

By: Turner of Harris

H.B. No. 3128

A BILL TO BE ENTITLED

1 AN ACT
2 relating to service of process or notices by a municipality with a
3 population of more than 1.9 million on certain condominiums.

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

5 SECTION 1. Section 82.055, Property Code, is amended to
6 read as follows:

7 Sec. 82.055. CONTENTS OF DECLARATION FOR ALL CONDOMINIUMS.
8 The declaration for a condominium must contain:

9 (1) the name of the condominium, which must include
10 the word "condominium" or be followed by the words "a condominium"
11 or a phrase that includes the word "condominium," and the name of
12 the association;

13 (2) the name of each county in which any part of the
14 condominium is located;

15 (3) a legally sufficient description of the real
16 property included in the condominium;

17 (4) a description of the boundaries of each unit
18 created by the declaration, including the unit's identifying
19 number;

20 (5) a statement of the maximum number of units that the
21 declarant reserves the right to create;

22 (6) a description of the limited common elements other
23 than those listed in Sections 82.052(2) and (4);

24 (7) a description of any real property, except real

1 property subject to development rights, that may be allocated
2 subsequently as limited common elements, together with a statement
3 that the property may be so allocated;

4 (8) an allocation to each unit of its allocated
5 interests;

6 (9) any restrictions on use, occupancy, or alienation
7 of the units;

8 (10) a description of and the recording data for
9 recorded easements and licenses appurtenant to or included in the
10 condominium or to which any portion of the condominium is or may
11 become subject by reservation in the declaration;

12 (11) the method of amending the declaration;

13 (12) a plat or plan or the recording data of a plat or
14 plan that has been recorded in the real property or condominium plat
15 records;

16 (13) a statement of the association's obligation under
17 Section 82.111(i) to rebuild or repair any part of the condominium
18 after a casualty or any other disposition of the proceeds of a
19 casualty insurance policy;

20 (14) a description of any development rights and other
21 special declarant rights reserved by the declarant, together with a
22 legally sufficient description of the real property to which each
23 of those rights applies, and a time limit within which each of those
24 rights must be exercised;

25 (15) if any development right may be exercised with
26 respect to different parcels of real property at different times, a
27 statement to that effect, together with:

1 (A) either a statement fixing the boundaries of
2 those portions and regulating the order in which those portions may
3 be subjected to the exercise of each development right, or a
4 statement that no assurances are made in those regards; and

5 (B) a statement as to whether, if any development
6 right is exercised in any portion of the real property subject to
7 that development right, that development right must be exercised in
8 all or in any other portion of the remainder of that real property;

9 (16) the name, physical address, and mailing address
10 of the registered agent for service of process for any condominium
11 located in a municipality with a population of more than 1.9
12 million;

13 (17) all matters required by this chapter to be stated
14 in the declaration; and

15 (18) [~~(17)~~] any other matters the declarant
16 considers appropriate.

17 SECTION 2. Subchapter B, Chapter 82, Property Code, is
18 amended by adding Section 82.0551 to read as follows:

19 Sec. 82.0551. ALTERNATE AGENT FOR SERVICE OF PROCESS. The
20 secretary of state is the agent for service of process for an
21 association that fails to comply with Section 82.055(16).

22 SECTION 3. Section 82.116, Property Code, is amended by
23 amending Subsections (a) and (b) and adding Subsection (d) to read
24 as follows:

25 (a) An association shall record in each county in which any
26 portion of the condominium is located a certificate, signed and
27 acknowledged by an officer of the association, stating:

- 1 (1) the name of the condominium;
2 (2) the name of the association;
3 (3) the location of the condominium;
4 (4) the recording data for the declaration;
5 (5) the mailing address of the association, or the
6 name and mailing address of the person or entity managing the
7 association; ~~and~~
8 (6) the name, physical address, and mailing address of
9 the registered agent for service of process for any condominium
10 located in a municipality with a population of more than 1.9
11 million; and
12 (7) other information the association considers
13 appropriate.

14 (b) The association shall record a management certificate
15 not later than the 30th day after the date the association has
16 notice of a change in any information in a recorded certificate
17 required by Subsection (a) [~~Subdivisions (a)(1)-(5)~~].

18 (d) The secretary of state is the agent for service of
19 process for an association that fails to comply with Subsection
20 (a)(6).

21 SECTION 4. Section 54.035, Local Government Code, is
22 amended by amending Subsections (a), (d), (e), and (f) and adding
23 Subsection (a-1) to read as follows:

24 (a) Except as provided in Subsection (a-1), notice [~~Notice~~]
25 of all proceedings before the commission panels must be given:

26 (1) by personal delivery, by certified mail with
27 return receipt requested, or by delivery by the United States

1 Postal Service using signature confirmation service, to the record
2 owners of the affected property, and each holder of a recorded lien
3 against the affected property, as shown by the records in the office
4 of the county clerk of the county in which the affected property is
5 located if the address of the lienholder can be ascertained from the
6 deed of trust establishing the lien or ~~and/or~~ other applicable
7 instruments on file in the office of the county clerk; and

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

11 (a-1) Notice of all proceedings relating to a condominium as
12 defined by Section 81.002 or 82.003, Property Code, before the
13 commission panels must be given by personal delivery, by certified
14 mail with return receipt requested, or by delivery by the United
15 States Postal Service using signature confirmation service, to the
16 registered agent for service of process identified under Section
17 82.116, Property Code.

18 (d) A municipality must exercise due diligence to determine
19 the identity and address of a property owner, or ~~or~~ lienholder, or
20 registered agent to whom the municipality is required to give
21 notice.

22 (e) A municipality exercises due diligence in determining
23 the identity and address of a property owner, or ~~or~~ lienholder, or
24 registered agent when it searches the following records:

25 (1) county real property records of the county in
26 which the property is located;

27 (2) appraisal district records of the appraisal

1 district in which the property is located;

2 (3) records of the secretary of state, if the property
3 owner, ~~or~~ lienholder, or registered agent is a corporation,
4 partnership, or other business association;

5 (4) assumed name records of the county in which the
6 property is located;

7 (5) tax records of the municipality; and

8 (6) utility records of the municipality.

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

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

17 (b) The ordinance must:

18 (1) establish minimum standards for the continued use
19 and occupancy of all buildings regardless of the date of their
20 construction;

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

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

25 (b-1) In the case of a condominium, as defined by Section
26 81.002 or 82.003, Property Code, located in a municipality with a
27 population of more than 1.9 million, providing notice to the

1 registered agent for service of process identified under Section
2 82.116, Property Code, satisfies the notice requirement under this
3 section.

4 (r) When a municipality mails a notice in accordance with
5 this section to a property owner, lienholder, [~~or~~] mortgagee, or
6 registered agent identified under Section 82.116, Property Code,
7 and the United States Postal Service returns the notice as
8 "refused" or "unclaimed," the validity of the notice is not
9 affected, and the notice is considered delivered.

10 SECTION 6. (a) The change in law made by this Act to
11 Section 82.055, Property Code, applies to a condominium for which a
12 declaration is recorded on or after September 1, 2009.

13 (b) Not later than November 1, 2009, a condominium
14 association shall file an amended management certificate providing
15 the name and addresses of the registered agent for service of
16 process as required by Section 82.116, Property Code, as amended by
17 this Act.

18 SECTION 7. This Act takes effect September 1, 2009.