

By: Leach

H.B. No. 2022

Substitute the following for H.B. No. 2022:

By: Schofield

C.S.H.B. No. 2022

A BILL TO BE ENTITLED

1 AN ACT

2 relating to residential construction liability.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 27.001, Property Code, is amended to
5 read as follows:

6 Sec. 27.001. DEFINITIONS. In this chapter:

7 (1) "Action" means a court or judicial proceeding or
8 an arbitration.

9 (2) "Appurtenance" means any garage, outbuilding,
10 retaining wall, or other structure or recreational facility that is
11 constructed by a contractor in connection with the construction or
12 alteration of a residence, regardless of whether it is attached to
13 or [appurtenant to a residence but is not] a part of the dwelling
14 unit.

15 (3) [~~"Commission" means the Texas Residential~~
16 ~~Construction Commission.~~]

17 [~~(4)~~] "Construction defect" [~~has the meaning assigned~~
18 ~~by Section 401.004 for an action to which Subtitle D, Title 16,~~
19 ~~applies and for any other action]~~ means a deficiency in [matter
20 concerning] the design, construction, or repair of a new residence,
21 of an alteration of or repair or addition to an existing residence,
22 or of an appurtenance to a residence, on which a person has a
23 complaint against a contractor. [~~The term may include any physical~~
24 ~~damage to the residence, any appurtenance, or the real property on~~

1 ~~which the residence and appurtenance are affixed proximately caused~~
2 ~~by a construction defect.]~~

3 (4) [~~(5)~~] "Contractor":

4 (A) means:

5 (i) a builder [~~, as defined by Section~~
6 ~~401.003,~~] contracting with an owner for the construction or repair
7 of a new residence, for the repair or alteration of or an addition
8 to an existing residence, or for the construction, sale,
9 alteration, addition, or repair of an appurtenance to a new or
10 existing residence;

11 (ii) any person contracting [~~with a~~
12 ~~purchaser~~] for the sale or construction of a new residence
13 constructed by or on behalf of that person; or

14 (iii) a person contracting with an owner or
15 the developer of a condominium or other housing project for the
16 construction or sale of one or more [~~a~~] new residences [~~residence~~],
17 for an alteration of or an addition to an existing residence, for
18 repair of a new or existing residence, or for the construction,
19 sale, alteration, addition, or repair of an appurtenance to a new or
20 existing residence; and

21 (B) includes:

22 (i) an owner, officer, director,
23 shareholder, partner, or employee of the contractor; and

24 (ii) a risk retention group registered
25 under Chapter 2201 [~~Article 21.54~~], Insurance Code, that insures
26 all or any part of a contractor's liability for the cost to repair a
27 residential construction defect.

1 (5) [~~(6)~~] "Economic damages" means compensatory
2 damages for pecuniary loss proximately caused by a construction
3 defect. The term does not include exemplary damages or damages for
4 bodily or personal injury, physical pain and mental anguish, loss
5 of consortium, disfigurement, physical impairment, or loss of
6 companionship and society.

7 (6) [~~(7)~~] "Residence" means the real property and
8 improvements for a detached one-family or two-family dwelling, a
9 townhouse not more than three stories above grade plane in height
10 with a separate means of egress, an accessory structure not more
11 than three stories above grade plane in height, or a [~~single-family~~
12 ~~house,~~] duplex, triplex, or quadruplex or a unit and the common
13 elements in a multiunit residential structure in which [~~title to~~
14 the individual units are sold [~~is transferred~~] to the owners under a
15 condominium or cooperative system.

16 (7) [~~(8)~~] "Structural failure" [~~has the meaning~~
17 ~~assigned by Section 401.002 for an action to which Subtitle D, Title~~
18 ~~16, applies and for any other action]~~ means actual physical damage
19 to the load-bearing portion of a residence caused by a failure of
20 the load-bearing portion.

21 (8) [~~(9)~~] "~~Third-party inspector~~" ~~has the meaning~~
22 ~~assigned by Section 401.002.~~

23 [~~(10)~~] "Developer of a condominium" means a declarant,
24 as defined by Section 82.003, of a condominium consisting of one or
25 more residences.

26 (9) "Townhouse" means a single-family dwelling unit
27 constructed in a group of three or more attached units in which each

1 unit extends from foundation to roof and with a yard or public way
2 on not less than two sides.

3 SECTION 2. Section 27.002(b), Property Code, is amended to
4 read as follows:

5 (b) To [~~Except as provided by this subsection, to~~] the
6 extent of conflict between this chapter and any other law,
7 including the Deceptive Trade Practices-Consumer Protection Act
8 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law
9 cause of action, this chapter prevails. [~~To the extent of conflict~~
10 ~~between this chapter and Title 16, Title 16 prevails.~~]

11 SECTION 3. Section 27.003, Property Code, is amended by
12 amending Subsection (a) and adding Subsection (c) to read as
13 follows:

14 (a) In an action subject to this chapter [~~to recover damages~~
15 ~~or other relief~~] arising from a construction defect:

16 (1) a contractor is liable only to the extent a
17 defective condition proximately causes:

18 (A) actual physical damage to the residence;

19 (B) an actual failure or lack of capability of a
20 building component to perform its intended function or purpose; or

21 (C) a verifiable danger to the safety of the
22 occupants of the residence;

23 (2) a contractor is not liable for [~~any percentage of~~]
24 damages caused by:

25 (A) negligence of a person other than the
26 contractor or an agent, employee, or subcontractor of the
27 contractor;

1 (B) failure of a person other than the contractor
2 or an agent, employee, or subcontractor of the contractor to:

3 (i) [~~take reasonable action to~~] mitigate
4 the damages; [~~or~~]

5 (ii) [~~take reasonable action to~~] maintain
6 the residence; or

7 (iii) timely notify a contractor of a
8 construction defect;

9 (C) normal wear, tear, or deterioration;

10 (D) normal cracking or shrinkage cracking due to
11 drying or settlement of construction components within the
12 tolerance of building standards; or

13 (E) the contractor's reliance on written
14 information relating to the residence, appurtenance, or real
15 property on which the residence and appurtenance are affixed that
16 was obtained from official government records, if the written
17 information was false, modified, or inaccurate and the contractor
18 did not know and could not reasonably have known of the falsity,
19 modification, or inaccuracy of the information; and

20 (3) [~~(2)~~] if an assignee of the claimant or a person
21 subrogated to the rights of a claimant fails to provide the
22 contractor with the written notice and opportunity to inspect and
23 offer to repair required by Section 27.004 [~~or fails to request~~
24 ~~state-sponsored inspection and dispute resolution under Chapter~~
25 ~~428, if applicable,~~] before performing repairs, the contractor is
26 not liable for the cost of any repairs or any percentage of damages
27 caused by repairs made to a construction defect at the request of an

1 assignee of the claimant or a person subrogated to the rights of a
2 claimant by a person other than the contractor or an agent,
3 employee, or subcontractor of the contractor.

4 (c) To maintain a claim of breach of a warranty of
5 habitability, a claimant must establish that a construction defect:

6 (1) was latent at the time the residence was completed
7 or title was conveyed to the original purchaser; and

8 (2) has rendered the residence unsuitable for its
9 intended use as a home.

10 SECTION 4. Section 27.004, Property Code, is amended by
11 amending Subsections (a), (b), (c), (d), and (g) and adding
12 Subsection (g-1) to read as follows:

13 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~
14 ~~before~~] the 60th day preceding the date a claimant seeking from a
15 contractor damages or other relief arising from a construction
16 defect initiates an action, the claimant shall give written notice
17 by certified mail, return receipt requested, to the contractor, at
18 the contractor's last known address, specifying in reasonable
19 detail the construction defects that are the subject of the
20 complaint. The [~~On the request of the contractor, the~~] claimant
21 shall provide to the contractor any evidence that depicts the
22 nature and cause of the defect and the nature and extent of repairs
23 necessary to remedy the defect, including any expert reports,
24 photographs, and video or audio recordings [~~videotapes~~], if that
25 evidence would be discoverable under Rule 192, Texas Rules of Civil
26 Procedure. During the 35-day period after the date the contractor
27 receives the notice, and on the contractor's written request, the

1 contractor shall be given a reasonable opportunity to inspect and
2 have inspected the property that is the subject of the complaint to
3 determine the nature and cause of the defect and the nature and
4 extent of repairs necessary to remedy the defect. To the extent
5 requested, the contractor shall be given the opportunity to conduct
6 up to three inspections during the 35-day period after the date the
7 contractor receives the notice and during any extension of that
8 inspection period provided by law or as otherwise agreed to by the
9 parties. The contractor may take reasonable steps to document the
10 defect. [~~In a claim subject to Subtitle D, Title 16, a contractor~~
11 ~~is entitled to make an offer of repair in accordance with Subsection~~
12 ~~(b). A claimant is not required to give written notice to a~~
13 ~~contractor under this subsection in a claim subject to Subtitle D,~~
14 ~~Title 16.]~~

15 (b) Not later than the 60th [~~15th day after the date of a~~
16 ~~final, unappealable determination of a dispute under Subtitle D,~~
17 ~~Title 16, if applicable, or not later than the 45th]~~ day after the
18 date the contractor receives the notice under this section, [~~if~~
19 ~~Subtitle D, Title 16, does not apply,~~] the contractor may make a
20 written offer of settlement to the claimant. The offer must be sent
21 to the claimant at the claimant's last known address or to the
22 claimant's attorney by certified mail, return receipt requested.
23 The offer may include either an agreement by the contractor to
24 repair or to have repaired by an independent contractor partially
25 or totally at the contractor's expense or at a reduced rate to the
26 claimant any construction defect described in the notice and shall
27 describe in reasonable detail the kind of repairs which will be made

1 and the time for completion of the repairs if more than 60 days. The
2 repairs shall be made not later than the 60th [~~45th~~] day after the
3 date the contractor receives written notice of acceptance of the
4 settlement offer, unless completion is delayed by the claimant or
5 by other events beyond the control of the contractor. If a
6 contractor makes a written offer of settlement that the claimant
7 considers to be unreasonable:

8 (1) on or before the 25th day after the date the
9 claimant receives the offer, the claimant shall advise the
10 contractor in writing and in reasonable detail of the reasons why
11 the claimant considers the offer unreasonable; and

12 (2) not later than the 10th day after the date the
13 contractor receives notice under Subdivision (1), the contractor
14 may make a supplemental written offer of settlement to the claimant
15 by sending the offer to the claimant or the claimant's attorney.

16 (c) If [~~compliance with Subtitle D, Title 16, or~~] the giving
17 of the notice under Subsections (a) and (b) within the period
18 prescribed by those subsections is impracticable because of the
19 necessity of initiating an action at an earlier date to prevent
20 expiration of the statute of limitations or if the complaint is
21 asserted as a counterclaim, [~~compliance with Subtitle D, Title 16,~~
22 ~~or~~] the notice is not required. However, the action or counterclaim
23 shall specify in reasonable detail each construction defect that is
24 the subject of the complaint. The [~~If Subtitle D, Title 16, applies~~
25 ~~to the complaint, simultaneously with the filing of an action by a~~
26 ~~claimant, the claimant must submit a request under Section 428.001.~~
27 ~~If Subtitle D, Title 16, does not apply, the~~] inspection provided

1 for by Subsection (a) may be made not later than the 75th day after
2 the date of service of the suit, request for arbitration, or
3 counterclaim on the contractor, and the offer provided for by
4 Subsection (b) may be made not later than the ~~[15th day after the~~
5 ~~date the state-sponsored inspection and dispute resolution process~~
6 ~~is completed, if Subtitle D, Title 16, applies, or not later than~~
7 ~~the]~~ 60th day after the date of service [~~, if Subtitle D, Title 16,~~
8 ~~does not apply~~]. If, while an action subject to this chapter is
9 pending, the statute of limitations for the cause of action would
10 have expired and it is determined that the provisions of Subsection
11 (a) were not properly followed, the action shall be abated to allow
12 compliance with Subsections (a) and (b).

13 (d) The court or arbitration tribunal shall abate an action
14 governed by this chapter if Subsection (c) does not apply and the
15 court or tribunal, after a hearing, finds that the contractor is
16 entitled to abatement because the claimant ~~[failed to comply with~~
17 ~~the requirements of Subtitle D, Title 16, if applicable,]~~ failed to
18 provide the notice or failed to give the contractor a reasonable
19 opportunity to inspect the property as required by Subsection
20 (a)[~~7~~] or failed to follow the procedures specified by Subsection
21 (b). An action is automatically abated without the order of the
22 court or tribunal beginning on the 11th day after the date a motion
23 to abate is filed if the motion:

24 (1) is verified and alleges that the person against
25 whom the action is pending did not receive the written notice
26 required by Subsection (a), the person against whom the action is
27 pending was not given a reasonable opportunity to inspect the

1 property as required by Subsection (a), or the claimant failed to
2 follow the procedures specified by Subsection (b) [~~or Subtitle D,~~
3 ~~Title 16~~]; and

4 (2) is not controverted by an affidavit filed by the
5 claimant before the 11th day after the date on which the motion to
6 abate is filed.

7 (g) Except as provided by Subsection (e), in an action
8 subject to this chapter the claimant may recover only the following
9 economic damages proximately caused by a construction defect:

10 (1) the reasonable cost of repairs necessary to cure
11 any construction defect;

12 (2) the reasonable and necessary cost for the
13 replacement or repair of any damaged goods in the residence;

14 (3) reasonable and necessary engineering and
15 consulting fees;

16 (4) the reasonable expenses of temporary housing
17 reasonably necessary during the repair period;

18 (5) the reduction in current market value, if any,
19 after the construction defect is repaired if the construction
20 defect is a structural failure; [~~and~~]

21 (6) reasonable and necessary attorney's fees; and

22 (7) reasonable and necessary arbitration filing fees
23 and the claimant's share of arbitrator compensation.

24 (g-1) The court or arbitration tribunal may order that an
25 offer made by the contractor after the time prescribed is
26 considered timely for purposes of Subsection (b) or (c), as
27 applicable, if the contractor is prejudiced in the contractor's

1 opportunity to inspect as provided for by Subsection (a) or (c) or
2 make an offer provided for by Subsection (b) or (c):

3 (1) because the claimant:

4 (A) failed to provide the contractor evidence
5 available and in the claimant's possession, custody, or control at
6 the time of the original notice depicting the nature and cause of
7 the defect and the nature and extent of repairs necessary to remedy
8 the defect, including reports, photographs, videos, or any other
9 evidence; or

10 (B) amended a claim to add a new alleged defect;
11 or

12 (2) due to events beyond the contractor's control.

13 SECTION 5. Section 27.0042(a), Property Code, is amended to
14 read as follows:

15 (a) A written agreement between a contractor and a homeowner
16 may provide that, [~~except as provided by Subsection (b),~~] if the
17 reasonable cost of repairs necessary to repair a construction
18 defect that is the responsibility of the contractor exceeds an
19 agreed percentage of the current fair market value of the
20 residence, as determined without reference to the construction
21 defects, then, in an action subject to this chapter, the contractor
22 may elect as an alternative to the damages specified in Section
23 27.004(g) that the contractor who sold the residence to the
24 homeowner purchase it.

25 SECTION 6. Section 27.006, Property Code, is amended to
26 read as follows:

27 Sec. 27.006. CAUSATION. In an action to recover damages

1 resulting from a construction defect, the claimant must prove that:

2 (1) the construction defect existed at the time of
3 completion of the construction, alteration, or repair; and

4 (2) the damages were proximately caused by the
5 construction defect.

6 SECTION 7. Chapter 27, Property Code, is amended by adding
7 Sections 27.008 and 27.009 to read as follows:

8 Sec. 27.008. EFFECT OF ARBITRATION ON LIMITATIONS PERIOD.

9 The submission of an action subject to this chapter to arbitration
10 has the same effect on the running of a limitations period as a
11 filing in a court in this state.

12 Sec. 27.009. NO WAIVER. An attempted waiver of the
13 provisions of this chapter in a contract subject to this chapter is
14 void.

15 SECTION 8. The following provisions of the Property Code
16 are repealed:

- 17 (1) Section 27.004(1);
- 18 (2) Section 27.0042(b); and
- 19 (3) Section 27.007(c).

20 SECTION 9. The changes in law made by this Act apply only to
21 a cause of action that accrues on or after the effective date of
22 this Act. A cause of action that accrued before the effective date
23 of this Act is governed by the law as it existed immediately before
24 the effective date of this Act, and that law is continued in effect
25 for that purpose.

26 SECTION 10. This Act takes effect September 1, 2023.