

By: King of Parker

H.B. No. 1455

Substitute the following for H.B. No. 1455:

By: Schofield

C.S.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 at least  
3 67 percent of the total votes in the association, voting in person  
4 or by proxy as provided by Section 82.110, at a special meeting  
5 called in accordance with the declaration or bylaws, as applicable.

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

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

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

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

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

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

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

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

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

27 (1) on completion of the independent third-party

1 report, provide the report to each unit owner and each party subject  
2 to a claim; and

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

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

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

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

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

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

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

24 (6) a statement that initiating a lawsuit or  
25 arbitration proceeding to resolve a claim may affect the market  
26 value, marketability, or refinancing of a unit while the claim is  
27 prosecuted; and

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

3           (h) The notice required by Subsection (g) must be prepared  
4 and signed by a person who is not:

5           (1) the attorney who represents or will represent the  
6 association in the claim;

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

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

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 claim based on an act or omission that occurs  
25 on or after the effective date of this Act. A claim based on an act  
26 or omission that occurred before the effective date of this Act is  
27 governed by the law applicable to the claim immediately before the

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

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