

1-1 By: Creighton S.B. No. 1768  
 1-2 (In the Senate - Filed March 7, 2023; March 20, 2023, read  
 1-3 first time and referred to Committee on State Affairs;  
 1-4 April 6, 2023, reported favorably by the following vote: Yeas 11,  
 1-5 Nays 0; April 6, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
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 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the correction or removal of certain obsolete  
 1-22 provisions of the Property Code.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Sections 27.001(4), (5), and (8), Property Code,  
 1-25 are amended to read as follows:

1-26 (4) "Construction defect" [~~has the meaning assigned by~~  
 1-27 ~~Section 401.004 for an action to which Subtitle D, Title 16, applies~~  
 1-28 ~~and for any other action]~~ means a matter concerning the design,  
 1-29 construction, or repair of a new residence, of an alteration of or  
 1-30 repair or addition to an existing residence, or of an appurtenance  
 1-31 to a residence, on which a person has a complaint against a  
 1-32 contractor. The term may include any physical damage to the  
 1-33 residence, any appurtenance, or the real property on which the  
 1-34 residence and appurtenance are affixed proximately caused by a  
 1-35 construction defect.

1-36 (5) "Contractor":

1-37 (A) means:

1-38 (i) a builder [~~, as defined by Section~~  
 1-39 ~~401.003,~~] contracting with an owner for the construction or repair  
 1-40 of a new residence, for the repair or alteration of or an addition  
 1-41 to an existing residence, or for the construction, sale,  
 1-42 alteration, addition, or repair of an appurtenance to a new or  
 1-43 existing residence;

1-44 (ii) any person contracting with a  
 1-45 purchaser for the sale of a new residence constructed by or on  
 1-46 behalf of that person; or

1-47 (iii) a person contracting with an owner or  
 1-48 the developer of a condominium for the construction of a new  
 1-49 residence, for an alteration of or an addition to an existing  
 1-50 residence, for repair of a new or existing residence, or for the  
 1-51 construction, sale, alteration, addition, or repair of an  
 1-52 appurtenance to a new or existing residence; and

1-53 (B) includes:

1-54 (i) an owner, officer, director,  
 1-55 shareholder, partner, or employee of the contractor; and

1-56 (ii) a risk retention group registered  
 1-57 under Chapter 2201 [~~Article 21.54~~], Insurance Code, that insures  
 1-58 all or any part of a contractor's liability for the cost to repair a  
 1-59 residential construction defect.

1-60 (8) "Structural failure" [~~has the meaning assigned by~~  
 1-61 ~~Section 401.002 for an action to which Subtitle D, Title 16, applies~~

2-1 ~~and for any other action]~~ means actual physical damage to the  
2-2 load-bearing portion of a residence caused by a failure of the  
2-3 load-bearing portion.

2-4 SECTION 2. Section 27.002(b), Property Code, is amended to  
2-5 read as follows:

2-6 (b) To [~~Except as provided by this subsection, to~~] the  
2-7 extent of conflict between this chapter and any other law,  
2-8 including the Deceptive Trade Practices-Consumer Protection Act  
2-9 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law  
2-10 cause of action, this chapter prevails. [~~To the extent of conflict~~  
2-11 ~~between this chapter and Title 16, Title 16 prevails.~~]

2-12 SECTION 3. Section 27.003(a), Property Code, is amended to  
2-13 read as follows:

2-14 (a) In an action to recover damages or other relief arising  
2-15 from a construction defect:

2-16 (1) a contractor is not liable for any percentage of  
2-17 damages caused by:

2-18 (A) negligence of a person other than the  
2-19 contractor or an agent, employee, or subcontractor of the  
2-20 contractor;

2-21 (B) failure of a person other than the contractor  
2-22 or an agent, employee, or subcontractor of the contractor to:

2-23 (i) take reasonable action to mitigate the  
2-24 damages; or

2-25 (ii) take reasonable action to maintain the  
2-26 residence;

2-27 (C) normal wear, tear, or deterioration;

2-28 (D) normal shrinkage due to drying or settlement  
2-29 of construction components within the tolerance of building  
2-30 standards; or

2-31 (E) the contractor's reliance on written  
2-32 information relating to the residence, appurtenance, or real  
2-33 property on which the residence and appurtenance are affixed that  
2-34 was obtained from official government records, if the written  
2-35 information was false or inaccurate and the contractor did not know  
2-36 and could not reasonably have known of the falsity or inaccuracy of  
2-37 the information; and

2-38 (2) if an assignee of the claimant or a person  
2-39 subrogated to the rights of a claimant fails to provide the  
2-40 contractor with the written notice and opportunity to inspect and  
2-41 offer to repair required by Section 27.004 [~~or fails to request~~  
2-42 ~~state-sponsored inspection and dispute resolution under Chapter~~  
2-43 ~~428, if applicable,~~] before performing repairs, the contractor is  
2-44 not liable for the cost of any repairs or any percentage of damages  
2-45 caused by repairs made to a construction defect at the request of an  
2-46 assignee of the claimant or a person subrogated to the rights of a  
2-47 claimant by a person other than the contractor or an agent,  
2-48 employee, or subcontractor of the contractor.

2-49 SECTION 4. Sections 27.004(a), (b), (c), and (d), Property  
2-50 Code, are amended to read as follows:

2-51 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~  
2-52 ~~before~~] the 60th day preceding the date a claimant seeking from a  
2-53 contractor damages or other relief arising from a construction  
2-54 defect initiates an action, the claimant shall give written notice  
2-55 by certified mail, return receipt requested, to the contractor, at  
2-56 the contractor's last known address, specifying in reasonable  
2-57 detail the construction defects that are the subject of the  
2-58 complaint. On the request of the contractor, the claimant shall  
2-59 provide to the contractor any evidence that depicts the nature and  
2-60 cause of the defect and the nature and extent of repairs necessary  
2-61 to remedy the defect, including expert reports, photographs, and  
2-62 videotapes, if that evidence would be discoverable under Rule 192,  
2-63 Texas Rules of Civil Procedure. During the 35-day period after the  
2-64 date the contractor receives the notice, and on the contractor's  
2-65 written request, the contractor shall be given a reasonable  
2-66 opportunity to inspect and have inspected the property that is the  
2-67 subject of the complaint to determine the nature and cause of the  
2-68 defect and the nature and extent of repairs necessary to remedy the  
2-69 defect. The contractor may take reasonable steps to document the

3-1 defect. [~~In a claim subject to Subtitle D, Title 16, a contractor is~~  
 3-2 ~~entitled to make an offer of repair in accordance with Subsection~~  
 3-3 ~~(b). A claimant is not required to give written notice to a~~  
 3-4 ~~contractor under this subsection in a claim subject to Subtitle D,~~  
 3-5 ~~Title 16.]~~

3-6 (b) Not later than the [~~15th day after the date of a final,~~  
 3-7 ~~unappealable determination of a dispute under Subtitle D, Title 16,~~  
 3-8 ~~if applicable, or not later than the]~~ 45th day after the date the  
 3-9 contractor receives the notice under this section, [~~if Subtitle D,~~  
 3-10 ~~Title 16, does not apply,]~~ the contractor may make a written offer  
 3-11 of settlement to the claimant. The offer must be sent to the  
 3-12 claimant at the claimant's last known address or to the claimant's  
 3-13 attorney by certified mail, return receipt requested. The offer  
 3-14 may include either an agreement by the contractor to repair or to  
 3-15 have repaired by an independent contractor partially or totally at  
 3-16 the contractor's expense or at a reduced rate to the claimant any  
 3-17 construction defect described in the notice and shall describe in  
 3-18 reasonable detail the kind of repairs which will be made. The  
 3-19 repairs shall be made not later than the 45th day after the date the  
 3-20 contractor receives written notice of acceptance of the settlement  
 3-21 offer, unless completion is delayed by the claimant or by other  
 3-22 events beyond the control of the contractor. If a contractor makes  
 3-23 a written offer of settlement that the claimant considers to be  
 3-24 unreasonable:

3-25 (1) on or before the 25th day after the date the  
 3-26 claimant receives the offer, the claimant shall advise the  
 3-27 contractor in writing and in reasonable detail of the reasons why  
 3-28 the claimant considers the offer unreasonable; and

3-29 (2) not later than the 10th day after the date the  
 3-30 contractor receives notice under Subdivision (1), the contractor  
 3-31 may make a supplemental written offer of settlement to the claimant  
 3-32 by sending the offer to the claimant or the claimant's attorney.

3-33 (c) If [~~compliance with Subtitle D, Title 16, or]~~ the giving  
 3-34 of the notice under Subsections (a) and (b) within the period  
 3-35 prescribed by those subsections is impracticable because of the  
 3-36 necessity of initiating an action at an earlier date to prevent  
 3-37 expiration of the statute of limitations or if the complaint is  
 3-38 asserted as a counterclaim, [~~compliance with Subtitle D, Title 16,~~  
 3-39 ~~or]~~ the notice is not required. However, the action or counterclaim  
 3-40 shall specify in reasonable detail each construction defect that is  
 3-41 the subject of the complaint. ~~The [If Subtitle D, Title 16, applies~~  
 3-42 ~~to the complaint, simultaneously with the filing of an action by a~~  
 3-43 ~~claimant, the claimant must submit a request under Section 428.001.~~  
 3-44 ~~If Subtitle D, Title 16, does not apply, the]~~ inspection provided  
 3-45 for by Subsection (a) may be made not later than the 75th day after  
 3-46 the date of service of the suit, request for arbitration, or  
 3-47 counterclaim on the contractor, and the offer provided for by  
 3-48 Subsection (b) may be made not later than the [~~15th day after the~~  
 3-49 ~~date the state-sponsored inspection and dispute resolution process~~  
 3-50 ~~is completed, if Subtitle D, Title 16, applies, or not later than~~  
 3-51 ~~the]~~ 60th day after the date of service[, ~~if Subtitle D, Title 16,~~  
 3-52 ~~does not apply]. If, while an action subject to this chapter is~~  
 3-53 pending, the statute of limitations for the cause of action would  
 3-54 have expired and it is determined that the provisions of Subsection  
 3-55 (a) were not properly followed, the action shall be abated to allow  
 3-56 compliance with Subsections (a) and (b).

3-57 (d) The court or arbitration tribunal shall abate an action  
 3-58 governed by this chapter if Subsection (c) does not apply and the  
 3-59 court or tribunal, after a hearing, finds that the contractor is  
 3-60 entitled to abatement because the claimant failed to [~~comply with~~  
 3-61 ~~the requirements of Subtitle D, Title 16, if applicable, failed to]~~  
 3-62 provide the notice or failed to give the contractor a reasonable  
 3-63 opportunity to inspect the property as required by Subsection (a),  
 3-64 or failed to follow the procedures specified by Subsection (b). An  
 3-65 action is automatically abated without the order of the court or  
 3-66 tribunal beginning on the 11th day after the date a motion to abate  
 3-67 is filed if the motion:

3-68 (1) is verified and alleges that the person against  
 3-69 whom the action is pending did not receive the written notice

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

4-6 (2) is not controverted by an affidavit filed by the  
4-7 claimant before the 11th day after the date on which the motion to  
4-8 abate is filed.

4-9 SECTION 5. Section 27.0042(b), Property Code, is amended to  
4-10 read as follows:

4-11 (b) A contractor may not elect to purchase the residence  
4-12 under Subsection (a) if[+]

4-13 [~~(1)~~] the residence is more than five years old at the  
4-14 time an action is initiated[~~, or~~

4-15 [~~(2) the contractor makes such an election later than~~  
4-16 ~~the 15th day after the date of a final, unappealable determination~~  
4-17 ~~of a dispute under Subtitle D, Title 16, if applicable].~~

4-18 SECTION 6. Section 53.172, Property Code, is amended to  
4-19 read as follows:

4-20 Sec. 53.172. BOND REQUIREMENTS. The bond must:

4-21 (1) describe the property on which the liens are  
4-22 claimed;

4-23 (2) refer to each lien claimed in a manner sufficient  
4-24 to identify it;

4-25 (3) be in an amount that is double the amount of the  
4-26 liens referred to in the bond unless the total amount claimed in the  
4-27 liens exceeds \$40,000, in which case the bond must be in an amount  
4-28 that is the greater of 1-1/2 times the amount of the liens or the sum  
4-29 of \$40,000 and the amount of the liens;

4-30 (4) be payable to the parties claiming the liens;

4-31 (5) be executed by:

4-32 (A) the party filing the bond as principal; and

4-33 (B) a corporate surety authorized and admitted to  
4-34 do business under the law in this state and licensed by this state  
4-35 to execute the bond as surety, subject to Subchapter A, Chapter  
4-36 3503, Insurance Code [Section 1, Chapter 87, Acts of the 56th  
4-37 Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas  
4-38 Insurance Code)]; and

4-39 (6) be conditioned substantially that the principal  
4-40 and sureties will pay to the named obligees or to their assignees  
4-41 the amount that the named obligees would have been entitled to  
4-42 recover if their claims had been proved to be valid and enforceable  
4-43 liens on the property.

4-44 SECTION 7. Section 74.3013(h), Property Code, is amended  
4-45 to read as follows:

4-46 (h) In this section, a nonprofit cooperative corporation  
4-47 means a cooperative corporation organized under Chapters 51 and 52,  
4-48 Agriculture Code, the Texas Nonprofit [Non-Profit] Corporation  
4-49 Law, as described by Section 1.008(d), Business Organizations Code  
4-50 [Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)],  
4-51 the Texas Cooperative Association Law, as described by Section  
4-52 1.008(i), Business Organizations Code [Act (Article 1396-50.01,  
4-53 Vernon's Texas Civil Statutes)], and Chapter 161, Utilities Code.

4-54 SECTION 8. Sections 112.058(c) and (d), Property Code, are  
4-55 amended to read as follows:

4-56 (c) The community trust may transfer assets of the trust to  
4-57 a nonprofit corporation only if the nonprofit corporation is  
4-58 organized under the Texas Nonprofit Corporation Law, as described  
4-59 by Section 1.008(d), Business Organizations Code, [~~the Texas~~  
4-60 ~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~  
4-61 ~~Texas Civil Statutes)] and organized for the same purpose as the  
4-62 community trust. The charter of the nonprofit corporation must  
4-63 describe the purpose of the corporation and the proposed use of the  
4-64 assets transferred using language substantially similar to the  
4-65 language used in the instrument creating the community trust.~~

4-66 (d) To transfer the assets of and terminate a community  
4-67 trust under this section, the governing body of the community trust  
4-68 must:

4-69 (1) file a petition in a probate court, county court,

5-1 or district court requesting:

5-2 (A) the transfer of the assets of the trust to a  
5-3 nonprofit corporation established for the purpose of receiving and  
5-4 administering the assets of the trust; and

5-5 (B) the termination of the trust;

5-6 (2) send by first class mail to each trust settlor and  
5-7 each trustee of each component trust of the community trust who can  
5-8 be located by the exercise of reasonable diligence a copy of the  
5-9 governing body's petition and a notice specifying the time and  
5-10 place of the court-scheduled hearing on the petition; and

5-11 (3) publish once in a newspaper of general circulation  
5-12 in the county in which the proceeding is pending a notice that reads  
5-13 substantially similar to the following:

5-14 TO ALL INTERESTED PERSONS:

5-15 (NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF  
5-16 COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT  
5-17 TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

5-18 (1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED;  
5-19 AND

5-20 (2) THE ASSETS OF THE TRUST WILL BE:

5-21 (A) TRANSFERRED TO A NONPROFIT CORPORATION WITH  
5-22 THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF  
5-23 COMMUNITY TRUST); AND

5-24 (B) HELD AND ADMINISTERED BY THE CORPORATION AS  
5-25 PROVIDED BY THE TEXAS NONPROFIT [~~NON-PROFIT~~] CORPORATION LAW [~~ACT~~  
5-26 (~~ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES~~)].

5-27 THE PURPOSE OF THE CONVERSION IS TO ACHIEVE SAVINGS AND USE  
5-28 THE MONEY SAVED TO FURTHER THE PURPOSES FOR WHICH THE (NAME OF  
5-29 COMMUNITY TRUST) WAS CREATED.

5-30 A HEARING ON THE PETITION IS SCHEDULED ON (DATE AND TIME) AT  
5-31 (LOCATION OF COURT).

5-32 FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING  
5-33 BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE  
5-34 NUMBER) OR THE COURT.

5-35 SECTION 9. Section 202.002(b), Property Code, is amended to  
5-36 read as follows:

5-37 (b) This chapter does not affect the requirements of Chapter  
5-38 123, Human Resources Code [~~the Community Homes for Disabled Persons~~  
5-39 ~~Location Act (Article 1011n, Vernon's Texas Civil Statutes)~~].

5-40 SECTION 10. Section 202.003(b), Property Code, is amended  
5-41 to read as follows:

5-42 (b) In this subsection, "family home" is a residential home  
5-43 that meets the definition of and requirements applicable to a  
5-44 family home under Chapter 123, Human Resources Code [~~the Community~~  
5-45 ~~Homes for Disabled Persons Location Act (Article 1011n, Vernon's~~  
5-46 ~~Texas Civil Statutes)~~]. A dedicatory instrument or restrictive  
5-47 covenant may not be construed to prevent the use of property as a  
5-48 family home. However, any restrictive covenant that applies to  
5-49 property used as a family home shall be liberally construed to give  
5-50 effect to its purposes and intent except to the extent that the  
5-51 construction would restrict the use as a family home.

5-52 SECTION 11. Section 204.004(b), Property Code, is amended  
5-53 to read as follows:

5-54 (b) The association must be nonprofit and may be  
5-55 incorporated as a Texas nonprofit corporation. An unincorporated  
5-56 association may incorporate under the Texas Nonprofit [~~Non-Profit~~]  
5-57 Corporation Law, as described by Section 1.008(d), Business  
5-58 Organizations Code [~~Act (Article 1396-1.01 et seq., Vernon's Texas~~  
5-59 ~~Civil Statutes)~~].

5-60 SECTION 12. Section 204.010(a), Property Code, is amended  
5-61 to read as follows:

5-62 (a) Unless otherwise provided by the restrictions or the  
5-63 association's articles of incorporation or bylaws, the property  
5-64 owners' association, acting through its board of directors or  
5-65 trustees, may:

5-66 (1) adopt and amend bylaws;

5-67 (2) adopt and amend budgets for revenues,  
5-68 expenditures, and reserves and collect regular assessments or  
5-69 special assessments for common expenses from property owners;

6-1 (3) hire and terminate managing agents and other  
6-2 employees, agents, and independent contractors;  
6-3 (4) institute, defend, intervene in, settle, or  
6-4 compromise litigation or administrative proceedings on matters  
6-5 affecting the subdivision;  
6-6 (5) make contracts and incur liabilities relating to  
6-7 the operation of the subdivision and the property owners'  
6-8 association;  
6-9 (6) regulate the use, maintenance, repair,  
6-10 replacement, modification, and appearance of the subdivision;  
6-11 (7) make additional improvements to be included as a  
6-12 part of the common area;  
6-13 (8) grant easements, leases, licenses, and  
6-14 concessions through or over the common area;  
6-15 (9) impose and receive payments, fees, or charges for  
6-16 the use, rental, or operation of the common area and for services  
6-17 provided to property owners;  
6-18 (10) impose interest, late charges, and, if  
6-19 applicable, returned check charges for late payments of regular  
6-20 assessments or special assessments;  
6-21 (11) if notice and an opportunity to be heard are  
6-22 given, collect reimbursement of actual attorney's fees and other  
6-23 reasonable costs incurred by the property owners' association  
6-24 relating to violations of the subdivision's restrictions or the  
6-25 property owners' association's bylaws and rules;  
6-26 (12) charge costs to an owner's assessment account and  
6-27 collect the costs in any manner provided in the restrictions for the  
6-28 collection of assessments;  
6-29 (13) adopt and amend rules regulating the collection  
6-30 of delinquent assessments and the application of payments;  
6-31 (14) impose reasonable charges for preparing,  
6-32 recording, or copying amendments to the restrictions, resale  
6-33 certificates, or statements of unpaid assessments;  
6-34 (15) purchase insurance and fidelity bonds, including  
6-35 directors' and officers' liability insurance, that the board  
6-36 considers appropriate or necessary;  
6-37 (16) if the restrictions allow for an annual increase  
6-38 in the maximum regular assessment without a vote of the membership,  
6-39 assess the increase annually or accumulate and assess the increase  
6-40 after a number of years;  
6-41 (17) subject to the requirements of the Texas  
6-42 Nonprofit [Non-Profit] Corporation Law, as described by Section  
6-43 1.008(d), Business Organizations Code, [Act (Article 1396-1.01 et  
6-44 seq., Vernon's Texas Civil Statutes)] and by majority vote of its  
6-45 board of directors, indemnify a director or officer of the property  
6-46 owners' association who was, is, or may be made a named defendant or  
6-47 respondent in a proceeding because the person is or was a director;  
6-48 (18) if the restrictions vest the architectural  
6-49 control authority in the property owners' association or if the  
6-50 authority is vested in the property owners' association under  
6-51 Section 204.011:  
6-52 (A) implement written architectural control  
6-53 guidelines for its own use or record the guidelines in the real  
6-54 property records of the applicable county; and  
6-55 (B) modify the guidelines as the needs of the  
6-56 subdivision change;  
6-57 (19) exercise other powers conferred by the  
6-58 restrictions, its articles of incorporation, or its bylaws;  
6-59 (20) exercise other powers that may be exercised in  
6-60 this state by a corporation of the same type as the property owners'  
6-61 association; and  
6-62 (21) exercise other powers necessary and proper for  
6-63 the governance and operation of the property owners' association.

6-64 SECTION 13. The following provisions of the Property Code  
6-65 are repealed:  
6-66 (1) Section 5.018;  
6-67 (2) Sections 27.001(3) and (9);  
6-68 (3) Section 27.004(1); and  
6-69 (4) Section 27.007(c).

7-1 SECTION 14. This Act takes effect immediately if it  
7-2 receives a vote of two-thirds of all the members elected to each  
7-3 house, as provided by Section 39, Article III, Texas Constitution.  
7-4 If this Act does not receive the vote necessary for immediate  
7-5 effect, this Act takes effect September 1, 2023.

7-6

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