

By: Lambert, Darby

H.B. No. 3503

Substitute the following for H.B. No. 3503:

By: Johnson of Dallas

C.S.H.B. No. 3503

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the correction or removal of certain obsolete
3 provisions of the Property Code.

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

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

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

17 (5) "Contractor":

18 (A) means:

19 (i) a builder [~~as defined by Section~~
20 ~~401.003,~~] contracting with an owner for the construction or repair
21 of a new residence, for the repair or alteration of or an addition
22 to an existing residence, or for the construction, sale,
23 alteration, addition, or repair of an appurtenance to a new or
24 existing residence;

1 (ii) any person contracting with a
2 purchaser for the sale of a new residence constructed by or on
3 behalf of that person; or

4 (iii) a person contracting with an owner or
5 the developer of a condominium for the construction of a new
6 residence, for an alteration of or an addition to an existing
7 residence, for repair of a new or existing residence, or for the
8 construction, sale, alteration, addition, or repair of an
9 appurtenance to a new or existing residence; and

10 (B) includes:

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

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

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

22 SECTION 2. Section 27.003(a), Property Code, is amended to
23 read as follows:

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

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

1 (A) negligence of a person other than the
2 contractor or an agent, employee, or subcontractor of the
3 contractor;

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

6 (i) take reasonable action to mitigate the
7 damages; or

8 (ii) take reasonable action to maintain the
9 residence;

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

11 (D) normal shrinkage due to drying or settlement
12 of construction components within the tolerance of building
13 standards; or

14 (E) the contractor's reliance on written
15 information relating to the residence, appurtenance, or real
16 property on which the residence and appurtenance are affixed that
17 was obtained from official government records, if the written
18 information was false or inaccurate and the contractor did not know
19 and could not reasonably have known of the falsity or inaccuracy of
20 the information; and

21 (2) if an assignee of the claimant or a person
22 subrogated to the rights of a claimant fails to provide the
23 contractor with the written notice and opportunity to inspect and
24 offer to repair required by Section 27.004 [~~or fails to request~~
25 ~~state-sponsored inspection and dispute resolution under Chapter~~
26 ~~428, if applicable,~~] before performing repairs, the contractor is
27 not liable for the cost of any repairs or any percentage of damages

1 caused by repairs made to a construction defect at the request of an
2 assignee of the claimant or a person subrogated to the rights of a
3 claimant by a person other than the contractor or an agent,
4 employee, or subcontractor of the contractor.

5 SECTION 3. Sections 27.004(a), (b), (c), and (d), Property
6 Code, are amended to read as follows:

7 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~
8 ~~before~~] the 60th day preceding the date a claimant seeking from a
9 contractor damages or other relief arising from a construction
10 defect initiates an action, the claimant shall give written notice
11 by certified mail, return receipt requested, to the contractor, at
12 the contractor's last known address, specifying in reasonable
13 detail the construction defects that are the subject of the
14 complaint. On the request of the contractor, the claimant shall
15 provide to the contractor any evidence that depicts the nature and
16 cause of the defect and the nature and extent of repairs necessary
17 to remedy the defect, including expert reports, photographs, and
18 videotapes, if that evidence would be discoverable under Rule 192,
19 Texas Rules of Civil Procedure. During the 35-day period after the
20 date the contractor receives the notice, and on the contractor's
21 written request, the contractor shall be given a reasonable
22 opportunity to inspect and have inspected the property that is the
23 subject of the complaint to determine the nature and cause of the
24 defect and the nature and extent of repairs necessary to remedy the
25 defect. The contractor may take reasonable steps to document the
26 defect. [~~In a claim subject to Subtitle D, Title 16, a contractor is~~
27 ~~entitled to make an offer of repair in accordance with Subsection~~

1 ~~(b). A claimant is not required to give written notice to a~~
2 ~~contractor under this subsection in a claim subject to Subtitle D,~~
3 ~~Title 16.]~~

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

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

27 (2) not later than the 10th day after the date the

1 contractor receives notice under Subdivision (1), the contractor
2 may make a supplemental written offer of settlement to the claimant
3 by sending the offer to the claimant or the claimant's attorney.

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

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

12 (1) is verified and alleges that the person against
13 whom the action is pending did not receive the written notice
14 required by Subsection (a), the person against whom the action is
15 pending was not given a reasonable opportunity to inspect the
16 property as required by Subsection (a), or the claimant failed to
17 follow the procedures specified by Subsection (b) [~~or Subtitle D,~~
18 ~~Title 16~~]; and

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

22 SECTION 4. Section 53.172, Property Code, is amended to
23 read as follows:

24 Sec. 53.172. BOND REQUIREMENTS. The bond must:

25 (1) describe the property on which the liens are
26 claimed;

27 (2) refer to each lien claimed in a manner sufficient

1 to identify it;

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

7 (4) be payable to the parties claiming the liens;

8 (5) be executed by:

9 (A) the party filing the bond as principal; and

10 (B) a corporate surety authorized and admitted to
11 do business under the law in this state and licensed by this state
12 to execute the bond as surety, subject to Subchapter A, Chapter
13 3503, Insurance Code [~~Section 1, Chapter 87, Acts of the 56th~~
14 ~~Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas~~
15 ~~Insurance Code)~~]; and

16 (6) be conditioned substantially that the principal
17 and sureties will pay to the named obligees or to their assignees
18 the amount that the named obligees would have been entitled to
19 recover if their claims had been proved to be valid and enforceable
20 liens on the property.

21 SECTION 5. Section 74.3013(h), Property Code, is amended
22 to read as follows:

23 (h) In this section, a nonprofit cooperative corporation
24 means a cooperative corporation organized under Chapters 51 and 52,
25 Agriculture Code, the Texas Nonprofit [~~Non-Profit~~] Corporation
26 Law, as described by Section 1.008(d), Business Organizations Code
27 [~~Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~],

1 the Texas Cooperative Association Law, as described by Section
2 1.008(i), Business Organizations Code [~~Act (Article 1396-50.01,~~
3 ~~Vernon's Texas Civil Statutes)~~], and Chapter 161, Utilities Code.

4 SECTION 6. Sections 112.058(c) and (d), Property Code, are
5 amended to read as follows:

6 (c) The community trust may transfer assets of the trust to
7 a nonprofit corporation only if the nonprofit corporation is
8 organized under the Texas Nonprofit Corporation Law, as described
9 by Section 1.008(d), Business Organizations Code, [~~the Texas~~
10 ~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~
11 ~~Texas Civil Statutes)~~] and organized for the same purpose as the
12 community trust. The charter of the nonprofit corporation must
13 describe the purpose of the corporation and the proposed use of the
14 assets transferred using language substantially similar to the
15 language used in the instrument creating the community trust.

16 (d) To transfer the assets of and terminate a community
17 trust under this section, the governing body of the community trust
18 must:

19 (1) file a petition in a probate court, county court,
20 or district court requesting:

21 (A) the transfer of the assets of the trust to a
22 nonprofit corporation established for the purpose of receiving and
23 administering the assets of the trust; and

24 (B) the termination of the trust;

25 (2) send by first class mail to each trust settlor and
26 each trustee of each component trust of the community trust who can
27 be located by the exercise of reasonable diligence a copy of the

1 governing body's petition and a notice specifying the time and
2 place of the court-scheduled hearing on the petition; and

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

6 TO ALL INTERESTED PERSONS:

7 (NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF
8 COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT
9 TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

10 (1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED;
11 AND

12 (2) THE ASSETS OF THE TRUST WILL BE:

13 (A) TRANSFERRED TO A NONPROFIT CORPORATION WITH
14 THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF
15 COMMUNITY TRUST); AND

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

19 THE PURPOSE OF THE CONVERSION IS TO ACHIEVE SAVINGS AND USE
20 THE MONEY SAVED TO FURTHER THE PURPOSES FOR WHICH THE (NAME OF
21 COMMUNITY TRUST) WAS CREATED.

22 A HEARING ON THE PETITION IS SCHEDULED ON (DATE AND TIME) AT
23 (LOCATION OF COURT).

24 FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING
25 BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE
26 NUMBER) OR THE COURT.

27 SECTION 7. Section [202.002\(b\)](#), Property Code, is amended to

1 read as follows:

2 (b) This chapter does not affect the requirements of Chapter
3 123, Human Resources Code [~~the Community Homes for Disabled Persons~~
4 ~~Location Act (Article 1011n, Vernon's Texas Civil Statutes)] .~~

5 SECTION 8. Section 202.003(b), Property Code, is amended to
6 read as follows:

7 (b) In this subsection, "family home" is a residential home
8 that meets the definition of and requirements applicable to a
9 family home under Chapter 123, Human Resources Code [~~the Community~~
10 ~~Homes for Disabled Persons Location Act (Article 1011n, Vernon's~~
11 ~~Texas Civil Statutes)] . A dedicatory instrument or restrictive
12 covenant may not be construed to prevent the use of property as a
13 family home. However, any restrictive covenant that applies to
14 property used as a family home shall be liberally construed to give
15 effect to its purposes and intent except to the extent that the
16 construction would restrict the use as a family home.~~

17 SECTION 9. Section 204.004(b), Property Code, is amended to
18 read as follows:

19 (b) The association must be nonprofit and may be
20 incorporated as a Texas nonprofit corporation. An unincorporated
21 association may incorporate under the Texas Nonprofit [~~Non-Profit~~
22 Corporation Law, as described by Section 1.008(d), Business
23 Organizations Code [~~Act (Article 1396-1.01 et seq., Vernon's Texas~~
24 ~~Civil Statutes)] .~~

25 SECTION 10. Section 204.010(a), Property Code, is amended
26 to read as follows:

27 (a) Unless otherwise provided by the restrictions or the

1 association's articles of incorporation or bylaws, the property
2 owners' association, acting through its board of directors or
3 trustees, may:

4 (1) adopt and amend bylaws;

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

8 (3) hire and terminate managing agents and other
9 employees, agents, and independent contractors;

10 (4) institute, defend, intervene in, settle, or
11 compromise litigation or administrative proceedings on matters
12 affecting the subdivision;

13 (5) make contracts and incur liabilities relating to
14 the operation of the subdivision and the property owners'
15 association;

16 (6) regulate the use, maintenance, repair,
17 replacement, modification, and appearance of the subdivision;

18 (7) make additional improvements to be included as a
19 part of the common area;

20 (8) grant easements, leases, licenses, and
21 concessions through or over the common area;

22 (9) impose and receive payments, fees, or charges for
23 the use, rental, or operation of the common area and for services
24 provided to property owners;

25 (10) impose interest, late charges, and, if
26 applicable, returned check charges for late payments of regular
27 assessments or special assessments;

1 (11) if notice and an opportunity to be heard are
2 given, collect reimbursement of actual attorney's fees and other
3 reasonable costs incurred by the property owners' association
4 relating to violations of the subdivision's restrictions or the
5 property owners' association's bylaws and rules;

6 (12) charge costs to an owner's assessment account and
7 collect the costs in any manner provided in the restrictions for the
8 collection of assessments;

9 (13) adopt and amend rules regulating the collection
10 of delinquent assessments and the application of payments;

11 (14) impose reasonable charges for preparing,
12 recording, or copying amendments to the restrictions, resale
13 certificates, or statements of unpaid assessments;

14 (15) purchase insurance and fidelity bonds, including
15 directors' and officers' liability insurance, that the board
16 considers appropriate or necessary;

17 (16) if the restrictions allow for an annual increase
18 in the maximum regular assessment without a vote of the membership,
19 assess the increase annually or accumulate and assess the increase
20 after a number of years;

21 (17) subject to the requirements of the Texas
22 Nonprofit [Non-Profit] Corporation Law, as described by Section
23 1.008(d), Business Organizations Code [~~Act (Article 1396-1.01 et~~
24 ~~seq., Vernon's Texas Civil Statutes)~~] and by majority vote of its
25 board of directors, indemnify a director or officer of the property
26 owners' association who was, is, or may be made a named defendant or
27 respondent in a proceeding because the person is or was a director;

1 (18) if the restrictions vest the architectural
2 control authority in the property owners' association or if the
3 authority is vested in the property owners' association under
4 Section 204.011:

5 (A) implement written architectural control
6 guidelines for its own use or record the guidelines in the real
7 property records of the applicable county; and

8 (B) modify the guidelines as the needs of the
9 subdivision change;

10 (19) exercise other powers conferred by the
11 restrictions, its articles of incorporation, or its bylaws;

12 (20) exercise other powers that may be exercised in
13 this state by a corporation of the same type as the property owners'
14 association; and

15 (21) exercise other powers necessary and proper for
16 the governance and operation of the property owners' association.

17 SECTION 11. The following provisions of the Property Code
18 are repealed:

19 (1) Section 5.018;

20 (2) Sections 27.001(3) and (9);

21 (3) Section 27.004(1); and

22 (4) Section 27.007(c).

23 SECTION 12. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect September 1, 2021.