

PROPERTY CODE

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 27. RESIDENTIAL CONSTRUCTION LIABILITY

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 a part of the dwelling unit.

(3) "Construction defect" means a deficiency in 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.

(4) "Contractor":

(A) means:

(i) a builder 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 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 new residences, 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](#), Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

(5) "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) "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 duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which the individual units are sold to the owners under a condominium or cooperative system.

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

(8) "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.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 1, 2 eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.01, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 750 (H.B. [3147](#)), Sec. 1, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 1, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 13(2), eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 1, eff. September 1, 2023.

Sec. 27.002. APPLICATION OF CHAPTER. (a) This chapter applies to:

(1) any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and

(2) any subsequent purchaser of a residence who files a claim against a contractor.

(b) 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.

(c) In this section:

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

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

(d) This chapter does not apply to an action to recover damages that arise from:

(1) a violation of Section [27.01](#), Business & Commerce Code;

(2) a contractor's wrongful abandonment of an improvement project before completion; or

(3) a violation of Chapter [162](#).

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.02, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. [1038](#)), Sec. 2, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 2, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 2, eff. September 1, 2023.

Sec. 27.003. LIABILITY. (a) In an action subject to this chapter 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 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) mitigate the damages;

(ii) 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) 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 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.

(b) Except as provided by this chapter, 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 or other relief arising from a construction defect.

(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.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 4, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.03, eff. Sept. 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 3, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 3, eff. September 1, 2023.

Sec. 27.0031. FRIVOLOUS SUIT; HARASSMENT. A party who files a suit under this chapter that is groundless and brought in bad faith or for purposes of harassment is liable to the defendant for reasonable and necessary attorney's fees and court costs.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 4, eff. Sept. 1, 1999.

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) 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

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, 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.

(b) Not later than the 60th day after the date the contractor receives the notice under this section, 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 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 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, 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 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 60th day after the date of service. 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 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); 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.

(e) If a claimant rejects a reasonable offer made under Subsection (b) or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the fair market value of the contractor's last offer of settlement under Subsection (b); or

(B) the amount of a reasonable monetary settlement or purchase offer made under Subsection (n); and

(2) may recover only the amount of reasonable and necessary costs and attorney's fees as prescribed by Rule 1.04, Texas Disciplinary Rules of Professional Conduct, incurred before the offer was rejected or considered rejected.

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection (e) shall not apply.

(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;

(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.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter.

(i) 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.

(j) An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final offer of settlement made under this section.

(k) 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.

(l) Repealed by Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 13(3), eff. May 29, 2023, and Ch. 441 (H.B. [2022](#)), Sec. 8(1), eff. September 1, 2023.

(m) 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.

(n) This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure.

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 414, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 189, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.04, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. [1038](#)), Sec. 3, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 4, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 13(3), eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 8(1),

eff. September 1, 2023.

Sec. 27.0041. MEDIATION. (a) If a claimant files suit seeking from a contractor damages arising from a construction defect in an amount greater than \$7,500, the claimant or contractor may file a motion to compel mediation of the dispute. The motion must be filed not later than the 90th day after the date the suit is filed.

(b) Not later than the 30th day after the date a motion is filed under Subsection (a), the court shall order the parties to mediate the dispute. If the parties cannot agree on the appointment of a mediator, the court shall appoint the mediator.

(c) The court shall order the parties to begin mediation of the dispute not later than the 30th day after the date the court enters its order under Subsection (b) unless the parties agree otherwise or the court determines additional time is required. If the court determines that additional time is required, the court may order the parties to begin mediation of the dispute not later than the 60th day after the date the court enters its order under Subsection (b).

(d) Unless each party who has appeared in a suit filed under this chapter agrees otherwise, each party shall participate in the mediation and contribute equally to the cost of the mediation.

(e) Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to a mediation under this section to the extent those laws do not conflict with this section.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 6, eff. Sept. 1, 1999.

Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written agreement between a contractor and a homeowner may provide that, 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.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 8(2), eff. September 1, 2023.

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

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

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

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

(d) An offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 2.05, eff. Sept. 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 5, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 5, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 8(2), eff. September 1, 2023.

Sec. 27.005. LIMITATIONS ON EFFECT OF CHAPTER. This

chapter does not create a cause of action or derivative liability or extend a limitations period.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1999, 76th Leg., ch. 189, Sec. 7, eff. Sept. 1, 1999.

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.

Added by Acts 1993, 73rd Leg., ch. 797, Sec. 6, eff. Aug. 30, 1993.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 6, eff. September 1, 2023.

Sec. 27.007. DISCLOSURE STATEMENT REQUIRED. (a) A written contract subject to this chapter, other than a contract between a developer of a condominium and a contractor for the construction or repair of a residence or appurtenance to a residence in a condominium, must contain in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter [27](#) of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter [27](#) of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter [27](#) of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section [27.004](#) of the Texas Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of \$500 in addition to any other remedy provided by this chapter.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 13(4), eff. May 29, 2023, and Ch. 441 (H.B. [2022](#)), Sec. 8(3), eff. September 1, 2023.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 8, eff. Sept. 1, 2000.
Amended by Acts 2003, 78th Leg., ch. 458, Sec. 2.06, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 750 (H.B. [3147](#)), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. [1038](#)), Sec. 4, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. [1768](#)), Sec. 13(4), eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 8(3), eff. September 1, 2023.

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.

Added by Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 7, eff. September 1, 2023.

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

Added by Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. [2022](#)), Sec. 7, eff. September 1, 2023.