

By: King of Parker, Burrows

H.B. No. 1455

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to procedures required before certain condominium  
3 associations file a suit or initiate an arbitration proceeding for  
4 a defect or design claim.

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

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

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

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

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

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

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

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

1 or the association; and

2 (2) obtain approval from unit owners holding more than  
3 50 percent of the total votes allocated under the declaration,  
4 voting in person or by proxy as provided by Section 82.110, at a  
5 regular, annual, or special meeting called in accordance with the  
6 declaration or bylaws, as applicable.

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

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

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

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

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

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

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

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

27 (f) Not later than the 30th day before the date the meeting

1 described by Subsection (b)(2) is held, the association must  
2 provide each unit owner with written notice of the date, time, and  
3 location of the meeting. The notice must also include:

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

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

9 (3) a copy of the contract or proposed contract  
10 between the association and the attorney selected by the board to  
11 assert or provide assistance with the claim;

12 (4) a description of the attorney's fees, consultant  
13 fees, expert witness fees, and court costs, whether incurred by the  
14 association directly or for which the association may be liable as a  
15 result of prosecuting the claim;

16 (5) a summary of the steps previously taken by the  
17 association to resolve the claim;

18 (6) a statement that initiating a lawsuit or  
19 arbitration proceeding to resolve a claim may affect the market  
20 value, marketability, or refinancing of a unit while the claim is  
21 prosecuted; and

22 (7) a description of the manner in which the  
23 association proposes to fund the cost of prosecuting the claim.

24 (g) The notice required by Subsection (f) must be prepared  
25 and signed by a person who is not:

26 (1) the attorney who represents or will represent the  
27 association in the claim;

1           (2) a member of the law firm of the attorney who  
2 represents or will represent the association in the claim; or

3           (3) employed by or otherwise affiliated with the law  
4 firm of the attorney who represents or will represent the  
5 association in the claim.

6           (h) The period of limitations for filing a suit or  
7 initiating an arbitration proceeding for a claim described by  
8 Subsection (b) is tolled until the first anniversary of the date the  
9 procedures are initiated by the association under that subsection  
10 if the procedures are initiated during the final year of the  
11 applicable period of limitation.

12           Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS. (a) A  
13 declaration may provide that a claim pertaining to the construction  
14 or design of a unit or the common elements must be resolved by  
15 binding arbitration and may provide for a process by which the claim  
16 is resolved.

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

23           SECTION 2. Section 82.119, Property Code, as added by this  
24 Act, applies only to a suit filed or arbitration proceeding  
25 initiated on or after the effective date of this Act. A suit filed  
26 or arbitration proceeding initiated before the effective date of  
27 this Act is governed by the law applicable to the claim immediately

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1 before the effective date of this Act, and that law is continued in  
2 effect for that purpose.

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