

BILL ANALYSIS

C.S.H.B. 1455
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that a condominium association, under certain circumstances, is allowed to make litigation decisions that affect condominium unit owners without prior approval from the unit owners. This has raised concerns about an association entering into disputes over construction defects that often have serious implications for unit owners, such as lower market values and complications in selling or refinancing the unit during the pendency of the dispute. C.S.H.B. 1455 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1455 amends the Property Code to require a condominium unit owners' association, in addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration and before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, to obtain an inspection and a written independent third-party report from a licensed professional engineer that identifies and describes certain information relating to the units or common elements subject to the claim and to obtain approval from unit owners holding at least 67 percent of the total votes in the association, voting in person or by proxy, at a special meeting called in accordance with the declaration or bylaws, as applicable. The bill requires the independent third-party report from the engineer to be obtained directly by the association and paid for by the association and prohibits the report from being prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the association in the claim.

C.S.H.B. 1455 requires the association to provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs and sets out requirements for such notice. The bill authorizes each party subject to a claim to attend the inspection conducted by the engineer, either personally or through an agent.

C.S.H.B. 1455 requires the association, not later than the 30th day before the date the special meeting is held, to provide each unit owner with written notice of the date, time, and location of the meeting and sets out requirements relating to the notice. The bill requires an association, before providing such notice, to provide the independent third-party report to each unit owner

and each party subject to a claim on completion of the report and to allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report. The bill's provisions relating to procedures for filing suit or initiating arbitration proceedings for defect or design claims under the Uniform Condominium Act do not apply to an association with less than eight units.

C.S.H.B. 1455 authorizes a declaration to provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved. The bill prohibits the retroactive application of an amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurred before the date of the amendment.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1455 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter C, Chapter 82, Property Code, is amended by adding Section 82.119 to read as follows:

Sec. 82.119. PROCEDURES REQUIRED BEFORE FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS.

(a) In addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration, an association, before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, must:

(1) obtain an inspection and a written independent third-party report from a licensed professional engineer that:

(A) identifies the specific units or common elements subject to the claim;

(B) describes the present physical condition of the units or common elements subject to the claim; and

(C) describes any modifications, maintenance, or repairs to the units or common elements performed by the unit

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter C, Chapter 82, Property Code, is amended by adding Sections 82.119 and 82.120 to read as follows:

Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN ASSOCIATIONS. (a) This section does not apply to an association with less than eight units.

(b) In addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration, an association, before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, must:

(1) obtain an inspection and a written independent third-party report from a licensed professional engineer that:

(A) identifies the specific units or common elements subject to the claim;

(B) describes the present physical condition of the units or common elements subject to the claim; and

(C) describes any modifications, maintenance, or repairs to the units or common elements performed by the unit

owners or the association; and
(2) obtain approval from unit owners holding at least 67 percent of the total votes in the association at a special meeting called in accordance with the declaration or bylaws, as applicable.

(b) The independent third-party report required by Subsection (a)(1):

(1) must be obtained directly by the association and paid for by the association; and

(2) may not be prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the association in the claim.

(c) The association must provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs. The notice must:

(1) identify the party engaged to prepare the report required by Subsection (a)(1);

(2) identify the specific units or common elements to be inspected; and

(3) include the date and time the inspection will occur.

(d) Each party subject to a claim may attend the inspection conducted by the engineer, either personally or through an agent.

(e) Before providing the notice of the special meeting under Subsection (f), an association must:

(1) on completion of the independent third-party report, provide the report to each unit owner and each party subject to a claim; and

(2) allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report.

(f) Not later than the 30th day before the date the special meeting described by Subsection (a)(2) is held, the association must provide each unit owner with written notice of the date, time, and location of the meeting. The notice must also include:

(1) a description of the nature of the claim, the relief sought, the anticipated duration of prosecuting the claim, and the likelihood of success;

(2) a copy of the report required by Subsection (a)(1);

(3) a copy of the contract or proposed contract between the association and the attorney selected by the board to assert or

owners or the association; and
(2) obtain approval from unit owners holding at least 67 percent of the total votes in the association, voting in person or by proxy as provided by Section 82.110, at a special meeting called in accordance with the declaration or bylaws, as applicable.

(c) The independent third-party report required by Subsection (b)(1):

(1) must be obtained directly by the association and paid for by the association; and

(2) may not be prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the association in the claim.

(d) The association must provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs. The notice must:

(1) identify the party engaged to prepare the report required by Subsection (b)(1);

(2) identify the specific units or common elements to be inspected; and

(3) include the date and time the inspection will occur.

(e) Each party subject to a claim may attend the inspection conducted by the engineer, either personally or through an agent.

(f) Before providing the notice of the special meeting under Subsection (g), an association must:

(1) on completion of the independent third-party report, provide the report to each unit owner and each party subject to a claim; and

(2) allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report.

(g) Not later than the 30th day before the date the special meeting described by Subsection (b)(2) is held, the association must provide each unit owner with written notice of the date, time, and location of the meeting. The notice must also include:

(1) a description of the nature of the claim, the relief sought, the anticipated duration of prosecuting the claim, and the likelihood of success;

(2) a copy of the report required by Subsection (b)(1);

(3) a copy of the contract or proposed contract between the association and the attorney selected by the board to assert or

provide assistance with the claim;
(4) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which the association may be liable as a result of prosecuting the claim;
(5) a summary of the steps previously taken and the steps proposed to be taken by the association to resolve the claim;
(6) an estimate, prepared by a licensed appraiser, of the impact on the value of each unit if the claim is prosecuted and the impact on the value of each unit after resolution of the claim;
(7) an estimate, prepared by a licensed real estate broker, of the impact on the marketability of each unit if the claim is prosecuted and the impact on the marketability of each unit while the claim is prosecuted;
(8) a description of the manner in which the association proposes to fund the cost of prosecuting the claim; and
(9) an estimate of the impact on the finances of the association, including the impact on present and projected reserves, if the association is not the prevailing party in the claim.
(g) The notice required by Subsection (f) must be prepared and signed by a person who is not:
(1) the attorney who represents or will represent the association in the claim;
(2) a member of the law firm of the attorney who represents or will represent the association in the claim; or
(3) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the association in the claim.
(h) For purposes of the special meeting described by Subsection (a)(2), a quorum is present throughout the meeting if persons entitled to cast more than 50 percent of the votes in the association are present in person at the beginning of the meeting.
(i) The declaration may provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved.
An amendment to the declaration that modifies or removes the arbitration

provide assistance with the claim;
(4) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which the association may be liable as a result of prosecuting the claim;
(5) a summary of the steps previously taken by the association to resolve the claim;
(6) a statement that initiating a lawsuit or arbitration proceeding to resolve a claim may affect the market value, marketability, or refinancing of a unit while the claim is prosecuted; and
(7) a description of the manner in which the association proposes to fund the cost of prosecuting the claim.

(h) The notice required by Subsection (g) must be prepared and signed by a person who is not:
(1) the attorney who represents or will represent the association in the claim;
(2) a member of the law firm of the attorney who represents or will represent the association in the claim; or
(3) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the association in the claim.

Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS.

(a) A declaration may provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved.

requirement or the process associated with resolution of a claim may not apply retroactively to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurred before the date of the amendment.

SECTION 2. Section 82.119, Property Code, as added by this Act, applies only to a claim based on an act or omission that occurs on or after the effective date of this Act. A claim based on an act or omission that occurred before the effective date of this Act is governed by the law applicable to the claim immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

(b) An amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim may not apply retroactively to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurred before the date of the amendment.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.