

- SUBJECT:** Notice requirements for construction defect claims in condominiums
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler
- 0 nays
- 1 absent — Bailey
- WITNESSES:** For — Robert Bass, Texas Building Branch- AGC; (*Registered, but did not testify*: Judd Austin, Sandy Denton, and Robert Garza, Community Associations Institute of Texas/TLAC, Aston M. Bryan, Arroyo Verde Homeowners Assoc.; Andy Hill, Chade Nelson and Stephanie Redding, Communities for Fair Legislation; Reynaldo Saucedo, Gardens Medical Association; Andrea Smith and Stephanie Smith, Select Management; Dawn Tomaschefsky, Encino Creek Homeowners Association; and 11 others.
- Against — (*Registered, but did not testify*: Joey Park, Texas College of Real Estate Attorneys)
- On — (*Registered, but did not testify*: Amy McLin)
- BACKGROUND:** Property Code, ch. 27 establishes notice requirements and procedures for resolving claims prior to commencement of litigation or initiation of an arbitration proceeding against a contractor for alleged construction defects arising on a residential construction project.
- Sec. 27.007 requires construction contracts to contain a disclosure statement informing purchasers of their right to recover damages resulting from a contractor's performance. A purchaser with a complaint about an uncorrected construction defect caused by the contractor's performance and not covered through normal warranty service must provide notice describing the problem to the contractor at least 60 days before the purchaser files a lawsuit or initiates arbitration. The contractor is entitled to an opportunity to inspect and cure the defect before suit is filed or arbitration is pursued.

DIGEST:

HB 3147 would exempt a contract between a developer of a condominium and a contractor for the construction or repair of a residence or appurtenance to a residence in a condominium from the disclosure statement requirement in Property Code, sec. 27.007.

HB 3147 would amend the definition of “contractor” in Property Code, sec. 27.001 to specifically include a person contracting with an owner or the developer of a condominium for the construction of a new residence, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence.

The bill would add “common elements” in a condominium to the definition of “residence.” It also would define “developer of a condominium” to mean a declarant of a condominium consisting of one or more residences. “Declarant” in the Property Code means a person, or group of persons acting in concert, who:

- as part of a common promotional plan, offered to dispose of the person’s interest in a unit not previously disposed of; or
- reserved or succeeded to any special declarant right.

The bill also would change language in the disclosure statement to inform the purchaser of the right to recover damages arising from a “construction defect,” rather than the performance of the contract, that had not been corrected “as may be required by law or by contract,” rather than through normal warranty service.

The bill would take effect September 1, 2007, and would apply to contracts entered into on or after that date.

SUPPORTERS
SAY:

HB 3147 would remedy the confusion regarding the applicability of Property Code, ch. 27 notice requirements and procedures to remedy alleged construction defects arising on condominium projects. While the current definition of “residence” expressly includes a “unit” in a residential condominium, it is not clear whether ch. 27 applies to common elements of a condominium development. In addition, it is unclear under current law whether parties involved in the development and construction of residential condominiums are required to provide the disclosure notice, and whether condominium unit owners and owners associations are required to comply with notice and settlement procedures before initiating

legal action against the developer or the third-party contractor for alleged construction defects in a unit or the common elements of a condominium.

By amending the definitions of “contractor” and “residence,” the bill would clarify that all construction defect claims on a residential condominium project would be covered by the notice requirements and procedures for resolving claims in ch. 27. In addition, HB 3147 would make clear that the developer of a condominium project would provide the disclosure notice to the unit purchaser.

**OPPONENTS
SAY:**

Piecemeal legislation regarding the real estate industry creates more confusion than benefit. This approach makes it difficult for contractors, associations, purchasers, and developers to be on notice of their rights and responsibilities. Such problems should be addressed by a comprehensive bill.