

By: Gattis

H.B. No. 2695

A BILL TO BE ENTITLED

AN ACT

relating to the abolition of the Texas Residential Construction Commission.

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

SECTION 1. (a) The Texas Residential Construction Commission is abolished effective February 1, 2010.

(b) The following statutes are repealed:

(1) Section 214.906, Local Government Code;

(2) Title 16, Property Code;

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

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

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

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

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. Chapter 27, Property Code, is amended by adding
27 Section 27.0021 to read as follows:

1 Sec. 27.0021. CERTAIN COMMON LAW ACTIONS REESTABLISHED.
2 Subject to Section 27.002(b), a cause of action that existed at
3 common law before the enactment of former Title 16, repealed by the
4 81st Legislature, Regular Session, 2009, that would have been
5 barred by that title at any time before its repeal is reestablished.

6 SECTION 6. Section 27.002(b), Property Code, is amended to
7 read as follows:

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

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

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

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

20 (A) negligence of a person other than the
21 contractor or an agent, employee, or subcontractor of the
22 contractor;

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

25 (i) take reasonable action to mitigate the
26 damages; or

27 (ii) take reasonable action to maintain the

1 residence;

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

3 (D) normal shrinkage due to drying or settlement
4 of construction components within the tolerance of building
5 standards; or

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

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

24 SECTION 8. Sections 27.004(a), (b), (c), and (d), Property
25 Code, are amended to read as follows:

26 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~
27 ~~before~~] the 60th day preceding the date a claimant seeking from a

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

23 (b) Not ~~[later than the 15th day after the date of a final,~~
24 ~~unappealable determination of a dispute under Subtitle D, Title 16,~~
25 ~~if applicable, or not]~~ later than the 45th day after the date the
26 contractor receives the notice ~~[under this section, if Subtitle D,~~
27 ~~Title 16, does not apply]~~, the contractor may make a written offer

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

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

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

23 (c) If [~~compliance with Subtitle D, Title 16, or~~] the giving
24 of the notice under Subsections (a) and (b) within the period
25 prescribed by those subsections is impracticable because of the
26 necessity of initiating an action at an earlier date to prevent
27 expiration of the statute of limitations or if the complaint is

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

20 (d) The court or arbitration tribunal shall abate an action
21 governed by this chapter if Subsection (c) does not apply and the
22 court or tribunal, after a hearing, finds that the contractor is
23 entitled to abatement because the claimant failed to [~~comply with~~
24 ~~the requirements of Subtitle D, Title 16, if applicable, failed to~~]
25 provide the notice or failed to give the contractor a reasonable
26 opportunity to inspect the property as required by Subsection (a),
27 or failed to follow the procedures specified by Subsection (b). An

1 action is automatically abated without the order of the court or
2 tribunal beginning on the 11th day after the date a motion to abate
3 is filed if the motion:

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

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

14 SECTION 9. Section 27.0042(b), Property Code, is amended to
15 read as follows:

16 (b) A contractor may not elect to purchase the residence
17 under Subsection (a) if [+]

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

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

23 SECTION 10. Section 41.007(a), Property Code, is amended to
24 read as follows:

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

27 [~~(1) the contractor's certificate of registration~~

~~number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission,~~

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

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

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

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

(b) Section 27.0021, Property Code, as added by this Act, and the repeal by this Act of Section 401.005(c), Property Code, apply only to a home or material improvement to a home described by Section 401.005(c), Property Code, repealed by this Act, the

building or remodeling of which commences on or after the effective date of this Act. A home or material improvement to a home described by Section 401.005(c), Property Code, repealed by this Act, the building or remodeling of which is commenced before the effective date of this Act is subject to the warranty obligation applicable to the home or material improvement to the home immediately before the effective date of this Act, and is not subject to a cause of action under Section 27.0021, Property Code, as added by this Act.

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

(d) Except as provided by this section, the change in law made by this Act to Chapter 27, Property Code, and the repeal by this Act of Sections 426.005, 426.007, and 426.008, Property Code, apply only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act or with respect to which a request was filed under Section 428.001, Property Code, repealed by this Act, before the effective date of this Act, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for

1 that purpose.

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

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

15 (g) Except as provided by this subsection, Section 27.0021,
16 Property Code, as added by this Act, and the repeal by this Act of
17 Chapter 430, Property Code, apply only to residential construction
18 commenced on or after the effective date of this Act. Residential
19 construction commenced before the effective date of this Act or
20 residential construction commenced after the effective date of this
21 Act under a contract entered into before the effective date of this
22 Act is subject to the warranties and building and performance
23 standards applicable to the residential construction immediately
24 before the effective date of this Act, and is not subject to a cause
25 of action under Section 27.0021, Property Code, as added by this
26 Act.

27 (h) The repeal by this Act of Section 436.003, Property

1 Code, applies only to an arbitration initiated on or after the
2 effective date of this Act. An arbitration initiated before the
3 effective date of this Act is governed by the law applicable to the
4 arbitration immediately before the effective date of this Act, and
5 that law is continued in effect for that purpose.

6 (i) The repeal by this Act of Chapter 437, Property Code,
7 applies only to an arbitration award filed on or after the effective
8 date of this Act. An award filed before the effective date of this
9 Act is governed by the law in effect immediately before that date,
10 and that law is continued in effect for that purpose.

11 (j) The repeal by this Act of Chapter 438, Property Code,
12 applies only to an arbitration award issued on or after the
13 effective date of this Act. An award issued before the effective
14 date of this Act is governed by the law in effect immediately before
15 that date, and that law is continued in effect for that purpose.

16 SECTION 12. This Act takes effect September 1, 2009.