

CHAPTER 797

H.B. No. 1395

AN ACT

relating to residential construction liability.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Sections 27.001(2) and (3), Property Code, are amended to read as follows:

(2) "Construction defect" means a matter concerning the design, construction, or repair of a new residence, of an alteration of 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 "construction defect" may include any physical damage to the residence, ~~or~~ any appurtenance, *or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.*

(3) "Contractor" means a person contracting with an owner for the construction or sale of a new residence constructed by that person or of an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence. *The term "contractor" also includes a risk retention group registered under 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.

SECTION 2. Section 27.001, Property Code, is amended by adding Subdivision (5) to read as follows:

(5) "Structural failure" means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

SECTION 3. Section 27.002, Property Code, is amended to read as follows:

Sec. 27.002. APPLICATION OF CHAPTER. (a) This chapter applies to any action to recover damages resulting from a construction defect, except a claim ~~[an action]~~ for personal injury, survival, or wrongful death or for damage to goods. 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), this chapter prevails.

(b) In this section:

(1) "Goods" does not include a residence.

(2) "Personal injury" does not include mental anguish.

SECTION 4. Section 27.003, Property Code, is amended to read as follows:

Sec. 27.003. LIABILITY. (a) In an action to recover damages resulting from a construction defect, a contractor is not liable for ~~[damages, or]~~ any percentage of damages~~[,]~~ caused by:

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

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

(A) take reasonable action to mitigate the damages; or

(B) take reasonable action to maintain the residence;

(3) normal wear, tear, or deterioration; ~~[or]~~

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

(5) 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 or inaccurate and the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) Except as provided herein, this chapter does not limit or bar any other defense or defensive matter or other *defensive* cause of action applicable to an action to recover damages resulting from a construction defect.

SECTION 5. Section 27.004, Property Code, is amended to read as follows:

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) Before the 60th day preceding the date a claimant seeking from a contractor damages arising from a construction defect files suit, 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. During the *35-day* ~~[21-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. The contractor may take reasonable steps to document the defect.

(b) Within the *45-day* ~~[31-day]~~ period after the date the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer may include *either* an agreement by the contractor to repair or *to* have repaired by an independent contractor at the contractor's expense any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made. The repairs shall be made within the 45-day period 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. For the purposes of this section, "independent contractor" means a person who is independent of the contractor and did not perform any of the work complained of in the claimant's notice. *The claimant and the contractor may agree in writing to extend the periods described by this subsection.*

(c) If the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of filing suit at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, that notice is not required. However, the suit or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint, and the inspection provided for by Subsection (a) may be made during the *60-day* ~~[21-day]~~ period following the date of service of the suit or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made within the *60-day* ~~[31-day]~~ period following the date of service. If, while a suit 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 suit shall be abated for up to 75 days in order to allow compliance with Subsections (a) ~~and~~ (b) ~~and~~ (f).

(d) If a claimant unreasonably rejects an offer made as provided by this section or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of the reasonable cost of the repairs which are necessary to cure the construction defect and which are the responsibility of the contractor and may recover only the amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected.

(e) ~~If [a claimant reasonably rejects an offer,] a contractor fails to make a reasonable [an] offer under this section, or [a contractor] fails to make a reasonable attempt to complete the repairs specified in an accepted offer made under this section, or fails to complete, [repair the defects within the time allowed by this section] in a good and workmanlike manner, the repairs specified in an accepted offer made under this section, the limitations on damages and defenses to liability provided for in this section shall not apply.~~

(f) *Except as provided by Subsection (d), in a suit subject to this chapter the claimant may recover only the following damages proximately caused by a construction defect:*

(1) *the reasonable cost of repairs necessary to cure any construction defect that the contractor failed to cure;*

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

(3) *the reduction in market value, if any, to the extent the reduction is due to structural failure; and*

(4) *reasonable and necessary attorney's fees. [If suit is filed after a contractor makes repairs as provided by this section, the claimant may not be awarded damages arising from the construction defect, attorney's fees, or costs unless the trier of fact finds that the attempt to repair was not made in good faith and did not cure the construction defect described in the notice.]*

(g) *The total damages awarded in a suit subject to this chapter may not exceed the claimant's purchase price for the residence.*

(h) ~~[(g)]~~ An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(i) ~~[(h)]~~ An affidavit certifying rejection of a settlement offer under this section may be filed with the court. *The trier of fact shall determine the reasonableness of a rejection of an offer of settlement made under this section [The affidavit may not be offered into evidence or referred to by a party in the presence of the jury on trial of the case].*

(j) ~~[(i)]~~ A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(k) ~~[(j)]~~ Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent,

employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(l) [~~k~~] This section does not preclude a contractor from making a monetary settlement offer.

(m) [~~l~~] The inspection and repair provisions of this chapter are in addition to any rights of inspection and settlement provided by common law or by another statute, including Section 17.505, Business & Commerce Code.

SECTION 6. Chapter 27, Property Code, is amended by adding Section 27.006 to read as follows:

*Sec. 27.006. CAUSATION. In an action to recover damages resulting from a construction defect, the claimant must prove that the damages were proximately caused by the construction defect.*

SECTION 7. The change in law made by this Act applies to an action for residential construction liability filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect at the time of filing, and the prior law is continued in effect for that purpose.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 4, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1395 on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 19, 1993: Yeas 31, Nays 0.

Approved June 18, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.