

HCS SS SCS SB 168 -- RESTRICTIVE REAL ESTATE COVENANTS AND DEFECTIVE RESIDENTIAL CONSTRUCTION

This bill requires that any restrictive real estate covenant included in an association's governing document be removed by the board of directors of that association. If the association fails to remove a restrictive covenant within 30 days of receiving a written request, injunctive relief may be granted to any individual or organization requesting the removal. This provision becomes effective January 1, 2006.

A procedural prerequisite for filing a lawsuit for defective residential construction is established. In its main provisions, the bill:

- (1) Requires contractors to provide written notice to homeowners, including homeowners' associations, upon entering contracts of the right to offer to cure construction defects before homeowners may file legal actions and specifies the required notice language;
- (2) Clarifies that if a homeowner countersues a contractor in a suit originally filed by the contractor against the homeowner, the procedural prerequisites do not apply;
- (3) Requires homeowners to provide a written notice to contractors detailing the alleged defective construction prior to filing a lawsuit;
- (4) Requires contractors to respond timely in writing offering an inspection followed by repair, monetary compensation, or disputation of the claim; offering timely repair; offering repair and compensation; offering monetary compensation; or disputing the claim. If the contractor disputes the claim or fails to timely respond, the homeowner may file suit. If the homeowner rejects a contractor's offer, the homeowner must notify the contractor, and then the homeowner may file suit. If the homeowner accepts a contractor's offer that includes repair, the homeowner must provide reasonable access to the premises;
- (5) Authorizes the homeowner to take immediate action to prevent imminent injury to persons or additional significant and material damage to the residence without violating the procedural prerequisites; and
- (6) Specifies the mediation procedure option if agreed upon by the homeowner and contractor.