

By: Eiland

H.B. No. 3269

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the abolition of the Texas Residential Construction
3 Commission.

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

5 SECTION 1. (a) The Texas Residential Construction
6 Commission is abolished effective January 1, 2008.

7 (b) The following statutes are repealed:

8 (1) Title 16, Property Code; and

9 (2) Sections 27.001(3) and (9) and 27.004(1), Property
10 Code.

11 SECTION 2. (a) The Texas Building and Procurement
12 Commission shall take custody of the property, records, or other
13 assets of the Texas Residential Construction Commission unless the
14 governor designates another appropriate governmental entity to
15 take custody of the property, records, or other assets.

16 (b) If the Texas Residential Construction Commission has a
17 continuing valid and enforceable obligation, including bonded
18 indebtedness, Section 325.017(f), Government Code, applies in
19 relation to the continuing obligation of the commission.

20 SECTION 3. Sections 59.011(a) and (c), Finance Code, are
21 amended to read as follows:

22 (a) For purposes of Chapter 27, Property Code, [~~and Title~~
23 ~~16, Property Code,~~] a federally insured financial institution
24 regulated under this code is not a builder.

1 (c) A builder hired by a lender to complete the construction
2 of a foreclosed home is not liable for any construction defects of
3 which the builder had no knowledge that existed prior to the
4 acquisition of the home by the lender, but the builder is subject to
5 Chapter 27, Property Code, [~~and Title 16, Property Code,~~] for work
6 performed for the lender subsequent to the acquisition of the home
7 by the lender.

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

10 (4) "Construction defect" [~~has the meaning assigned by~~
11 ~~Section 401.004 for an action to which Subtitle D, Title 16, applies~~
12 ~~and for any other action]~~ means a matter concerning the design,
13 construction, or repair of a new residence, of an alteration of or
14 repair or addition to an existing residence, or of an appurtenance
15 to a residence, on which a person has a complaint against a
16 contractor. The term may include any physical damage to the
17 residence, any appurtenance, or the real property on which the
18 residence and appurtenance are affixed proximately caused by a
19 construction defect.

20 (5) "Contractor" means a [~~builder, as defined by~~
21 ~~Section 401.003, and any]~~ person contracting with an owner for the
22 construction or sale of a new residence constructed by that person
23 or of an alteration of or addition to an existing residence, repair
24 of a new or existing residence, or construction, sale, alteration,
25 addition, or repair of an appurtenance to a new or existing
26 residence. The term includes:

27 (A) an owner, officer, director, shareholder,

1 partner, or employee of the contractor; and

2 (B) a risk retention group registered under
3 Article 21.54, Insurance Code, that insures all or any part of a
4 contractor's liability for the cost to repair a residential
5 construction defect.

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

11 SECTION 5. Section 27.003(a), Property Code, is amended to
12 read as follows:

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

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

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

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

22 (i) take reasonable action to mitigate the
23 damages; or

24 (ii) take reasonable action to maintain the
25 residence;

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

27 (D) normal shrinkage due to drying or settlement

1 of construction components within the tolerance of building
2 standards; or

3 (E) the contractor's reliance on written
4 information relating to the residence, appurtenance, or real
5 property on which the residence and appurtenance are affixed that
6 was obtained from official government records, if the written
7 information was false or inaccurate and the contractor did not know
8 and could not reasonably have known of the falsity or inaccuracy of
9 the information; and

10 (2) if an assignee of the claimant or a person
11 subrogated to the rights of a claimant fails to provide the
12 contractor with the written notice and opportunity to inspect and
13 offer to repair required by Section 27.004 [~~or fails to request~~
14 ~~state-sponsored inspection and dispute resolution under Chapter~~
15 ~~428, if applicable,~~] before performing repairs, the contractor is
16 not liable for the cost of any repairs or any percentage of damages
17 caused by repairs made to a construction defect at the request of an
18 assignee of the claimant or a person subrogated to the rights of a
19 claimant by a person other than the contractor or an agent,
20 employee, or subcontractor of the contractor.

21 SECTION 6. Sections 27.004(a), (b), (c), and (d), Property
22 Code, are amended to read as follows:

23 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~
24 ~~before~~] the 60th day preceding the date a claimant seeking from a
25 contractor damages or other relief arising from a construction
26 defect initiates an action, the claimant shall give written notice
27 by certified mail, return receipt requested, to the contractor, at

1 the contractor's last known address, specifying in reasonable
2 detail the construction defects that are the subject of the
3 complaint. On the request of the contractor, the claimant shall
4 provide to the contractor any evidence that depicts the nature and
5 cause of the defect and the nature and extent of repairs necessary
6 to remedy the defect, including expert reports, photographs, and
7 videotapes, if that evidence would be discoverable under Rule 192,
8 Texas Rules of Civil Procedure. During the 35-day period after the
9 date the contractor receives the notice, and on the contractor's
10 written request, the contractor shall be given a reasonable
11 opportunity to inspect and have inspected the property that is the
12 subject of the complaint to determine the nature and cause of the
13 defect and the nature and extent of repairs necessary to remedy the
14 defect. The contractor may take reasonable steps to document the
15 defect. [~~In a claim subject to Subtitle D, Title 16, a contractor~~
16 ~~is entitled to make an offer of repair in accordance with Subsection~~
17 ~~(b). A claimant is not required to give written notice to a~~
18 ~~contractor under this subsection in a claim subject to Subtitle D,~~
19 ~~Title 16.]~~

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

1 may include either an agreement by the contractor to repair or to
2 have repaired by an independent contractor partially or totally at
3 the contractor's expense or at a reduced rate to the claimant any
4 construction defect described in the notice and shall describe in
5 reasonable detail the kind of repairs which will be made. The
6 repairs shall be made not later than the 45th day after the date the
7 contractor receives written notice of acceptance of the settlement
8 offer, unless completion is delayed by the claimant or by other
9 events beyond the control of the contractor. If a contractor makes
10 a written offer of settlement that the claimant considers to be
11 unreasonable:

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

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

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

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

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

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

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

11 SECTION 7. Section 27.0042(b), Property Code, is amended to
12 read as follows:

13 (b) A contractor may not elect to purchase the residence
14 under Subsection (a) if [~~+~~

15 ~~(1)]~~ the residence is more than five years old at the
16 time an action is initiated [~~+~~~~or~~

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

20 SECTION 8. (a) Except as provided by this section, the
21 change in law made by this Act applies to an action commenced on or
22 after the effective date of this Act. An action commenced before
23 the effective date of this Act or with respect to which a request
24 was filed under Section 428.001, Property Code, repealed by this
25 Act, before the effective date of this Act is governed by the law in
26 effect immediately before the effective date of this Act, and that
27 law is continued in effect for that purpose.

1 (b) The change in law made by this Act to Section
2 27.003(a)(2), Property Code, applies only to a repair made on or
3 after the effective date of this Act. A repair made before the
4 effective date of this Act is subject to the law as it existed
5 immediately before the effective date of this Act, and that law is
6 continued in effect for that purpose.

7 (c) The repeal by this Act of Section 428.005, Property
8 Code, does not apply to the receipt by a builder of a notice
9 described by that section before the effective date of this Act.
10 The receipt by a builder of a notice described by that section
11 before the effective date of this Act is governed by the law in
12 effect immediately before that date, and that law is continued in
13 effect for that purpose.

14 (d) The repeal by this Act of Chapter 430, Property Code,
15 applies only to residential construction under a contract that is
16 entered into on or after the effective date of this Act.
17 Residential construction under a contract entered into before the
18 effective date of this Act is subject to the warranties and building
19 and performance standards applicable to the construction
20 immediately before the effective date of this Act.

21 (e) The repeal by this Act of Section 436.003, Property
22 Code, and Chapters 437 and 438, Property Code, applies only to an
23 arbitration initiated on or after the effective date of this Act.
24 An arbitration initiated before the effective date of this Act is
25 governed by the law applicable to the arbitration immediately
26 before the effective date of this Act, and that law is continued in
27 effect for that purpose.

1 SECTION 9. This Act takes effect September 1, 2007.