88R19894 AJA-F

By:  Leach, Patterson, et al. H.B. No. 2022

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, or other structure or recreational facility that is constructed by a contractor in connection with the construction or alteration of a residence, regardless of whether 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 deficiency in [~~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 residence and appurtenance are affixed proximately caused by a construction defect.~~]

(4) [~~(5)~~]  "Contractor":

(A)  means:

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

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

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

(B)  includes:

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

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

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

(6) [~~(7)~~]  "Residence" means the real property and improvements for a detached one-family or two-family dwelling, a townhouse not more than three stories above grade plane in height with a separate means of egress, an accessory structure not more than three stories above grade plane in height, or a [~~single-family house,~~] duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which [~~title to~~] the individual units are sold [~~is transferred~~] to the owners under a condominium or cooperative system.

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

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

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

(9)  "Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not less than two sides.

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

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

SECTION 3.  Section 27.003, Property Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  In an action subject to this chapter [~~to recover damages or other relief~~] arising from a construction defect:

(1)  a contractor is liable only to the extent a defective condition proximately causes:

(A)  actual physical damage to the residence;

(B)  an actual failure or lack of capability of a building component to perform its intended function or purpose; or

(C)  a verifiable danger to the safety of the occupants of the residence;

(2)  a contractor is not liable for [~~any percentage of~~] damages caused by:

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

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

(i)  [~~take reasonable action to~~] mitigate the damages; [~~or~~]

(ii)  [~~take reasonable action to~~] maintain the residence; or

(iii)  timely notify a contractor of a construction defect;

(C)  normal wear, tear, or deterioration;

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

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

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

(c)  To maintain a claim of breach of a warranty of habitability, a claimant must establish that a construction defect:

(1)   was latent at the time the residence was completed or title was conveyed to the original purchaser; and

(2)  has rendered the residence unsuitable for its intended use as a home.

SECTION 4.  Section 27.004, Property Code, is amended by amending Subsections (a), (b), (c), (d), and (g) and adding Subsection (g-1) to read as follows:

(a)  Before [~~In a claim not subject to Subtitle D, Title 16, before~~] the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. The [~~On the request of the contractor, the~~] claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including any expert reports, photographs, and video or audio recordings [~~videotapes~~], if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. To the extent requested, the contractor shall be given the opportunity to conduct up to three inspections during the 35-day period after the date the contractor receives the notice and during any extension of that inspection period provided by law or as otherwise agreed to by the parties. The contractor may take reasonable steps to document the defect. [~~In a claim subject to Subtitle D, Title 16, a contractor is entitled to make an offer of repair in accordance with Subsection (b). A claimant is not required to give written notice to a contractor under this subsection in a claim subject to Subtitle D, Title 16.~~]

(b)  Not later than the 60th [~~15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable, or not later than the 45th~~] day after the date the contractor receives the notice under this section, [~~if Subtitle D, Title 16, does not apply,~~] the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made and the time for completion of the repairs if more than 60 days. The repairs shall be made not later than the 60th [~~45th~~] day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

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

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

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

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

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

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

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

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

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

(3)  reasonable and necessary engineering and consulting fees;

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

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

(6)  reasonable and necessary attorney's fees; and

(7)  reasonable and necessary arbitration filing fees and the claimant's share of arbitrator compensation.

(g-1)  The court or arbitration tribunal may order that an offer made by the contractor after the time prescribed is considered timely for purposes of Subsection (b) or (c), as applicable, if the contractor is prejudiced in the contractor's opportunity to inspect as provided for by Subsection (a) or (c) or make an offer provided for by Subsection (b) or (c):

(1)  because the claimant:

(A)  failed to provide the contractor evidence available and in the claimant's possession, custody, or control at the time of the original notice depicting the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including reports, photographs, videos, or any other evidence; or

(B)  amended a claim to add a new alleged defect; or

(2)  due to events beyond the contractor's control.

SECTION 5.  Section 27.0042(a), Property Code, is amended to read as follows:

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

SECTION 6.  Section 27.006, Property Code, is amended to read as follows:

Sec. 27.006.  CAUSATION.  In an action to recover damages resulting from a construction defect, the claimant must prove that:

(1)  the construction defect existed at the time of completion of the construction, alteration, or repair; and

(2)  the damages were proximately caused by the construction defect.

SECTION 7.  Chapter 27, Property Code, is amended by adding Sections 27.008 and 27.009 to read as follows:

Sec. 27.008.  EFFECT OF ARBITRATION ON LIMITATIONS PERIOD. The submission of an action subject to this chapter to arbitration has the same effect on the running of a limitations period as a filing in a court in this state.

Sec. 27.009.  NO WAIVER. An attempted waiver of the provisions of this chapter in a contract subject to this chapter is void.

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

(1)  Section 27.004(l);

(2)  Section 27.0042(b); and

(3)  Section 27.007(c).

SECTION 9.  The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued 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.

SECTION 10.  This Act takes effect September 1, 2023.