

BILL ANALYSIS

Senate Research Center
84R5001 LEH-F

S.B. 834
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State Affairs
4/17/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a condominium association may file a suit or initiate an arbitration proceeding for defects or design claims without informing residents or condominium owners. The pendency of these claims can have an adverse effect on re-sale value and overall marketability of these properties, in effect giving to the condominium association the ability to adversely affect the property value of owners without notice, much less input.

S.B. 834 addresses these issues by establishing a required process before a condominium association files suit or initiates an arbitration proceeding. This required process would include notice to potentially affected residents or owners and an affirmative vote of unit owners amounting to at least 67 percent of the total votes in the association.

As proposed, S.B. 834 amends current law relating to procedures required before a condominium association files a suit or initiates an arbitration proceeding for a defect or design claim.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 82, Property Code, by adding Section 82.119, as follows:

Sec. 82.119. PROCEDURES REQUIRED BEFORE FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS. (a) Requires a condominium 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, in addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration, to:

(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) Provides that the independent third-party report required by Subsection (a)(1) is:

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

(2) prohibited 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) 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. Requires that the notice:

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

(e) Requires an association, before providing the notice of the special meeting under Subsection (f), to:

(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) Requires the association to provide each unit owner with written notice of the date, time, and location of the meeting, not later than the 30th day before the date the special meeting described by Subsection (a)(2) is held. Requires that the notice 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 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) Requires that the notice required by Subsection (f) 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) Provides that, 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) Authorizes the 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. Prohibits an amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim from applying 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. Makes application of Section 82.119, Property Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2015.