

## **BILL ANALYSIS**

Senate Research Center  
80R8516 JPL-F

H.B. 3147  
By: Solomons (Carona)  
Business & Commerce  
5/16/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 27, Property Code, 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. A disclosure notice advising owners of the Chapter 27 notice requirements as a prerequisite to filing suit or initiating an arbitration proceeding is required to be included in contracts between the contractor and the owner. Under Section 27.001 (5) the definition of the term "contractor" includes (i) a builder as defined in Chapter 401, Property Code, (ii) those persons who contract with an owner for the sale of a residence constructed by the person, and (iii) those persons who contract with an owner for the construction or repair of the owner's residence. Under Section 27.001 (8), Property Code, the definition of the term "residence" includes a unit in a residential condominium.

There is considerable confusion with regard to the applicability of Chapter 27 to claims for alleged construction defects arising on condominium projects because the definition of "residence" expressly includes a "unit" in a residential condominium. The definition is silent with regard to the "common elements" of a residential condominium (such as the exterior walls, roof, structural elements and foundation, common mechanical and plumbing systems, lobbies, and hallways). Accordingly, it is unclear whether claims for alleged defects in connection with the construction of the common elements in a residential condominium would be covered by the statute. Additionally, there is confusion with regard to the definition of "contractor" in connection with condominium construction because most construction contracts for new residential condominium construction are between a developer (who sells the completed units to the unit owners) and a third-party contractor. Parties involved in the development and construction of residential condominiums are unable to determine whether they are required to provide the disclosure notice mandated by Chapter 27, and condominium unit owners and unit owners associations are unable to determine if they are required to comply with the statutory notice and settlement procedures before initiating any legal action against a developer or the third-party contractor for an alleged construction defect in a residential condominium unit or the common elements.

As proposed, H.B. 3147 modifies the definition of "contractor" and "residence" so that all construction defect claims arising on a residential condominium project are covered by Chapter 27, Property Code, regardless of whether the alleged defect arises from construction of an individual unit or the common elements and regardless of whether the claim is against the developer or a third-party contractor. This bill is intended to clarify the requirement that the developer of a condominium project must provide the disclosure notice to the unit purchaser.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 27.001, Property Code, by amending Subdivisions (5) and (7) and adding Subdivision (10), to redefine "contractor" and "residence" and define "developer of a condominium."

SECTION 2. Amends Section 27.007(a), Property Code, to require a written contract subject to this chapter, other than 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, to contain in the contract, rather than next to the signature lines in the contract, a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to a certain notice.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2007.