

1-1 By: King of Parker, Burrows H.B. No. 1455
 1-2 (Senate Sponsor - Creighton)
 1-3 (In the Senate - Received from the House May 11, 2015;
 1-4 May 13, 2015, read first time and referred to Committee on State
 1-5 Affairs; May 21, 2015, reported favorably by the following vote:
 1-6 Yeas 6, Nays 0; May 21, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16			X	
1-17	X			

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to procedures required before certain condominium
 1-21 associations file a suit or initiate an arbitration proceeding for
 1-22 a defect or design claim.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subchapter C, Chapter 82, Property Code, is
 1-25 amended by adding Sections 82.119 and 82.120 to read as follows:

1-26 Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING
 1-27 ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN
 1-28 ASSOCIATIONS. (a) This section does not apply to an association
 1-29 with less than eight units.

1-30 (b) In addition to any preconditions to filing suit or
 1-31 initiating an arbitration proceeding included in the declaration,
 1-32 an association, before filing suit or initiating an arbitration
 1-33 proceeding to resolve a claim pertaining to the construction or
 1-34 design of a unit or the common elements, must:

1-35 (1) obtain an inspection and a written independent
 1-36 third-party report from a licensed professional engineer that:

1-37 (A) identifies the specific units or common
 1-38 elements subject to the claim;

1-39 (B) describes the present physical condition of
 1-40 the units or common elements subject to the claim; and

1-41 (C) describes any modifications, maintenance, or
 1-42 repairs to the units or common elements performed by the unit owners
 1-43 or the association; and

1-44 (2) obtain approval from unit owners holding more than
 1-45 50 percent of the total votes allocated under the declaration,
 1-46 voting in person or by proxy as provided by Section 82.110, at a
 1-47 regular, annual, or special meeting called in accordance with the
 1-48 declaration or bylaws, as applicable.

1-49 (c) The association must provide written notice of the
 1-50 inspection to be conducted by the engineer to each party subject to
 1-51 a claim not later than the 10th day before the date the inspection
 1-52 occurs. The notice must:

1-53 (1) identify the party engaged to prepare the report
 1-54 required by Subsection (b)(1);

1-55 (2) identify the specific units or common elements to
 1-56 be inspected; and

1-57 (3) include the date and time the inspection will
 1-58 occur.

1-59 (d) Each party subject to a claim may attend the inspection
 1-60 conducted by the engineer, either personally or through an agent.

1-61 (e) Before providing the notice of the meeting under

2-1 Subsection (f), an association must:

2-2 (1) on completion of the independent third-party
2-3 report, provide the report to each unit owner and each party subject
2-4 to a claim; and

2-5 (2) allow each party subject to a claim at least 90
2-6 days after the date of completion of the report to inspect and
2-7 correct any condition identified in the report.

2-8 (f) Not later than the 30th day before the date the meeting
2-9 described by Subsection (b)(2) is held, the association must
2-10 provide each unit owner with written notice of the date, time, and
2-11 location of the meeting. The notice must also include:

2-12 (1) a description of the nature of the claim, the
2-13 relief sought, the anticipated duration of prosecuting the claim,
2-14 and the likelihood of success;

2-15 (2) a copy of the report required by Subsection
2-16 (b)(1);

2-17 (3) a copy of the contract or proposed contract
2-18 between the association and the attorney selected by the board to
2-19 assert or provide assistance with the claim;

2-20 (4) a description of the attorney's fees, consultant
2-21 fees, expert witness fees, and court costs, whether incurred by the
2-22 association directly or for which the association may be liable as a
2-23 result of prosecuting the claim;

2-24 (5) a summary of the steps previously taken by the
2-25 association to resolve the claim;

2-26 (6) a statement that initiating a lawsuit or
2-27 arbitration proceeding to resolve a claim may affect the market
2-28 value, marketability, or refinancing of a unit while the claim is
2-29 prosecuted; and

2-30 (7) a description of the manner in which the
2-31 association proposes to fund the cost of prosecuting the claim.

2-32 (g) The notice required by Subsection (f) must be prepared
2-33 and signed by a person who is not:

2-34 (1) the attorney who represents or will represent the
2-35 association in the claim;

2-36 (2) a member of the law firm of the attorney who
2-37 represents or will represent the association in the claim; or

2-38 (3) employed by or otherwise affiliated with the law
2-39 firm of the attorney who represents or will represent the
2-40 association in the claim.

2-41 (h) The period of limitations for filing a suit or
2-42 initiating an arbitration proceeding for a claim described by
2-43 Subsection (b) is tolled until the first anniversary of the date the
2-44 procedures are initiated by the association under that subsection
2-45 if the procedures are initiated during the final year of the
2-46 applicable period of limitation.

2-47 Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS. (a) A
2-48 declaration may provide that a claim pertaining to the construction
2-49 or design of a unit or the common elements must be resolved by
2-50 binding arbitration and may provide for a process by which the claim
2-51 is resolved.

2-52 (b) An amendment to the declaration that modifies or removes
2-53 the arbitration requirement or the process associated with
2-54 resolution of a claim may not apply retroactively to a claim
2-55 regarding the construction or design of units or common elements
2-56 based on an alleged act or omission that occurred before the date of
2-57 the amendment.

2-58 SECTION 2. Section 82.119, Property Code, as added by this
2-59 Act, applies only to a suit filed or arbitration proceeding
2-60 initiated on or after the effective date of this Act. A suit filed
2-61 or arbitration proceeding initiated before the effective date of
2-62 this Act is governed by the law applicable to the claim immediately
2-63 before the effective date of this Act, and that law is continued in
2-64 effect for that purpose.

2-65 SECTION 3. This Act takes effect September 1, 2015.

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