

By: Smith of Tarrant

H.B. No. 1635

A BILL TO BE ENTITLED

1 AN ACT
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 February 1, 2010.

7 (b) The following statutes are repealed:

8 (1) Section 214.906, Local Government Code;

9 (2) Title 16, Property Code;

10 (3) Section 5.016, Property Code, as added by Section
11 1, Chapter 843 (H.B. 1038), Acts of the 80th Legislature, Regular
12 Session, 2007; and

13 (4) Sections 27.001(3) and (9), 27.004(1), and
14 27.007(c), Property Code.

15 SECTION 2. (a) The Texas Facilities Commission shall take
16 custody of the property, records, or other assets of the Texas
17 Residential Construction Commission unless the governor designates
18 another appropriate governmental entity to take custody of the
19 property, records, or other assets.

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

24 SECTION 3. Sections 59.011(a) and (c), Finance Code, are

1 amended to read as follows:

2 (a) For purposes of Chapter 27, Property Code, [~~and Title~~
3 ~~16, Property Code,~~] a federally insured financial institution
4 regulated under this code is not a builder.

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

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

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

24 (5) "Contractor":

25 (A) means:

26 (i) a person [~~builder, as defined by~~
27 ~~Section 401.003,~~] contracting with an owner for the construction or

1 repair of a new residence, for the repair or alteration of or an
2 addition to an existing residence, or for the construction, sale,
3 alteration, addition, or repair of an appurtenance to a new or
4 existing residence;

5 (ii) any person contracting with a
6 purchaser for the sale of a new residence constructed by or on
7 behalf of that person; or

8 (iii) a person contracting with an owner or
9 the developer of a condominium for the construction of a new
10 residence, for an alteration of or an addition to an existing
11 residence, for repair of a new or existing residence, or for the
12 construction, sale, alteration, addition, or repair of an
13 appurtenance to a new or existing residence; and

14 (B) includes:

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

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

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

26 SECTION 5. Section 27.002(b), Property Code, is amended to
27 read as follows:

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

7 SECTION 6. Section 27.003(a), Property Code, is amended to
8 read as follows:

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

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

13 (A) negligence of a person other than the
14 contractor or an agent, employee, or subcontractor of the
15 contractor;

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

18 (i) take reasonable action to mitigate the
19 damages; or

20 (ii) take reasonable action to maintain the
21 residence;

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

23 (D) normal shrinkage due to drying or settlement
24 of construction components within the tolerance of building
25 standards; or

26 (E) the contractor's reliance on written
27 information relating to the residence, appurtenance, or real

1 property on which the residence and appurtenance are affixed that
2 was obtained from official government records, if the written
3 information was false or inaccurate and the contractor did not know
4 and could not reasonably have known of the falsity or inaccuracy of
5 the information; and

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

17 SECTION 7. Sections 27.004(a), (b), (c), and (d), Property
18 Code, are amended to read as follows:

19 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~
20 ~~before~~] the 60th day preceding the date a claimant seeking from a
21 contractor damages or other relief arising from a construction
22 defect initiates an action, the claimant shall give written notice
23 by certified mail, return receipt requested, to the contractor, at
24 the contractor's last known address, specifying in reasonable
25 detail the construction defects that are the subject of the
26 complaint. On the request of the contractor, the claimant shall
27 provide to the contractor any evidence that depicts the nature and

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

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

1 reasonable detail the kind of repairs which will be made. The
2 repairs shall be made not later than the 45th day after the date the
3 contractor receives written notice of acceptance of the settlement
4 offer, unless completion is delayed by the claimant or by other
5 events beyond the control of the contractor. If a contractor makes
6 a written offer of settlement that the claimant considers to be
7 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 (a),
20 or failed to follow the procedures specified by Subsection (b). An
21 action is automatically abated without the order of the court or
22 tribunal beginning on the 11th day after the date a motion to abate
23 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 SECTION 8. Section 27.0042(b), Property Code, is amended to
8 read as follows:

9 (b) A contractor may not elect to purchase the residence
10 under Subsection (a) if [+

11 [~~(1)~~] the residence is more than five years old at the
12 time an action is initiated [~~, or~~

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

16 SECTION 9. Section 41.007(a), Property Code, is amended to
17 read as follows:

18 (a) A contract for improvements to an existing residence
19 described by Section 41.001(b)(3) must contain[+

20 [~~(1) the contractor's certificate of registration~~
21 ~~number from the Texas Residential Construction Commission if the~~
22 ~~contractor is required to register as a builder with the~~
23 ~~commission,~~

24 [~~(2) the address and telephone number at which the~~
25 ~~owner may file a complaint with the Texas Residential Construction~~
26 ~~Commission about the conduct of the contractor if the contractor is~~
27 ~~required to register as a builder with the commission, and~~

1 [~~3~~] the following warning conspicuously printed,
2 stamped, or typed in a size equal to at least 10-point bold type or
3 computer equivalent:

4 "IMPORTANT NOTICE: You and your contractor are responsible
5 for meeting the terms and conditions of this contract. If you sign
6 this contract and you fail to meet the terms and conditions of this
7 contract, you may lose your legal ownership rights in your
8 home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

9 SECTION 10. (a) The repeal by this Act of Section 5.016,
10 Property Code, as added by Section 1, Chapter 843 (H.B. 1038), Acts
11 of the 80th Legislature, Regular Session, 2007, applies only to a
12 transfer of residential property that occurs on or after the
13 effective date of this Act. A transfer of residential property that
14 occurs before the effective date of this Act is governed by the law
15 in effect immediately before the effective date of this Act, and
16 that law is continued in effect for that purpose.

17 (b) The repeal by this Act of Sections 420.002 and 420.003,
18 Property Code, applies only to a contract for the construction of a
19 new home or the improvement of an existing home that is entered into
20 on or after the effective date of this Act. A contract for the
21 construction of a new home or the improvement of an existing home
22 that is entered into before the effective date of this Act is
23 governed by the law as it existed immediately before the effective
24 date of this Act, and that law is continued in effect for that
25 purpose.

26 (c) Except as provided by this section, the change in law
27 made by this Act to Chapter 27, Property Code, and the repeal by

1 this Act of Sections 426.005, 426.007, and 426.008, Property Code,
2 apply only to an action commenced on or after the effective date of
3 this Act. An action commenced before the effective date of this Act
4 or with respect to which a request was filed under Section 428.001,
5 Property Code, repealed by this Act, before the effective date of
6 this Act, is governed by the law in effect immediately before the
7 effective date of this Act, and that law is continued in effect for
8 that purpose.

9 (d) The change in law made by this Act to Section
10 27.003(a)(2), Property Code, applies only to a repair made on or
11 after the effective date of this Act. A repair made before the
12 effective date of this Act is subject to the law as it existed
13 immediately before the effective date of this Act, and that law is
14 continued in effect for that purpose.

15 (e) The repeal by this Act of Section 428.005, Property
16 Code, does not apply to the receipt by a builder of a notice
17 described by that section before the effective date of this Act.
18 The receipt by a builder of a notice described by that section
19 before the effective date of this Act is governed by the law in
20 effect immediately before that date, and that law is continued in
21 effect for that purpose.

22 (f) Except as provided by this section, the repeal by this
23 Act of Chapter 430, Property Code, applies only to residential
24 construction under a contract entered into on or after the
25 effective date of this Act, and the repeal by this Act of Section
26 401.005(c), Property Code, applies only to a home or material
27 improvement to a home described by Section 401.005(c), Property

1 Code, repealed by this Act, the building or remodeling of which
2 commences after the effective date of this Act. Residential
3 construction under a contract entered into before the effective
4 date of this Act or a home or material improvement to a home
5 described by Section 401.005(c), Property Code, the building or
6 remodeling of which commenced before the effective date of this
7 Act, is subject to the warranties and building and performance
8 standards applicable to the construction immediately before the
9 effective date of this Act.

10 (g) The repeal by this Act of Section 436.003, Property
11 Code, applies only to an arbitration initiated on or after the
12 effective date of this Act. An arbitration initiated before the
13 effective date of this Act is governed by the law applicable to the
14 arbitration immediately before the effective date of this Act, and
15 that law is continued in effect for that purpose.

16 (h) The repeal by this Act of Chapter 437, Property Code,
17 applies only to an arbitration award filed on or after the effective
18 date of this Act. An award filed before the effective date of this
19 Act is governed by the law in effect immediately before that date,
20 and that law is continued in effect for that purpose.

21 (i) The repeal by this Act of Chapter 438, Property Code,
22 applies only to an arbitration award issued on or after the
23 effective date of this Act. An award issued before the effective
24 date of this Act is governed by the law in effect immediately before
25 that date, and that law is continued in effect for that purpose.

26 SECTION 11. This Act takes effect September 1, 2009.