

By: Leach

H.B. No. 3595

A BILL TO BE ENTITLED

AN ACT

relating to residential construction liability.

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

SECTION 1. Section 27.001, Property Code, is amended to read as follows:

Sec. 27.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration.

(2) "Appurtenance" means any garage, outbuilding, retaining wall, landscaping improvement, or other improvement, structure, or recreational facility that is constructed by a contractor in connection with the construction of a new residence, regardless of whether or not it is attached to or ~~[appurtenant to a residence but is not]~~ a part of the dwelling unit.

~~(3) ["Commission" means the Texas Residential Construction Commission.]~~

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

1 residence and appurtenance are affixed proximately caused by a  
2 construction defect.

3 (4) [~~(5)~~] "Contractor":

4 (A) means:

5 (i) a builder [~~, as defined by Section~~  
6 ~~401.003,~~] contracting with an owner for the construction or repair  
7 of a new residence, for the repair or alteration of or an addition  
8 to an existing residence, or for the construction, sale,  
9 alteration, addition, or repair of an appurtenance to a new or  
10 existing residence;

11 (ii) any person contracting [~~with a~~  
12 ~~purchaser~~] for the sale or construction of a new residence  
13 constructed by or on behalf of that person; or

14 (iii) a person contracting with an owner or  
15 the developer of a condominium or other housing project for the  
16 construction of one or more [~~a~~] new residences [~~residence~~], for an  
17 alteration of or an addition to an existing residence, for repair of  
18 a new or existing residence, or for the construction, sale,  
19 alteration, addition, or repair of an appurtenance to a new or  
20 existing residence; and

21 (B) includes:

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

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

1           (5) [~~(6)~~] "Economic damages" means compensatory  
2 damages for pecuniary loss proximately caused by a construction  
3 defect. The term does not include exemplary damages, speculative  
4 damages, or damages for bodily or personal injury, physical pain  
5 and mental anguish, loss of consortium, disfigurement, physical  
6 impairment, or loss of companionship and society.

7           (6) [~~(7)~~] "Residence" means the real property and  
8 improvements for a single-family house, duplex, triplex, or  
9 quadruplex or a unit and the common elements in a multiunit  
10 residential structure in which [~~title to~~] the individual units are  
11 sold or leased [~~is transferred~~] to the owners or occupants under a  
12 condominium or cooperative system.

13           (7) [~~(8)~~] "Structural failure" [~~has the meaning~~  
14 ~~assigned by Section 401.002 for an action to which Subtitle D, Title~~  
15 ~~16, applies and for any other action~~] means actual physical damage  
16 to the load-bearing portion of a residence, such as a foundation or  
17 framing system [~~caused by a failure of the load-bearing portion~~].

18           (8) [~~(9)~~] "~~Third-party inspector~~" ~~has the meaning~~  
19 ~~assigned by Section 401.002.~~

20           [~~(10)~~] "Developer of a condominium" means a declarant,  
21 as defined by Section 82.003, of a condominium consisting of one or  
22 more residences.

23           SECTION 2. Section 27.002(b), Property Code, is amended to  
24 read as follows:

25           (b) To [~~Except as provided by this subsection, to~~] the  
26 extent of conflict between this chapter and any other law,  
27 including the Deceptive Trade Practices-Consumer Protection Act

1 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law  
2 cause of action, this chapter prevails. [~~To the extent of conflict~~  
3 ~~between this chapter and Title 16, Title 16 prevails.~~]

4 SECTION 3. Section 27.003(a), Property Code, is amended to  
5 read as follows:

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

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

10 (A) negligence of a person other than the  
11 contractor or an agent, employee, or subcontractor of the  
12 contractor;

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

15 (i) take reasonable action to mitigate the  
16 damages; or

17 (ii) take reasonable action to maintain the  
18 residence;

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

20 (D) normal shrinkage or cracking due to drying or  
21 settlement of construction components within the tolerance of  
22 building standards; [~~or~~]

23 (E) the contractor's reliance on written  
24 information relating to the residence, appurtenance, or real  
25 property on which the residence and appurtenance are affixed that  
26 was obtained from official government records, if the written  
27 information was false, outdated, or inaccurate and the contractor

1 did not know and could not reasonably have known of the falsity,  
2 modification, or inaccuracy of the information; or

3 (F) any condition, including noncompliance with  
4 an applicable code, standard, warranty, manufacturer's  
5 recommendation, or contractual plan or specification, that does not  
6 result in either:

7 (i) actual physical damage to the  
8 residence; or

9 (ii) the failure of a building component to  
10 perform its intended function or purpose at the time the notice  
11 required by Section 27.004 is sent; and

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

23 SECTION 4. Sections 27.004(a), (b), (c), (d), (e), (g), and  
24 (m), Property Code, are amended to read as follows:

25 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~  
26 ~~before~~] the 60th day preceding the date a claimant seeking from a  
27 contractor damages or other relief arising from a construction

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

26 (b) Not later than the [~~15th day after the date of a final,~~  
27 ~~unappealable determination of a dispute under Subtitle D, Title 16,~~

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

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

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

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

25 (d) The court or arbitration tribunal shall dismiss [~~abate~~]  
26 an action governed by this chapter if Subsection (c) does not apply  
27 and the court or tribunal, after a hearing, finds that the

1 contractor is entitled to dismissal [~~abatement~~] because the  
2 claimant [~~failed to comply with the requirements of Subtitle D,~~  
3 ~~Title 16, if applicable,~~] failed to provide the notice or failed to  
4 give the contractor a reasonable opportunity to inspect the  
5 property as required by Subsection (a), or failed to follow the  
6 procedures specified by Subsection (b). An action is  
7 automatically dismissed [~~abated~~] without the order of the court or  
8 tribunal beginning on the 11th day after the date a motion to  
9 dismiss [~~abate~~] is filed if the motion:

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

17 (2) is not controverted by an affidavit filed by the  
18 claimant before the 11th day after the date on which the motion to  
19 dismiss [~~abate~~] is filed.

20 (e) If a claimant rejects a reasonable offer made under  
21 Subsection (b) or does not permit the contractor or independent  
22 contractor a reasonable opportunity to inspect or repair the defect  
23 pursuant to an accepted offer of settlement, the claimant[+]

24 [~~(1)~~] may not recover an amount in excess of:

25 (1) [~~(A)~~] the fair market value of the contractor's  
26 last offer of settlement under Subsection (b); or

27 (2) [~~(B)~~] the amount of a reasonable monetary

1 settlement or purchase offer made under Subsection (n) [~~and~~  
2 [~~(2) may recover only the amount of reasonable and~~  
3 ~~necessary costs and attorney's fees as prescribed by Rule 1.04,~~  
4 ~~Texas Disciplinary Rules of Professional Conduct, incurred before~~  
5 ~~the offer was rejected or considered rejected]~~.

6 (g) Except as provided by Subsection (e), in an action  
7 subject to this chapter the claimant may recover only the following  
8 economic damages proximately caused by a construction defect:

9 (1) the reasonable cost of repairs necessary to cure  
10 any construction defect;

11 (2) the reasonable and necessary cost for the  
12 replacement or repair of any damaged goods in the residence;

13 (3) reasonable and necessary engineering and  
14 consulting fees;

15 (4) the reasonable expenses of temporary housing  
16 reasonably necessary during the repair period; and

17 (5) the reduction in current market value, if any,  
18 after the construction defect is repaired if the construction  
19 defect is a structural failure [~~and~~

20 [~~(6) reasonable and necessary attorney's fees]~~.

21 (m) Notwithstanding Subsections (a), (b), and (c), a  
22 contractor who receives written notice of a construction defect  
23 resulting from work performed by the contractor or an agent,  
24 employee, or subcontractor of the contractor and creating an  
25 imminent threat to the health or safety of the inhabitants of the  
26 residence shall take reasonable steps to cure the defect as soon as  
27 practicable. If the contractor fails to cure the defect in a

1 reasonable time, the owner of the residence may have the defect  
2 cured and may recover from the contractor the reasonable cost of the  
3 repairs [~~plus attorney's fees and costs in addition to any other~~  
4 ~~damages recoverable under any law not inconsistent with the~~  
5 ~~provisions of this chapter~~].

6 SECTION 5. Sections 27.0042(a) and (c), Property Code, are  
7 amended to read as follows:

8 (a) A written agreement between a contractor and a homeowner  
9 may provide that, [~~except as provided by Subsection (b),~~] if the  
10 reasonable cost of repairs necessary to repair a construction  
11 defect that is the responsibility of the contractor exceeds an  
12 agreed percentage of the current fair market value of the  
13 residence, as determined without reference to the construction  
14 defects, then, in an action subject to this chapter, the contractor  
15 may elect as an alternative to the damages specified in Section  
16 27.004(g) that the contractor who sold the residence to the  
17 homeowner purchase it.

18 (c) If a contractor elects to purchase the residence under  
19 Subsection (a):

20 (1) the contractor shall pay the original purchase  
21 price of the residence and closing costs incurred by the homeowner  
22 and the cost of transferring title to the contractor under the  
23 election;

24 (2) the homeowner may recover:

25 (A) [~~reasonable and necessary attorney's and~~  
26 ~~expert fees as identified in Section 27.004(g),~~

27 [~~(B)~~] reimbursement for permanent improvements

1 the owner made to the residence after the date the owner purchased  
2 the residence from the builder; and

3 (B) [~~(C)~~] reasonable costs to move from the  
4 residence; and

5 (3) conditioned on the payment of the purchase price,  
6 the homeowner shall tender a special warranty deed to the  
7 contractor, free of all liens and claims to liens as of the date the  
8 title is transferred to the contractor, and without damage caused  
9 by the homeowner.

10 SECTION 6. Section 27.005, Property Code, is amended to  
11 read as follows:

12 Sec. 27.005. [~~LIMITATIONS ON~~] EFFECT OF CHAPTER; REPOSE.

13 (a) This chapter does not create a cause of action or derivative  
14 liability or extend a limitations period.

15 (b) Notwithstanding any other law, including Sections  
16 16.008 and 16.009, Civil Practice and Remedies Code, an action  
17 subject to this chapter must be initiated by filing and service of a  
18 lawsuit or a demand for arbitration not later than five years after  
19 the earlier of:

20 (1) the date construction of the residence was  
21 completed;

22 (2) the date a final inspection or certificate of  
23 occupancy was issued;

24 (3) the date of transfer of title to the first owner of  
25 the residence;

26 (4) the date of first occupancy of the residence;

27 (5) the date of final payment to the contractor; or

1           (6) the date an affidavit of completion is filed in the  
2 county in which the residence is located.

3           SECTION 7. Section 27.006, Property Code, is amended to  
4 read as follows:

5           Sec. 27.006. CAUSATION. In an action to recover damages  
6 resulting from a construction defect, the claimant must prove that  
7 actual physical ~~[the]~~ damages to the residence were proximately  
8 caused by the construction defect. In no event may a claimant  
9 recover anything other than economic damages in connection with a  
10 claim subject to this chapter.

11           SECTION 8. The following provisions of the Property Code  
12 are repealed:

- 13           (1) Section 27.0031;
- 14           (2) Sections 27.004(f) and (l);
- 15           (3) Section 27.0042(b); and
- 16           (4) Section 27.007(c).

17           SECTION 9. The changes in law made by this Act apply only to  
18 a cause of action that accrues on or after the effective date of  
19 this Act. A cause of action that accrued before the effective date  
20 of this Act is governed by the law as it existed immediately before  
21 the effective date of this Act, and that law is continued in effect  
22 for that purpose.

23           SECTION 10. This Act takes effect September 1, 2021.