

1-1 By: Leach, Patterson, Anderson H.B. No. 2022  
 1-2 (Senate Sponsor - King)  
 1-3 (In the Senate - Received from the House May 4, 2023;  
 1-4 May 5, 2023, read first time and referred to Committee on Business  
 1-5 & Commerce; May 12, 2023, reported favorably by the following vote:  
 1-6 Yeas 8, Nays 3; May 12, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14		X		
1-15	X			
1-16		X		
1-17	X			
1-18	X			
1-19		X		

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to residential construction liability.  
 1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-24 SECTION 1. Section 27.001, Property Code, is amended to  
 1-25 read as follows:  
 1-26 Sec. 27.001. DEFINITIONS. In this chapter:  
 1-27 (1) "Action" means a court or judicial proceeding or  
 1-28 an arbitration.  
 1-29 (2) "Appurtenance" means any garage, outbuilding,  
 1-30 retaining wall, or other structure or recreational facility that is  
 1-31 constructed by a contractor in connection with the construction or  
 1-32 alteration of a residence, regardless of whether it is attached to  
 1-33 or [appurtenant to a residence but is not] a part of the dwelling  
 1-34 unit.  
 1-35 (3) [~~"Commission" means the Texas Residential~~  
 1-36 ~~Construction Commission.~~  
 1-37 [~~(4)~~] "Construction defect" [~~has the meaning assigned~~  
 1-38 ~~by Section 401.004 for an action to which Subtitle D, Title 16,~~  
 1-39 ~~applies and for any other action]~~ means a deficiency in [matter  
 1-40 concerning] the design, construction, or repair of a new residence,  
 1-41 of an alteration of or repair or addition to an existing residence,  
 1-42 or of an appurtenance to a residence, on which a person has a  
 1-43 complaint against a contractor. [~~The term may include any physical~~  
 1-44 ~~damage to the residence, any appurtenance, or the real property on~~  
 1-45 ~~which the residence and appurtenance are affixed proximately caused~~  
 1-46 ~~by a construction defect.]  
 1-47 (4) [~~(5)~~] "Contractor":  
 1-48 (A) means:  
 1-49 (i) a builder [~~, as defined by Section~~  
 1-50 ~~401.003,~~] contracting with an owner for the construction or repair  
 1-51 of a new residence, for the repair or alteration of or an addition  
 1-52 to an existing residence, or for the construction, sale,  
 1-53 alteration, addition, or repair of an appurtenance to a new or  
 1-54 existing residence;  
 1-55 (ii) any person contracting [~~with a~~  
 1-56 ~~purchaser]~~ for the sale or construction of a new residence  
 1-57 constructed by or on behalf of that person; or  
 1-58 (iii) a person contracting with an owner or  
 1-59 the developer of a condominium or other housing project for the  
 1-60 construction or sale of one or more [~~a~~] new residences [~~residence~~],  
 1-61 for an alteration of or an addition to an existing residence, for~~

2-1 repair of a new or existing residence, or for the construction,  
 2-2 sale, alteration, addition, or repair of an appurtenance to a new or  
 2-3 existing residence; and  
 2-4 (B) includes:  
 2-5 (i) an owner, officer, director,  
 2-6 shareholder, partner, or employee of the contractor; and  
 2-7 (ii) a risk retention group registered  
 2-8 under Chapter 2201 [~~Article 21.54~~], Insurance Code, that insures  
 2-9 all or any part of a contractor's liability for the cost to repair a  
 2-10 residential construction defect.  
 2-11 (5) [~~(6)~~] "Economic damages" means compensatory  
 2-12 damages for pecuniary loss proximately caused by a construction  
 2-13 defect. The term does not include exemplary damages or damages for  
 2-14 bodily or personal injury, physical pain and mental anguish, loss  
 2-15 of consortium, disfigurement, physical impairment, or loss of  
 2-16 companionship and society.  
 2-17 (6) [~~(7)~~] "Residence" means the real property and  
 2-18 improvements for a detached one-family or two-family dwelling, a  
 2-19 townhouse not more than three stories above grade plane in height  
 2-20 with a separate means of egress, an accessory structure not more  
 2-21 than three stories above grade plane in height, or a [single-family  
 2-22 house,] duplex, triplex, or quadruplex or a unit and the common  
 2-23 elements in a multiunit residential structure in which [title to]  
 2-24 the individual units are sold [is transferred] to the owners under a  
 2-25 condominium or cooperative system.  
 2-26 (7) [~~(8)~~] "Structural failure" [~~has the meaning~~  
 2-27 ~~assigned by Section 401.002 for an action to which Subtitle D, Title~~  
 2-28 ~~16, applies and for any other action]~~ means actual physical damage  
 2-29 to the load-bearing portion of a residence caused by a failure of  
 2-30 the load-bearing portion.  
 2-31 (8) [~~(9)~~] "Third-party inspector" has the meaning  
 2-32 assigned by Section 401.002.  
 2-33 [~~(10)~~] "Developer of a condominium" means a declarant,  
 2-34 as defined by Section 82.003, of a condominium consisting of one or  
 2-35 more residences.  
 2-36 (9) "Townhouse" means a single-family dwelling unit  
 2-37 constructed in a group of three or more attached units in which each  
 2-38 unit extends from foundation to roof and with a yard or public way  
 2-39 on not less than two sides.  
 2-40 SECTION 2. Section 27.002(b), Property Code, is amended to  
 2-41 read as follows:  
 2-42 (b) To [~~Except as provided by this subsection, to~~] the  
 2-43 extent of conflict between this chapter and any other law,  
 2-44 including the Deceptive Trade Practices-Consumer Protection Act  
 2-45 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law  
 2-46 cause of action, this chapter prevails. [~~To the extent of conflict~~  
 2-47 ~~between this chapter and Title 16, Title 16 prevails.]~~  
 2-48 SECTION 3. Section 27.003, Property Code, is amended by  
 2-49 amending Subsection (a) and adding Subsection (c) to read as  
 2-50 follows:  
 2-51 (a) In an action subject to this chapter [~~to recover damages~~  
 2-52 ~~or other relief]~~ arising from a construction defect:  
 2-53 (1) a contractor is liable only to the extent a  
 2-54 defective condition proximately causes:  
 2-55 (A) actual physical damage to the residence;  
 2-56 (B) an actual failure or lack of capability of a  
 2-57 building component to perform its intended function or purpose; or  
 2-58 (C) a verifiable danger to the safety of the  
 2-59 occupants of the residence;  
 2-60 (2) a contractor is not liable for [~~any percentage of]~~  
 2-61 damages caused by:  
 2-62 (A) negligence of a person other than the  
 2-63 contractor or an agent, employee, or subcontractor of the  
 2-64 contractor;  
 2-65 (B) failure of a person other than the contractor  
 2-66 or an agent, employee, or subcontractor of the contractor to:  
 2-67 (i) [~~take reasonable action to~~] mitigate  
 2-68 the damages; [~~or~~]  
 2-69 (ii) [~~take reasonable action to~~] maintain

3-1 the residence; or  
3-2 (iii) timely notify a contractor of a  
3-3 construction defect;  
3-4 (C) normal wear, tear, or deterioration;  
3-5 (D) normal cracking or shrinkage cracking due to  
3-6 drying or settlement of construction components within the  
3-7 tolerance of building standards; or  
3-8 (E) the contractor's reliance on written  
3-9 information relating to the residence, appurtenance, or real  
3-10 property on which the residence and appurtenance are affixed that  
3-11 was obtained from official government records, if the written  
3-12 information was false, modified, or inaccurate and the contractor  
3-13 did not know and could not reasonably have known of the falsity,  
3-14 modification, or inaccuracy of the information; and  
3-15 (3) [(2)] if an assignee of the claimant or a person  
3-16 subrogated to the rights of a claimant fails to provide the  
3-17 contractor with the written notice and opportunity to inspect and  
3-18 offer to repair required by Section 27.004 [~~or fails to request~~  
3-19 ~~state-sponsored inspection and dispute resolution under Chapter~~  
3-20 ~~428, if applicable,~~] before performing repairs, the contractor is  
3-21 not liable for the cost of any repairs or any percentage of damages  
3-22 caused by repairs made to a construction defect at the request of an  
3-23 assignee of the claimant or a person subrogated to the rights of a  
3-24 claimant by a person other than the contractor or an agent,  
3-25 employee, or subcontractor of the contractor.  
3-26 (c) To maintain a claim of breach of a warranty of  
3-27 habitability, a claimant must establish that a construction defect:  
3-28 (1) was latent at the time the residence was completed  
3-29 or title was conveyed to the original purchaser; and  
3-30 (2) has rendered the residence unsuitable for its  
3-31 intended use as a home.  
3-32 SECTION 4. Section 27.004, Property Code, is amended by  
3-33 amending Subsections (a), (b), (c), (d), and (g) and adding  
3-34 Subsection (g-1) to read as follows:  
3-35 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~  
3-36 ~~before~~] the 60th day preceding the date a claimant seeking from a  
3-37 contractor damages or other relief arising from a construction  
3-38 defect initiates an action, the claimant shall give written notice  
3-39 by certified mail, return receipt requested, to the contractor, at  
3-40 the contractor's last known address, specifying in reasonable  
3-41 detail the construction defects that are the subject of the  
3-42 complaint. The [~~On the request of the contractor, the~~] claimant  
3-43 shall provide to the contractor any evidence that depicts the  
3-44 nature and cause of the defect and the nature and extent of repairs  
3-45 necessary to remedy the defect, including any expert reports,  
3-46 photographs, and video or audio recordings [~~videotapes~~], if that  
3-47 evidence would be discoverable under Rule 192, Texas Rules of Civil  
3-48 Procedure. During the 35-day period after the date the contractor  
3-49 receives the notice, and on the contractor's written request, the  
3-50 contractor shall be given a reasonable opportunity to inspect and  
3-51 have inspected the property that is the subject of the complaint to  
3-52 determine the nature and cause of the defect and the nature and  
3-53 extent of repairs necessary to remedy the defect. To the extent  
3-54 requested, the contractor shall be given the opportunity to conduct  
3-55 up to three inspections during the 35-day period after the date the  
3-56 contractor receives the notice and during any extension of that  
3-57 inspection period provided by law or as otherwise agreed to by the  
3-58 parties. The contractor may take reasonable steps to document the  
3-59 defect. [~~In a claim subject to Subtitle D, Title 16, a contractor~~  
3-60 ~~is entitled to make an offer of repair in accordance with Subsection~~  
3-61 ~~(b). A claimant is not required to give written notice to a~~  
3-62 ~~contractor under this subsection in a claim subject to Subtitle D,~~  
3-63 ~~Title 16.]~~  
3-64 (b) Not later than the 60th [~~15th day after the date of a~~  
3-65 ~~final, unappealable determination of a dispute under Subtitle D,~~  
3-66 ~~Title 16, if applicable, or not later than the 45th]~~ day after the  
3-67 date the contractor receives the notice under this section, [~~if~~  
3-68 ~~Subtitle D, Title 16, does not apply,~~] the contractor may make a  
3-69 written offer of settlement to the claimant. The offer must be sent

4-1 to the claimant at the claimant's last known address or to the  
 4-2 claimant's attorney by certified mail, return receipt requested.  
 4-3 The offer may include either an agreement by the contractor to  
 4-4 repair or to have repaired by an independent contractor partially  
 4-5 or totally at the contractor's expense or at a reduced rate to the  
 4-6 claimant any construction defect described in the notice and shall  
 4-7 describe in reasonable detail the kind of repairs which will be made  
 4-8 and the time for completion of the repairs if more than 60 days. The  
 4-9 repairs shall be made not later than the 60th ~~[45th]~~ day after the  
 4-10 date the contractor receives written notice of acceptance of the  
 4-11 settlement offer, unless completion is delayed by the claimant or  
 4-12 by other events beyond the control of the contractor. If a  
 4-13 contractor makes a written offer of settlement that the claimant  
 4-14 considers to be unreasonable:

4-15 (1) on or before the 25th day after the date the  
 4-16 claimant receives the offer, the claimant shall advise the  
 4-17 contractor in writing and in reasonable detail of the reasons why  
 4-18 the claimant considers the offer unreasonable; and

4-19 (2) not later than the 10th day after the date the  
 4-20 contractor receives notice under Subdivision (1), the contractor  
 4-21 may make a supplemental written offer of settlement to the claimant  
 4-22 by sending the offer to the claimant or the claimant's attorney.

4-23 (c) If ~~[compliance with Subtitle D, Title 16, or]~~ the giving  
 4-24 of the notice under Subsections (a) and (b) within the period  
 4-25 prescribed by those subsections is impracticable because of the  
 4-26 necessity of initiating an action at an earlier date to prevent  
 4-27 expiration of the statute of limitations or if the complaint is  
 4-28 asserted as a counterclaim, ~~[compliance with Subtitle D, Title 16,~~  
 4-29 ~~or]~~ the notice is not required. However, the action or counterclaim  
 4-30 shall specify in reasonable detail each construction defect that is  
 4-31 the subject of the complaint. ~~The [If Subtitle D, Title 16, applies~~  
 4-32 ~~to the complaint, simultaneously with the filing of an action by a~~  
 4-33 ~~claimant, the claimant must submit a request under Section 428.001.~~  
 4-34 ~~If Subtitle D, Title 16, does not apply, the]~~ inspection provided  
 4-35 for by Subsection (a) may be made not later than the 75th day after  
 4-36 the date of service of the suit, request for arbitration, or  
 4-37 counterclaim on the contractor, and the offer provided for by  
 4-38 Subsection (b) may be made not later than the ~~[15th day after the~~  
 4-39 ~~date the state-sponsored inspection and dispute resolution process~~  
 4-40 ~~is completed, if Subtitle D, Title 16, applies, or not later than~~  
 4-41 ~~the]~~ 60th day after the date of service ~~[, if Subtitle D, Title 16,~~  
 4-42 ~~does not apply]~~. If, while an action subject to this chapter is  
 4-43 pending, the statute of limitations for the cause of action would  
 4-44 have expired and it is determined that the provisions of Subsection  
 4-45 (a) were not properly followed, the action shall be abated to allow  
 4-46 compliance with Subsections (a) and (b).

4-47 (d) The court or arbitration tribunal shall abate an action  
 4-48 governed by this chapter if Subsection (c) does not apply and the  
 4-49 court or tribunal, after a hearing, finds that the contractor is  
 4-50 entitled to abatement because the claimant ~~[failed to comply with~~  
 4-51 ~~the requirements of Subtitle D, Title 16, if applicable,]~~ failed to  
 4-52 provide the notice or failed to give the contractor a reasonable  
 4-53 opportunity to inspect the property as required by Subsection  
 4-54 (a) ~~[7]~~ or failed to follow the procedures specified by Subsection  
 4-55 (b). An action is automatically abated without the order of the  
 4-56 court or tribunal beginning on the 11th day after the date a motion  
 4-57 to abate is filed if the motion:

4-58 (1) is verified and alleges that the person against  
 4-59 whom the action is pending did not receive the written notice  
 4-60 required by Subsection (a), the person against whom the action is  
 4-61 pending was not given a reasonable opportunity to inspect the  
 4-62 property as required by Subsection (a), or the claimant failed to  
 4-63 follow the procedures specified by Subsection (b) ~~[or Subtitle D,~~  
 4-64 ~~Title 16]~~; and

4-65 (2) is not controverted by an affidavit filed by the  
 4-66 claimant before the 11th day after the date on which the motion to  
 4-67 abate is filed.

4-68 (g) Except as provided by Subsection (e), in an action  
 4-69 subject to this chapter the claimant may recover only the following

- 5-1 economic damages proximately caused by a construction defect:
- 5-2 (1) the reasonable cost of repairs necessary to cure
- 5-3 any construction defect;
- 5-4 (2) the reasonable and necessary cost for the
- 5-5 replacement or repair of any damaged goods in the residence;
- 5-6 (3) reasonable and necessary engineering and
- 5-7 consulting fees;
- 5-8 (4) the reasonable expenses of temporary housing
- 5-9 reasonably necessary during the repair period;
- 5-10 (5) the reduction in current market value, if any,
- 5-11 after the construction defect is repaired if the construction
- 5-12 defect is a structural failure; ~~and~~
- 5-13 (6) reasonable and necessary attorney's fees; and
- 5-14 (7) reasonable and necessary arbitration filing fees
- 5-15 and the claimant's share of arbitrator compensation.

5-16 (g-1) The court or arbitration tribunal may order that an

5-17 offer made by the contractor after the time prescribed is

5-18 considered timely for purposes of Subsection (b) or (c), as

5-19 applicable, if the contractor is prejudiced in the contractor's

5-20 opportunity to inspect as provided for by Subsection (a) or (c) or

5-21 make an offer provided for by Subsection (b) or (c):

- 5-22 (1) because the claimant:
- 5-23 (A) failed to provide the contractor evidence
- 5-24 available and in the claimant's possession, custody, or control at
- 5-25 the time of the original notice depicting the nature and cause of
- 5-26 the defect and the nature and extent of repairs necessary to remedy
- 5-27 the defect, including reports, photographs, videos, or any other
- 5-28 evidence; or
- 5-29 (B) amended a claim to add a new alleged defect;
- 5-30 or
- 5-31 (2) due to events beyond the contractor's control.

5-32 SECTION 5. Section 27.0042(a), Property Code, is amended to

5-33 read as follows:

5-34 (a) A written agreement between a contractor and a homeowner

5-35 may provide that, ~~[except as provided by Subsection (b),]~~ if the

5-36 reasonable cost of repairs necessary to repair a construction

5-37 defect that is the responsibility of the contractor exceeds an

5-38 agreed percentage of the current fair market value of the

5-39 residence, as determined without reference to the construction

5-40 defects, then, in an action subject to this chapter, the contractor

5-41 may elect as an alternative to the damages specified in Section

5-42 27.004(g) that the contractor who sold the residence to the

5-43 homeowner purchase it.

5-44 SECTION 6. Section 27.006, Property Code, is amended to

5-45 read as follows:

5-46 Sec. 27.006. CAUSATION. In an action to recover damages

5-47 resulting from a construction defect, the claimant must prove that:

- 5-48 (1) the construction defect existed at the time of
- 5-49 completion of the construction, alteration, or repair; and
- 5-50 (2) the damages were proximately caused by the
- 5-51 construction defect.

5-52 SECTION 7. Chapter 27, Property Code, is amended by adding

5-53 Sections 27.008 and 27.009 to read as follows:

5-54 Sec. 27.008. EFFECT OF ARBITRATION ON LIMITATIONS PERIOD.

5-55 The submission of an action subject to this chapter to arbitration

5-56 has the same effect on the running of a limitations period as a

5-57 filing in a court in this state.

5-58 Sec. 27.009. NO WAIVER. An attempted waiver of the

5-59 provisions of this chapter in a contract subject to this chapter is

5-60 void.

5-61 SECTION 8. The following provisions of the Property Code

5-62 are repealed:

- 5-63 (1) Section 27.004(1);
- 5-64 (2) Section 27.0042(b); and
- 5-65 (3) Section 27.007(c).

5-66 SECTION 9. The changes in law made by this Act apply only to

5-67 a cause of action that accrues on or after the effective date of

5-68 this Act. A cause of action that accrued before the effective date

5-69 of this Act is governed by the law as it existed immediately before

6-1 the effective date of this Act, and that law is continued in effect  
6-2 for that purpose.

6-3 SECTION 10. This Act takes effect September 1, 2023.

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