

By: Leach

H.B. No. 2022

A BILL TO BE ENTITLED

AN ACT

relating to residential construction liability.

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

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

Sec. 27.001. DEFINITIONS. In this chapter:

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

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

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

~~[(4)] "Construction defect" [has the meaning assigned by Section 401.004 for an action to which Subtitle D, Title 16, applies and for any other action]~~ means a deficiency in ~~[matter concerning]~~ the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. ~~[The term may include any physical 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 [~~to recover damages or other relief~~]
15 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) an imminent danger to the safety of the
22 occupants of the residence;

23 (2) [(1)] a contractor is not liable for [any
24 percentage of] 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:

6 (1) a construction defect existed in the residence on
7 the date the residence was completed or title was conveyed to the
8 original purchaser; and

9 (2) the defect has rendered the residence
10 uninhabitable.

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

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

1 ~~that evidence would be discoverable under Rule 192, Texas Rules of~~
2 ~~Civil Procedure].~~ During the 35-day period after the date the
3 contractor receives the notice, and on the contractor's written
4 request, the contractor shall be given a reasonable opportunity to
5 inspect and have inspected the property that is the subject of the
6 complaint to determine the nature and cause of the defect and the
7 nature and extent of repairs necessary to remedy the defect. To the
8 extent requested, the contractor shall be given the opportunity to
9 conduct up to three inspections during the 35-day period after the
10 date the contractor receives the notice and during any extension of
11 that inspection period provided by law or as otherwise agreed to by
12 the parties. The contractor may take reasonable steps to document
13 the defect. [~~In a claim subject to Subtitle D, Title 16, a~~
14 ~~contractor is entitled to make an offer of repair in accordance with~~
15 ~~Subsection (b). A claimant is not required to give written notice~~
16 ~~to a contractor under this subsection in a claim subject to Subtitle~~
17 ~~D, Title 16.]~~

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

1 or totally at the contractor's expense or at a reduced rate to the
2 claimant any construction defect described in the notice and shall
3 describe in reasonable detail the kind of repairs which will be made
4 and the time for completion of the repairs if more than 60 days. The
5 repairs shall be made not later than the 60th [~~45th~~] day after the
6 date the contractor receives written notice of acceptance of the
7 settlement offer, unless completion is delayed by the claimant or
8 by other events beyond the control of the contractor. If a
9 contractor makes a written offer of settlement that the claimant
10 considers to be unreasonable:

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

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

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

1 ~~to the complaint, simultaneously with the filing of an action by a~~
2 ~~claimant, the claimant must submit a request under Section 428.001.~~
3 ~~If Subtitle D, Title 16, does not apply, the]~~ inspection provided
4 for by Subsection (a) may be made not later than the 75th day after
5 the date of service of the suit, request for arbitration, or
6 counterclaim on the contractor, and the offer provided for by
7 Subsection (b) may be made not later than the ~~[15th day after the~~
8 ~~date the state-sponsored inspection and dispute resolution process~~
9 ~~is completed, if Subtitle D, Title 16, applies, or not later than~~
10 ~~the]~~ 60th day after the date of service ~~[, if Subtitle D, Title 16,~~
11 ~~does not apply]~~. If, while an action subject to this chapter is
12 pending, the statute of limitations for the cause of action would
13 have expired and it is determined that the provisions of Subsection
14 (a) were not properly followed, the action shall be abated to allow
15 compliance with Subsections (a) and (b).

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

27 (1) is verified and alleges that the person against

1 whom the action is pending did not receive the written notice
2 required by Subsection (a), the person against whom the action is
3 pending was not given a reasonable opportunity to inspect the
4 property as required by Subsection (a), or the claimant failed to
5 follow the procedures specified by Subsection (b) [~~or Subtitle D,~~
6 ~~Title 16~~]; and

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

10 (d-1) If the court or arbitration tribunal orders the action
11 abated under Subsection (d), the court or tribunal may award the
12 contractor reasonable and necessary attorney's fees incurred by the
13 contractor to seek the abatement.

14 (g) Except as provided by Subsection (e), in an action
15 subject to this chapter the claimant may recover only the following
16 economic damages, and no other damages, proximately caused by a
17 construction defect:

18 (1) the reasonable cost of repairs necessary to cure
19 any construction defect;

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

22 (3) reasonable and necessary engineering and
23 consulting fees;

24 (4) the reasonable expenses of temporary housing
25 reasonably necessary during the repair period;

26 (5) the reduction in current market value, if any,
27 after the construction defect is repaired if the construction

1 defect is a structural failure; and

2 (6) reasonable and necessary attorney's fees.

3 (g-1) The court or arbitration tribunal may order that an
4 offer made by the contractor after the time prescribed is
5 considered timely for purposes of Subsection (b) or (c), as
6 applicable, if the contractor is prejudiced in the contractor's
7 opportunity to inspect as provided for by Subsection (a) or (c) or
8 make an offer provided for by Subsection (b) or (c):

9 (1) because the claimant:

10 (A) delayed giving written notice to the
11 contractor;

12 (B) failed to provide the contractor evidence
13 depicting the nature and cause of the defect and the nature and
14 extent of repairs necessary to remedy the defect, including
15 reports, photographs, videos, or any other evidence available at
16 the time of the original notice; or

17 (C) amended a claim to add a new alleged defect;
18 or

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

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

22 (a) A written agreement between a contractor and a homeowner
23 may provide that, [~~except as provided by Subsection (b),~~] if the
24 reasonable cost of repairs necessary to repair a construction
25 defect that is the responsibility of the contractor exceeds an
26 agreed percentage of the current fair market value of the
27 residence, as determined without reference to the construction

1 defects, then, in an action subject to this chapter, the contractor
2 may elect as an alternative to the damages specified in Section
3 27.004(g) that the contractor who sold the residence to the
4 homeowner purchase it.

5 SECTION 6. Chapter 27, Property Code, is amended by adding
6 Section 27.008 to read as follows:

7 Sec. 27.008. EFFECT OF ARBITRATION ON LIMITATIONS PERIOD.
8 The submission of an action subject to this chapter to arbitration
9 has the same effect on the running of a limitations period as a
10 filing in a court in this state.

11 SECTION 7. The following provisions of the Property Code
12 are repealed:

- 13 (1) Sections 27.004(f) and (l);
- 14 (2) Section 27.0042(b); and
- 15 (3) Section 27.007(c).

16 SECTION 8. The changes in law made by this Act apply only to
17 a cause of action that accrues on or after the effective date of
18 this Act. A cause of action that accrued before the effective date
19 of this Act is governed by the law as it existed immediately before
20 the effective date of this Act, and that law is continued in effect
21 for that purpose.

22 SECTION 9. This Act takes effect September 1, 2023.