

1-1 By: Creighton S.B. No. 834  
1-2 (In the Senate - Filed February 26, 2015; March 3, 2015,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 April 29, 2015, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 29, 2015,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Ellis	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Fraser	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 834 By: Creighton

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to procedures required before certain condominium  
1-22 associations file a suit or initiate an arbitration proceeding for  
1-23 a defect or design claim.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subchapter C, Chapter 82, Property Code, is  
1-26 amended by adding Sections 82.119 and 82.120 to read as follows:

1-27 Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING  
1-28 ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN  
1-29 ASSOCIATIONS. (a) This section does not apply to an association  
1-30 with less than eight units.

1-31 (b) In addition to any preconditions to filing suit or  
1-32 initiating an arbitration proceeding included in the declaration,  
1-33 an association, before filing suit or initiating an arbitration  
1-34 proceeding to resolve a claim pertaining to the construction or  
1-35 design of a unit or the common elements, must:

1-36 (1) obtain an inspection and a written independent  
1-37 third-party report from a licensed professional engineer that:

1-38 (A) identifies the specific units or common  
1-39 elements subject to the claim;

1-40 (B) describes the present physical condition of  
1-41 the units or common elements subject to the claim; and

1-42 (C) describes any modifications, maintenance, or  
1-43 repairs to the units or common elements performed by the unit owners  
1-44 or the association; and

1-45 (2) obtain approval from unit owners holding more than  
1-46 50 percent of the total votes in the association, voting in person  
1-47 or by proxy as provided by Section 82.110, at a regular, annual, or  
1-48 special meeting called in accordance with the declaration or  
1-49 bylaws, as applicable.

1-50 (c) The association must provide written notice of the  
1-51 inspection to be conducted by the engineer to each party subject to  
1-52 a claim not later than the 10th day before the date the inspection  
1-53 occurs. The notice must:

1-54 (1) identify the party engaged to prepare the report  
1-55 required by Subsection (b)(1);

1-56 (2) identify the specific units or common elements to  
1-57 be inspected; and

1-58 (3) include the date and time the inspection will  
1-59 occur.

1-60 (d) Each party subject to a claim may attend the inspection

2-1 conducted by the engineer, either personally or through an agent.

2-2 (e) Before providing the notice of the special meeting under  
2-3 Subsection (f), an association must:

2-4 (1) on completion of the independent third-party  
2-5 report, provide the report to each unit owner and each party subject  
2-6 to a claim; and

2-7 (2) allow each party subject to a claim at least 90  
2-8 days after the date of completion of the report to inspect and  
2-9 correct any condition identified in the report.

2-10 (f) Not later than the 30th day before the date the special  
2-11 meeting described by Subsection (b)(2) is held, the association  
2-12 must provide each unit owner with written notice of the date, time,  
2-13 and location of the meeting. The notice must also include:

2-14 (1) a description of the nature of the claim, the  
2-15 relief sought, the anticipated duration of prosecuting the claim,  
2-16 and the likelihood of success;

2-17 (2) a copy of the report required by Subsection  
2-18 (b)(1);

2-19 (3) a copy of the contract or proposed contract  
2-20 between the association and the attorney selected by the board to  
2-21 assert or provide assistance with the claim;

2-22 (4) a description of the attorney's fees, consultant  
2-23 fees, expert witness fees, and court costs, whether incurred by the  
2-24 association directly or for which the association may be liable as a  
2-25 result of prosecuting the claim;

2-26 (5) a summary of the steps previously taken by the  
2-27 association to resolve the claim;

2-28 (6) a statement that initiating a lawsuit or  
2-29 arbitration proceeding to resolve a claim may affect the market  
2-30 value, marketability, or refinancing of a unit while the claim is  
2-31 prosecuted; and

2-32 (7) a description of the manner in which the  
2-33 association proposes to fund the cost of prosecuting the claim.

2-34 (g) The notice required by Subsection (f) must be prepared  
2-35 and signed by a person who is not:

2-36 (1) the attorney who represents or will represent the  
2-37 association in the claim;

2-38 (2) a member of the law firm of the attorney who  
2-39 represents or will represent the association in the claim; or

2-40 (3) employed by or otherwise affiliated with the law  
2-41 firm of the attorney who represents or will represent the  
2-42 association in the claim.

2-43 Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS.

2-44 (a) A declaration may provide that a claim pertaining to the  
2-45 construction or design of a unit or the common elements must be  
2-46 resolved by binding arbitration and may provide for a process by  
2-47 which the claim is resolved.

2-48 (b) An amendment to the declaration that modifies or removes  
2-49 the arbitration requirement or the process associated with  
2-50 resolution of a claim may not apply retroactively to a claim  
2-51 regarding the construction or design of units or common elements  
2-52 based on an alleged act or omission that occurred before the date of  
2-53 the amendment.

2-54 SECTION 2. Section 82.119, Property Code, as added by this  
2-55 Act, applies only to a claim filed on or after the effective date of  
2-56 this Act. A claim filed before the effective date of this Act is  
2-57 governed by the law applicable to the claim immediately before the  
2-58 effective date of this Act, and that law is continued in effect for  
2-59 that purpose.

2-60 SECTION 3. This Act takes effect September 1, 2015.

2-61 \* \* \* \* \*