

By: Creighton

S.B. No. 834

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures required before a condominium association
3 files a suit or initiates an arbitration proceeding for a defect or
4 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 Section 82.119 to read as follows:

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

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

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

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

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

21 (C) describes any modifications, maintenance, or
22 repairs to the units or common elements performed by the unit owners
23 or the association; and

24 (2) obtain approval from unit owners holding at least

1 67 percent of the total votes in the association at a special
2 meeting called in accordance with the declaration or bylaws, as
3 applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (5) a summary of the steps previously taken and the
21 steps proposed to be taken by the association to resolve the claim;

22 (6) an estimate, prepared by a licensed appraiser, of
23 the impact on the value of each unit if the claim is prosecuted and
24 the impact on the value of each unit after resolution of the claim;

25 (7) an estimate, prepared by a licensed real estate
26 broker, of the impact on the marketability of each unit if the claim
27 is prosecuted and the impact on the marketability of each unit while

1 the claim is prosecuted;

2 (8) a description of the manner in which the
3 association proposes to fund the cost of prosecuting the claim; and

4 (9) an estimate of the impact on the finances of the
5 association, including the impact on present and projected
6 reserves, if the association is not the prevailing party in the
7 claim.

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

10 (1) the attorney who represents or will represent the
11 association in the claim;

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

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

17 (h) For purposes of the special meeting described by
18 Subsection (a)(2), a quorum is present throughout the meeting if
19 persons entitled to cast more than 50 percent of the votes in the
20 association are present in person at the beginning of the meeting.

21 (i) The declaration may provide that a claim pertaining to
22 the construction or design of a unit or the common elements must be
23 resolved by binding arbitration and may provide for a process by
24 which the claim is resolved. An amendment to the declaration that
25 modifies or removes the arbitration requirement or the process
26 associated with resolution of a claim may not apply retroactively
27 to a claim regarding the construction or design of units or common

1 elements based on an alleged act or omission that occurred before
2 the date of the amendment.

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

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