

1-1 By: Turner of Harris (Senate Sponsor - Ellis) H.B. No. 3128  
1-2 (In the Senate - Received from the House May 7, 2009;  
1-3 May 8, 2009, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2009, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 21, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to service of process on condominium unit owners and  
1-9 condominium unit owners' associations in certain municipalities.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 82.002(c), Property Code, is amended to  
1-12 read as follows:

1-13 (c) This section and the following sections apply to a  
1-14 condominium in this state for which the declaration was recorded  
1-15 before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053,  
1-16 82.054, 82.102(a)(1)-(7) and (12)-(22), 82.108, 82.111, 82.113,  
1-17 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions  
1-18 prescribed by Section 82.003 apply to a condominium in this state  
1-19 for which the declaration was recorded before January 1, 1994, to  
1-20 the extent the definitions do not conflict with the declaration.  
1-21 The sections listed in this subsection apply only with respect to  
1-22 events and circumstances occurring on or after January 1, 1994, and  
1-23 do not invalidate existing provisions of the declaration, bylaws,  
1-24 or plats or plans of a condominium for which the declaration was  
1-25 recorded before January 1, 1994.

1-26 SECTION 2. Subchapter C, Chapter 82, Property Code, is  
1-27 amended by adding Section 82.118 to read as follows:

1-28 Sec. 82.118. SERVICE OF PROCESS ON UNIT OWNERS. (a) A unit  
1-29 owner of a condominium located wholly or partly in a municipality  
1-30 with a population of more than 1.9 million may be served with  
1-31 process by the municipality or the municipality's agent for a  
1-32 judicial or administrative proceeding initiated by the  
1-33 municipality and directly related to the unit owner's property  
1-34 interest in the condominium by serving the unit owner at the unit  
1-35 owner's last known address, according to the records of the  
1-36 appraisal district in which the condominium is located, by any  
1-37 means permitted by Rule 21a, Texas Rules of Civil Procedure.

1-38 (b) Notwithstanding Subsection (a), a unit owner may not  
1-39 offer proof in the judicial or administrative proceeding, or in a  
1-40 subsequent related proceeding, that otherwise proper service by  
1-41 mail of the notice was not received not later than three days after  
1-42 the date the notice was deposited in a post office or official  
1-43 depository under the care and custody of the United States Postal  
1-44 Service.

1-45 SECTION 3. Section 82.153(a), Property Code, is amended to  
1-46 read as follows:

1-47 (a) A condominium information statement must contain or  
1-48 accurately disclose:

1-49 (1) the name and principal address of the declarant  
1-50 and of the condominium;

1-51 (2) a general description of the condominium that  
1-52 includes the types of units and the maximum number of units;

1-53 (3) the minimum and maximum number of additional  
1-54 units, if any, that may be included in the condominium;

1-55 (4) a brief narrative description of any development  
1-56 rights reserved by a declarant and of any conditions relating to or  
1-57 limitations upon the exercise of development rights;

1-58 (5) copies of the declaration, articles of  
1-59 incorporation of the association, the bylaws, any rules of the  
1-60 association, and amendments to any of them, and copies of leases and  
1-61 contracts, other than loan documents, that are required by the  
1-62 declarant to be signed by purchasers at closing;

1-63 (6) a projected or pro forma budget for the  
1-64 association that complies with Subsection (b) for the first fiscal

2-1 year of the association following the date of the first conveyance  
 2-2 to a purchaser, identification of the person who prepared the  
 2-3 budget, and a statement of the budget's assumptions concerning  
 2-4 occupancy and inflation factors;

2-5 (7) a general description of each lien, lease, or  
 2-6 encumbrance on or affecting the title to the condominium after  
 2-7 conveyance by the declarant;

2-8 (8) a copy of each written warranty provided by the  
 2-9 declarant;

2-10 (9) a description of any unsatisfied judgments against  
 2-11 the association and any pending suits to which the association is a  
 2-12 party or which are material to the land title and construction of  
 2-13 the condominium of which a declarant has actual knowledge;

2-14 (10) a general description of the insurance coverage  
 2-15 provided for the benefit of unit owners; ~~and~~

2-16 (11) current or expected fees or charges to be paid by  
 2-17 unit owners for the use of the common elements and other facilities  
 2-18 related to the condominium; and

2-19 (12) for a condominium located wholly or partly in a  
 2-20 municipality with a population of more than 1.9 million a statement  
 2-21 that a unit owner:

2-22 (A) as an alternative to personal service, may be  
 2-23 served with process by the municipality or the municipality's agent  
 2-24 for a judicial or administrative proceeding initiated by the  
 2-25 municipality and directly related to the unit owner's property  
 2-26 interest in the condominium by serving the unit owner at the unit  
 2-27 owner's last known address, according to the records of the  
 2-28 appraisal district in which the condominium is located, by any  
 2-29 means permitted by Rule 21a, Texas Rules of Civil Procedure;

2-30 (B) shall promptly notify the appraisal district  
 2-31 of a change in the unit owner's mailing address; and

2-32 (C) may not offer proof in the judicial or  
 2-33 administrative proceeding, or in a subsequent related proceeding,  
 2-34 that otherwise proper service by mail of the notice was not received  
 2-35 not later than three days after the date the notice was deposited in  
 2-36 a post office or official depository under the care and custody of  
 2-37 the United States Postal Service.

2-38 SECTION 4. Section 54.035, Local Government Code, is  
 2-39 amended by amending Subsections (a), (d), (e), and (f) and adding  
 2-40 Subsections (a-1) and (a-2) to read as follows:

2-41 (a) Except as provided by Subsections (a-1) and (a-2),  
 2-42 notice [~~Notice~~] of all proceedings before the commission panels  
 2-43 must be given:

2-44 (1) by personal delivery, by certified mail with  
 2-45 return receipt requested, or by delivery by the United States  
 2-46 Postal Service using signature confirmation service, to the record  
 2-47 owners of the affected property, and each holder of a recorded lien  
 2-48 against the affected property, as shown by the records in the office  
 2-49 of the county clerk of the county in which the affected property is  
 2-50 located if the address of the lienholder can be ascertained from the  
 2-51 deed of trust establishing the lien or [~~and/or~~] other applicable  
 2-52 instruments on file in the office of the county clerk; and

2-53 (2) to all unknown owners, by posting a copy of the  
 2-54 notice on the front door of each improvement situated on the  
 2-55 affected property or as close to the front door as practicable.

2-56 (a-1) Notice to a condominium association of a proceeding  
 2-57 before a commission panel relating to a condominium, as defined by  
 2-58 Section 81.002 or 82.003, Property Code, located wholly or partly  
 2-59 in a municipality with a population of more than 1.9 million must be  
 2-60 served by personal service, by certified mail, return receipt  
 2-61 requested, or by the United States Postal Service using signature  
 2-62 confirmation service, to the registered agent of the unit owners'  
 2-63 association.

2-64 (a-2) Notice to an owner of a unit of a condominium, as  
 2-65 defined by Section 81.002 or 82.003, Property Code, located wholly  
 2-66 or partly in a municipality with a population of more than 1.9  
 2-67 million must be given in accordance with Section 82.118, Property  
 2-68 Code.

2-69 (d) A municipality must exercise due diligence to determine

3-1 the identity and address of a property owner, ~~[or]~~ lienholder, or  
3-2 registered agent to whom the municipality is required to give  
3-3 notice.

3-4 (e) A municipality exercises due diligence in determining  
3-5 the identity and address of a property owner, ~~[or]~~ lienholder, or  
3-6 registered agent when it follows the procedures for service under  
3-7 Section 82.118, Property Code, or searches the following records:

3-8 (1) county real property records of the county in  
3-9 which the property is located;

3-10 (2) appraisal district records of the appraisal  
3-11 district in which the property is located;

3-12 (3) records of the secretary of state, if the property  
3-13 owner, ~~[or]~~ lienholder, or registered agent is a corporation,  
3-14 partnership, or other business association;

3-15 (4) assumed name records of the county in which the  
3-16 property is located;

3-17 (5) tax records of the municipality; and

3-18 (6) utility records of the municipality.

3-19 (f) When a municipality mails a notice in accordance with  
3-20 this section to a property owner, ~~[or]~~ lienholder, or registered  
3-21 agent and the United States Postal Service returns the notice as  
3-22 "refused" or "unclaimed," the validity of the notice is not  
3-23 affected, and the notice is considered delivered.

3-24 SECTION 5. Section 214.001, Local Government Code, is  
3-25 amended by amending Subsections (b) and (r) and adding Subsection  
3-26 (b-1) to read as follows:

3-27 (b) The ordinance must:

3-28 (1) establish minimum standards for the continued use  
3-29 and occupancy of all buildings regardless of the date of their  
3-30 construction;

3-31 (2) provide for giving proper notice, subject to  
3-32 Subsection (b-1), to the owner of a building; and

3-33 (3) provide for a public hearing to determine whether  
3-34 a building complies with the standards set out in the ordinance.

3-35 (b-1) For a condominium, as defined by Section 81.002 or  
3-36 82.003, Property Code, located wholly or partly in a municipality  
3-37 with a population of more than 1.9 million, notice to a unit owner  
3-38 in accordance with Section 82.118, Property Code, and notice to the  
3-39 registered agent for the unit owners' association in the manner  
3-40 provided for service of process to a condominium association under  
3-41 Section 54.035(a-1) satisfy the notice requirements under this  
3-42 section.

3-43 (r) When a municipality mails a notice in accordance with  
3-44 this section to a property owner, lienholder, ~~[or]~~ mortgagee, or  
3-45 registered agent and the United States Postal Service returns the  
3-46 notice as "refused" or "unclaimed," the validity of the notice is  
3-47 not affected, and the notice is considered delivered.

3-48 SECTION 6. This Act takes effect September 1, 2009.

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