

By: Creighton

S.B. No. 1938

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the representation of parties in justice court cases
3 and to the correction or removal of certain obsolete provisions of
4 the Property Code.

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

6 SECTION 1. Subchapter A, Chapter 27, Government Code, is
7 amended by adding Section 27.007 to read as follows:

8 Sec. 27.007. REPRESENTATION OF PARTIES. (a) A party in a
9 justice court case is not required to be represented by an attorney.

10 A party who is:

11 (1) an individual may be represented by:

12 (A) the individual's self;

13 (B) an attorney; or

14 (C) an authorized agent who is not an attorney;

15 or

16 (2) a corporation or other entity may be represented

17 by:

18 (A) an employee, owner, officer, or partner of
19 the entity who is not an attorney;

20 (B) an attorney; or

21 (C) an authorized agent who is not an attorney.

22 (b) The court may, for good cause, allow an individual who
23 is representing the individual's self to be assisted in court by a
24 family member or other individual who is not being compensated.

1 SECTION 2. Sections 27.001(4), (5), and (8), Property Code,
2 are amended to read as follows:

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

13 (5) "Contractor":

14 (A) means:

15 (i) a builder [~~as defined by Section~~
16 ~~401.003,~~] contracting with an owner for the construction or repair
17 of a new residence, for the repair or alteration of or an addition
18 to an existing residence, or for the construction, sale,
19 alteration, addition, or repair of an appurtenance to a new or
20 existing residence;

21 (ii) any person contracting with a
22 purchaser for the sale of a new residence constructed by or on
23 behalf of that person; or

24 (iii) a person contracting with an owner or
25 the developer of a condominium for the construction of a new
26 residence, for an alteration of or an addition to an existing
27 residence, for repair of a new or existing residence, or for the

1 construction, sale, alteration, addition, or repair of an
2 appurtenance to a new or existing residence; and

3 (B) includes:

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

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

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

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

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

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

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

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

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

1 (ii) take reasonable action to maintain the
2 residence;

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

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

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

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

25 SECTION 4. Sections 27.004(a), (b), (c), and (d), Property
26 Code, are amended to read as follows:

27 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~

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

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

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

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

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

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

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

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

1 or failed to follow the procedures specified by Subsection (b). An
2 action is automatically abated without the order of the court or
3 tribunal beginning on the 11th day after the date a motion to abate
4 is filed if the motion:

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

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

15 SECTION 5. Section 53.172, Property Code, is amended to
16 read as follows:

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

18 (1) describe the property on which the liens are
19 claimed;

20 (2) refer to each lien claimed in a manner sufficient
21 to identify it;

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

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

1 (5) be executed by:

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

3 (B) a corporate surety authorized and admitted to
4 do business under the law in this state and licensed by this state
5 to execute the bond as surety, subject to Subchapter A, Chapter
6 3503, Insurance Code [~~Section 1, Chapter 87, Acts of the 56th~~
7 ~~Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas~~
8 ~~Insurance Code)~~]; and

9 (6) be conditioned substantially that the principal
10 and sureties will pay to the named obligees or to their assignees
11 the amount that the named obligees would have been entitled to
12 recover if their claims had been proved to be valid and enforceable
13 liens on the property.

14 SECTION 6. Section 74.3013(h), Property Code, is amended
15 to read as follows:

16 (h) In this section, a nonprofit cooperative corporation
17 means a cooperative corporation organized under Chapters 51 and 52,
18 Agriculture Code, the Texas Nonprofit [~~Non-Profit~~] Corporation
19 Law, as described by Section 1.008(d), Business Organizations Code
20 [~~Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~],
21 the Texas Cooperative Association Law, as described by Section
22 1.008(i), Business Organizations Code [~~Act (Article 1396-50.01,~~
23 ~~Vernon's Texas Civil Statutes)~~], and Chapter 161, Utilities Code.

24 SECTION 7. Sections 112.058(c) and (d), Property Code, are
25 amended to read as follows:

26 (c) The community trust may transfer assets of the trust to
27 a nonprofit corporation only if the nonprofit corporation is

1 organized under the Texas Nonprofit Corporation Law, as described
2 by Section 1.008(d), Business Organizations Code, [the Texas
3 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's
4 Texas Civil Statutes)] and organized for the same purpose as the
5 community trust. The charter of the nonprofit corporation must
6 describe the purpose of the corporation and the proposed use of the
7 assets transferred using language substantially similar to the
8 language used in the instrument creating the community trust.

9 (d) To transfer the assets of and terminate a community
10 trust under this section, the governing body of the community trust
11 must:

12 (1) file a petition in a probate court, county court,
13 or district court requesting:

14 (A) the transfer of the assets of the trust to a
15 nonprofit corporation established for the purpose of receiving and
16 administering the assets of the trust; and

17 (B) the termination of the trust;

18 (2) send by first class mail to each trust settlor and
19 each trustee of each component trust of the community trust who can
20 be located by the exercise of reasonable diligence a copy of the
21 governing body's petition and a notice specifying the time and
22 place of the court-scheduled hearing on the petition; and

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

26 TO ALL INTERESTED PERSONS:

27 (NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF

1 COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT
2 TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

3 (1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED;
4 AND

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

6 (A) TRANSFERRED TO A NONPROFIT CORPORATION WITH
7 THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF
8 COMMUNITY TRUST); AND

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

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

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

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

20 SECTION 8. Section [202.002\(b\)](#), Property Code, is amended to
21 read as follows:

22 (b) This chapter does not affect the requirements of Chapter
23 123, Human Resources Code [~~the Community Homes for Disabled Persons~~
24 ~~Location Act (Article 1011n, Vernon's Texas Civil Statutes)~~].

25 SECTION 9. Section [202.003\(b\)](#), Property Code, is amended to
26 read as follows:

27 (b) In this subsection, "family home" is a residential home

1 that meets the definition of and requirements applicable to a
2 family home under Chapter 123, Human Resources Code [~~the Community~~
3 ~~Homes for Disabled Persons Location Act (Article 1011n, Vernon's~~
4 ~~Texas Civil Statutes)~~]. A dedicatory instrument or restrictive
5 covenant may not be construed to prevent the use of property as a
6 family home. However, any restrictive covenant that applies to
7 property used as a family home shall be liberally construed to give
8 effect to its purposes and intent except to the extent that the
9 construction would restrict the use as a family home.

10 SECTION 10. Section 204.004(b), Property Code, is amended
11 to read as follows:

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

18 SECTION 11. Section 204.010(a), Property Code, is amended
19 to read as follows:

20 (a) Unless otherwise provided by the restrictions or the
21 association's articles of incorporation or bylaws, the property
22 owners' association, acting through its board of directors or
23 trustees, may:

- 24 (1) adopt and amend bylaws;
- 25 (2) adopt and amend budgets for revenues,
26 expenditures, and reserves and collect regular assessments or
27 special assessments for common expenses from property owners;

1 (3) hire and terminate managing agents and other
2 employees, agents, and independent contractors;

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

6 (5) make contracts and incur liabilities relating to
7 the operation of the subdivision and the property owners'
8 association;

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

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

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

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

18 (10) impose interest, late charges, and, if
19 applicable, returned check charges for late payments of regular
20 assessments or special assessments;

21 (11) if notice and an opportunity to be heard are
22 given, collect reimbursement of actual attorney's fees and other
23 reasonable costs incurred by the property owners' association
24 relating to violations of the subdivision's restrictions or the
25 property owners' association's bylaws and rules;

26 (12) charge costs to an owner's assessment account and
27 collect the costs in any manner provided in the restrictions for the

1 collection of assessments;

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

4 (14) impose reasonable charges for preparing,
5 recording, or copying amendments to the restrictions, resale
6 certificates, or statements of unpaid assessments;

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

10 (16) if the restrictions allow for an annual increase
11 in the maximum regular assessment without a vote of the membership,
12 assess the increase annually or accumulate and assess the increase
13 after a number of years;

14 (17) subject to the requirements of the Texas
15 Nonprofit [Non-Profit] Corporation Law, as described by Section
16 1.008(d), Business Organizations Code [Act (Article 1396-1.01 et
17 seq., Vernon's Texas Civil Statutes)] and by majority vote of its
18 board of directors, indemnify a director or officer of the property
19 owners' association who was, is, or may be made a named defendant or
20 respondent in a proceeding because the person is or was a director;

21 (18) if the restrictions vest the architectural
22 control authority in the property owners' association or if the
23 authority is vested in the property owners' association under
24 Section 204.011:

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

1 (B) modify the guidelines as the needs of the
2 subdivision change;

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

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

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

10 SECTION 12. The following provisions are repealed:

11 (1) Section 27.031(d), Government Code;

12 (2) Section 5.018, Property Code;

13 (3) Sections 27.001(3) and (9), Property Code;

14 (4) Section 27.004(1), Property Code; and

15 (5) Section 27.007(c), Property Code.

16 SECTION 13. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2021.