

SUBJECT: Allowing service on owners of units in abandoned Houston condominiums

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 9 ayes — Deshotel, Elkins, Christian, England, Gattis, Keffer, S. Miller, Orr, Quintanilla

0 nays

2 absent — Giddings, S. Turner

WITNESSES: For — Victor Alvarez, on behalf of Houston Councilmember Toni Lawrence; Sandra Eidson, City of Houston; Shirley Gonzalez; Debra Harlow, Greater Inwood Partnership; Kenneth Miller, Near Northwest Management District; *(Registered, but did not testify: Wayne Norden)*

Against — None

On — Jim Robinson

BACKGROUND: Property Code, ch. 82, the Uniform Condominium Act, defines “condominium” as a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions.

Local Government Code, ch. 214 authorizes municipalities to adopt ordinances to require the vacation, relocation of occupants, securing, repair, removal, or demolition of a buildings that local buildings and standards commissions deem dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare.

Local Government Code, sec. 54.035 requires that a buildings and standards commission’s notice be sent by personal delivery, by certified mail with return receipt requested, or by delivery by the U.S. Postal Service using signature confirmation service, to the property owner of record or any lien holder. Alternatively, the notice could be posted on the front door of the building.

DIGEST:

(The author plans to offer a floor substitute for HB 3128. The analysis is of the proposed floor substitute:)

The proposed floor substitute for HB 3128 would amend Property Code, ch. 82, Property Code, sec. 82.153, and Local Government Code, sec. 54.035 to allow the City of Houston to serve legal notice to condominium unit owners at the last address provided to the Harris County Appraisal District (HCAD) by those owners. The provision would apply only to condominiums that are located entirely or partially within the city limits of Houston.

HB 3128 also would amend Local Government Code, sec. 214.001 to provide that service to Houston condominium unit owners at the last HCAD address or to the condominium's registered agent would be sufficient for hearings on potentially unsafe and dangerous buildings.

Service of the notices would be governed by the procedures defined by Texas Rules of Procedure, rule 21a, on proper service of legal documents. However, the bill would provide that a notice mailed to the condominium unit's address provided to the HCAD still would be valid, even if it is returned as refused or unclaimed. The bill would not allow a property owner to offer proof at a judicial or administrative or at appeal that the property owner did not receive proper delivery of the service within three days from the date of receipt by the U.S. Post Office.

The bill would take effect on September 1, 2009.

SUPPORTERS
SAY:

The proposed floor substitute to HB 3128 would provide a clear and simple compromise to protect Houston citizens from the hazards of large abandoned and dangerous condominiums, and to preserve the property right of condominium units. In situations involving apartments, the city need only notify the property owner of any administrative or legal proceedings. In a condominium, each unit owner has an undivided ownership interest and must also receive a separate notice. However, serving legal notices can be ineffective and costly if the unit owners have abandoned the property and possibly fled the city, state, or even the country. The city faces prohibitive costs from trying to locate unit owners. There also could be later lawsuits from condominium unit owners who might resurface and claim that their rights had been violated.

The floor substitute would allow a reasonable alternative to current service procedures when a property owner's whereabouts remain unknown. The

law allows service through publication in a newspaper or allows for appointment of an attorney ad litem. However, few people read the legal notices in the newspaper classifieds any more, even though those ads are very expensive. The process of appointing ad litem representatives can be time-consuming and costly as well. The substitute for HB 3148 would provide a better answer than the original bill's proposal to require naming of a registered agent to accept legal service or to name the secretary of state as a default recipient of service. Condominium unit owners already must keep their addresses current with the appraisal district. If an owner has abandoned the property and not paid taxes, the owner should not be able to reassert at a later date that he or she failed to get proper notice of the proceedings against the condominium property.

HB 3128 would have only a very limited application to condominium unit owners in administrative proceedings for substandard and abandoned condominiums. The bill also would be further restricted so that it would apply only to Houston. The service process would not be permitted for other legal actions by the city or for the collections of debts.

While Houston has many abandoned condominiums that blight the surrounding neighborhoods, the Candlelight Trails Condominiums serve as a poster child for the passage of HB 3128. The city has spent more than \$250,000 in a futile effort to serve the unit owners, who have obviously fled the condominium community. Yet, the buildings and the dangers they pose still remain.

**OPPONENTS
SAY:**

The Legislature should be cautious in adopting any legislation that could diminish property rights. Current methods for serving unknown persons are sufficient without the changes proposed in this legislation.

**OTHER
OPPONENTS
SAY:**

The bill should not be bracketed to limit its application only to Houston. Other large and small cities have similar problems with abandoned condominiums where unit owners cannot be located readily for service.

NOTES:

The original bill would have required that the declaration of filing for a condominium required by Property Code, sec. 82.055 be amended to include the name, physical address, and mailing address for the registered agent for service of process for any condominium located in Houston. The original bill would have allowed the city of Houston to serve this registered agent with any service on a proposed repair, removal or

demolition order or would have allowed service on the secretary of state as default if no registered agent were to be registered or could not be located.

The floor substitute would apply only to Houston condominiums that recorded declarations of filing before January 1, 1994, and would allow service on the unit owner's last address provided to the Harris County Appraisal District.