominium after
14 conveyance by the declarant;

15 (8) a copy of each written warranty provided by the
16 declarant;

17 (9) a description of any unsatisfied judgments against
18 the association and any pending suits to which the association is a
19 party or which are material to the land title and construction of
20 the condominium of which a declarant has actual knowledge;

21 (10) a general description of the insurance coverage
22 provided for the benefit of unit owners; ~~and~~

23 (11) current or expected fees or charges to be paid by
24 unit owners for the use of the common elements and other facilities
25 related to the condominium; and

26 (12) for a condominium located wholly or partly in a
27 municipality with a population of more than 1.9 million a statement

1 that a unit owner:

2 (A) as an alternative to personal service, may be
3 served with process by the municipality or the municipality's agent
4 for a judicial or administrative proceeding initiated by the
5 municipality and directly related to the unit owner's property
6 interest in the condominium by serving the unit owner at the unit
7 owner's last known address, according to the records of the
8 appraisal district in which the condominium is located, by any
9 means permitted by Rule 21a, Texas Rules of Civil Procedure;

10 (B) shall promptly notify the appraisal district
11 of a change in the unit owner's mailing address; and

12 (C) may not offer proof in the judicial or
13 administrative proceeding, or in a subsequent related proceeding,
14 that otherwise proper service by mail of the notice was not received
15 not later than three days after the date the notice was deposited in
16 a post office or official depository under the care and custody of
17 the United States Postal Service.

18 SECTION 4. Section 54.035, Local Government Code, is
19 amended by amending Subsections (a), (d), (e), and (f) and adding
20 Subsections (a-1) and (a-2) to read as follows:

21 (a) Except as provided by Subsections (a-1) and (a-2),
22 notice [~~Notice~~] of all proceedings before the commission panels
23 must be given:

24 (1) by personal delivery, by certified mail with
25 return receipt requested, or by delivery by the United States
26 Postal Service using signature confirmation service, to the record
27 owners of the affected property, and each holder of a recorded lien

1 against the affected property, as shown by the records in the office
2 of the county clerk of the county in which the affected property is
3 located if the address of the lienholder can be ascertained from the
4 deed of trust establishing the lien or ~~and/or~~ other applicable
5 instruments on file in the office of the county clerk; and

6 (2) to all unknown owners, by posting a copy of the
7 notice on the front door of each improvement situated on the
8 affected property or as close to the front door as practicable.

9 (a-1) Notice to a condominium association of a proceeding
10 before a commission panel relating to a condominium, as defined by
11 Section 81.002 or 82.003, Property Code, located wholly or partly
12 in a municipality with a population of more than 1.9 million must be
13 served by personal service, by certified mail, return receipt
14 requested, or by the United States Postal Service using signature
15 confirmation service, to the registered agent of the unit owners'
16 association.

17 (a-2) Notice to an owner of a unit of a condominium, as
18 defined by Section 81.002 or 82.003, Property Code, located wholly
19 or partly in a municipality with a population of more than 1.9
20 million must be given in accordance with Section 82.118, Property
21 Code.

22 (d) A municipality must exercise due diligence to determine
23 the identity and address of a property owner, or ~~or~~ lienholder, or
24 registered agent to whom the municipality is required to give
25 notice.

26 (e) A municipality exercises due diligence in determining
27 the identity and address of a property owner, or ~~or~~ lienholder, or

1 registered agent when it follows the procedures for service under
2 Section 82.118, Property Code, or searches the following records:

3 (1) county real property records of the county in
4 which the property is located;

5 (2) appraisal district records of the appraisal
6 district in which the property is located;

7 (3) records of the secretary of state, if the property
8 owner, [or] lienholder, or registered agent is a corporation,
9 partnership, or other business association;

10 (4) assumed name records of the county in which the
11 property is located;

12 (5) tax records of the municipality; and

13 (6) utility records of the municipality.

14 (f) When a municipality mails a notice in accordance with
15 this section to a property owner, [or] lienholder, or registered
16 agent and the United States Postal Service returns the notice as
17 "refused" or "unclaimed," the validity of the notice is not
18 affected, and the notice is considered delivered.

19 SECTION 5. Section 214.001, Local Government Code, is
20 amended by amending Subsections (b) and (r) and adding Subsection
21 (b-1) to read as follows:

22 (b) The ordinance must:

23 (1) establish minimum standards for the continued use
24 and occupancy of all buildings regardless of the date of their
25 construction;

26 (2) provide for giving proper notice, subject to
27 Subsection (b-1), to the owner of a building; and

1 (3) provide for a public hearing to determine whether
2 a building complies with the standards set out in the ordinance.

3 (b-1) For a condominium, as defined by Section 81.002 or
4 82.003, Property Code, located wholly or partly in a municipality
5 with a population of more than 1.9 million, notice to a unit owner
6 in accordance with Section 82.118, Property Code, and notice to the
7 registered agent for the unit owners' association in the manner
8 provided for service of process to a condominium association under
9 Section 54.035(a-1) satisfy the notice requirements under this
10 section.

11 (r) When a municipality mails a notice in accordance with
12 this section to a property owner, lienholder, [~~or~~] mortgagee, or
13 registered agent and the United States Postal Service returns the
14 notice as "refused" or "unclaimed," the validity of the notice is
15 not affected, and the notice is considered delivered.

16 SECTION 6. This Act takes effect September 1, 2009.