

By: Bryant

H.B. No. 3422

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(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 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 for the construction of a new 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.

(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.

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

1 cause of action, this chapter prevails. [~~To the extent of conflict~~
2 ~~between this chapter and Title 16, Title 16 prevails.~~]

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

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

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

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

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

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

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

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

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

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

1 the information; and

2 (2) if an assignee of the claimant or a person
3 subrogated to the rights of a claimant fails to provide the
4 contractor with the written notice and opportunity to inspect and
5 offer to repair required by Section 27.004 [~~or fails to request~~
6 ~~state-sponsored inspection and dispute resolution under Chapter~~
7 ~~428, if applicable,~~] before performing repairs, the contractor is
8 not liable for the cost of any repairs or any percentage of damages
9 caused by repairs made to a construction defect at the request of an
10 assignee of the claimant or a person subrogated to the rights of a
11 claimant by a person other than the contractor or an agent,
12 employee, or subcontractor of the contractor.

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

15 (a) Before [~~In a claim not subject to Subtitle D, Title 16,~~
16 ~~before~~] the 60th day preceding the date a claimant seeking from a
17 contractor damages or other relief arising from a construction
18 defect initiates an action, the claimant shall give written notice
19 by certified mail, return receipt requested, to the contractor, at
20 the contractor's last known address, specifying in reasonable
21 detail the construction defects that are the subject of the
22 complaint. On the request of the contractor, the claimant shall
23 provide to the contractor any evidence that depicts the nature and
24 cause of the defect and the nature and extent of repairs necessary
25 to remedy the defect, including expert reports, photographs, and
26 videotapes, if that evidence would be discoverable under Rule 192,
27 Texas Rules of Civil Procedure. During the 35-day period after the

1 date the contractor receives the notice, and on the contractor's
 2 written request, the contractor shall be given a reasonable
 3 opportunity to inspect and have inspected the property that is the
 4 subject of the complaint to determine the nature and cause of the
 5 defect and the nature and extent of repairs necessary to remedy the
 6 defect. The contractor may take reasonable steps to document the
 7 defect. ~~[In a claim subject to Subtitle D, Title 16, a contractor is~~
 8 ~~entitled to make an offer of repair in accordance with Subsection~~
 9 ~~(b). A claimant is not required to give written notice to a~~
 10 ~~contractor under this subsection in a claim subject to Subtitle D,~~
 11 ~~Title 16.]~~

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

1 events beyond the control of the contractor. If a contractor makes
2 a written offer of settlement that the claimant considers to be
3 unreasonable:

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

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

12 (c) If ~~[compliance with Subtitle D, Title 16, or]~~ the giving
13 of the notice under Subsections (a) and (b) within the period
14 prescribed by those subsections is impracticable because of the
15 necessity of initiating an action at an earlier date to prevent
16 expiration of the statute of limitations or if the complaint is
17 asserted as a counterclaim, ~~[compliance with Subtitle D, Title 16,~~
18 ~~or]~~ the notice is not required. However, the action or counterclaim
19 shall specify in reasonable detail each construction defect that is
20 the subject of the complaint. The ~~[If Subtitle D, Title 16, applies~~
21 ~~to the complaint, simultaneously with the filing of an action by a~~
22 ~~claimant, the claimant must submit a request under Section 428.001.~~
23 ~~If Subtitle D, Title 16, does not apply, the]~~ inspection provided
24 for by Subsection (a) may be made not later than the 75th day after
25 the date of service of the suit, request for arbitration, or
26 counterclaim on the contractor, and the offer provided for by
27 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

1 claimant before the 11th day after the date on which the motion to
2 abate is filed.

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

5 (b) A contractor may not elect to purchase the residence
6 under Subsection (a) if[+

7 [~~(1)~~] the residence is more than five years old at the
8 time an action is initiated[~~;~~ or

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

12 SECTION 6. Section 53.172, Property Code, is amended to
13 read as follows:

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

15 (1) describe the property on which the liens are
16 claimed;

17 (2) refer to each lien claimed in a manner sufficient
18 to identify it;

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

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

25 (5) be executed by:

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

27 (B) a corporate surety authorized and admitted to

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

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

SECTION 7. Section 74.3013(h), Property Code, is amended to read as follows:

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

SECTION 8. Sections 112.058(c) and (d), Property Code, are amended to read as follows:

(c) The community trust may transfer assets of the trust to a nonprofit corporation only if the nonprofit corporation is organized under the Texas Nonprofit Corporation Law, as described by Section 1.008(d), Business Organizations Code, [~~the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~

1 ~~Texas Civil Statutes~~] and organized for the same purpose as the
2 community trust. The charter of the nonprofit corporation must
3 describe the purpose of the corporation and the proposed use of the
4 assets transferred using language substantially similar to the
5 language used in the instrument creating the community trust.

6 (d) To transfer the assets of and terminate a community
7 trust under this section, the governing body of the community trust
8 must:

9 (1) file a petition in a probate court, county court,
10 or district court requesting:

11 (A) the transfer of the assets of the trust to a
12 nonprofit corporation established for the purpose of receiving and
13 administering the assets of the trust; and

14 (B) the termination of the trust;

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

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

23 TO ALL INTERESTED PERSONS:

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

27 (1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED;

1 AND

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

3 (A) TRANSFERRED TO A NONPROFIT CORPORATION WITH
4 THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF
5 COMMUNITY TRUST); AND

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

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

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

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

17 SECTION 9. Section 202.002(b), Property Code, is amended to
18 read as follows:

19 (b) This chapter does not affect the requirements of Chapter
20 123, Human Resources Code [~~the Community Homes for Disabled Persons~~
21 ~~Location Act (Article 1011n, Vernon's Texas Civil Statutes)~~].

22 SECTION 10. Section 202.003(b), Property Code, is amended
23 to read as follows:

24 (b) In this subsection, "family home" is a residential home
25 that meets the definition of and requirements applicable to a
26 family home under Chapter 123, Human Resources Code [~~the Community~~
27 ~~Homes for Disabled Persons Location Act (Article 1011n, Vernon's~~

1 ~~Texas Civil Statutes~~]). A dedicatory instrument or restrictive
2 covenant may not be construed to prevent the use of property as a
3 family home. However, any restrictive covenant that applies to
4 property used as a family home shall be liberally construed to give
5 effect to its purposes and intent except to the extent that the
6 construction would restrict the use as a family home.

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

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

15 SECTION 12. Section 204.010(a), Property Code, is amended
16 to read as follows:

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

- 21 (1) adopt and amend bylaws;
- 22 (2) adopt and amend budgets for revenues,
23 expenditures, and reserves and collect regular assessments or
24 special assessments for common expenses from property owners;
- 25 (3) hire and terminate managing agents and other
26 employees, agents, and independent contractors;
- 27 (4) institute, defend, intervene in, settle, or

1 compromise litigation or administrative proceedings on matters
2 affecting the subdivision;

3 (5) make contracts and incur liabilities relating to
4 the operation of the subdivision and the property owners'
5 association;

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

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

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

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

15 (10) impose interest, late charges, and, if
16 applicable, returned check charges for late payments of regular
17 assessments or special assessments;

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

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

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

1 (14) impose reasonable charges for preparing,
2 recording, or copying amendments to the restrictions, resale
3 certificates, or statements of unpaid assessments;

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

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

11 (17) subject to the requirements of the Texas
12 Nonprofit [Non-Profit] Corporation Law, as described by Section
13 1.008(d), Business Organizations Code, [Act (Article 1396-1.01 et
14 seq., Vernon's Texas Civil Statutes)] and by majority vote of its
15 board of directors, indemnify a director or officer of the property
16 owners' association who was, is, or may be made a named defendant or
17 respondent in a proceeding because the person is or was a director;

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

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

25 (B) modify the guidelines as the needs of the
26 subdivision change;

27 (19) exercise other powers conferred by the

1 restrictions, its articles of incorporation, or its bylaws;

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

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

7 SECTION 13. The following provisions of the Property Code
8 are repealed:

9 (1) Section 5.018;

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

11 (3) Section 27.004(1); and

12 (4) Section 27.007(c).

13 SECTION 14. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect September 1, 2023.