

- SUBJECT:** Residential construction liability damage limits
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 9 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Janek, Solomons, Woolley
- 0 nays
- WITNESSES:** For — Robert Johnson, Concerned Builders of Texas; John Krugh, Perry Homes; William Leigh, Leigh-Meyer, Inc.; William Little, Greater Houston Builders Association
- Against — None
- BACKGROUND :** The Residential Construction Liability Act (RCLA) was enacted in 1989 as chapter 27 of the Property Code. It established a procedure for adjudicating damage claims caused by construction defects as well as repair or remodelling construction defects. The provisions of the RCLA are meant to be used in lieu of the Deceptive Trade Practices Act (DTPA) when the claim involves residential construction. Total damages awarded may not exceed the purchase price of the residence.
- DIGEST:** HB 1742 would change the maximum damages calculation available under the RCLA to the greater of the purchase price of the residence or the fair market value of the residence without the construction defect. When the contractor failed to make a reasonable offer of settlement or repair, the total damage limits would still apply to the claim.
- HB 1742 would make RCLA provisions applicable to subsequent owners of a home. It would also allow contractors and homeowners to conduct mediation in the form and manner already available under the DTPA. The bill would clarify the definition of contractor under the RCLA.
- HB 1742 would take effect on September 1, 1997, and apply to actions for residential construction liability filed on or after that date.

SUPPORTERS
SAY:

The RCLA was drafted primarily for those concerned about liability claims for new home construction, then was extended to repairs and additions to existing residences. However, a recent case, *O'Donnell v. Bullivant*, 1997 WL 66137, (Tex. App. — Fort Worth, February 13, 1997), showed that there were problems when applying the RCLA to older homes. In that case, the homeowners had the foundation of their nearly 20 year old home repaired by a contractor. The repairs completely ruined the home and robbed it of its market value. However, the damages under RCLA were limited to the purchase price of the home, \$44,500, not the market value of the home prior to the repair, which was estimated to be \$84,500. Because of these limits, many homeowners who have residential construction repairs often attempt to use the DTPA to pursue such claims instead of the RCLA. Revising the limits would give a more appropriate damage cap to the homeowner and allow more homeowners to use the RCLA, which provides a balance of rights to both the homeowner and the contractor.

HB 1742 would also clarify a drafting problem in the RCLA pointed out in the *Bullivant* case. The RCLA provides that if a contractor fails to make a reasonable offer of repair or settlement, the provisions of section 27.004 would not apply to that contractor. Section 27.004 contains three pertinent sections: one that limits the contractor's liability if a reasonable offer is rejected by the homeowner, one that limits the type of damages for which the contractor is liable and one setting the total damages available under the RCLA. The court found it unclear whether the failure of making a reasonable offer invalidated the total damages limit and ruled that such a failure removed all damage caps. HB 1742 would make clear that the total damages limit of sec. 27.004(I), modified by the bill, would still apply even if a reasonable settlement or repair offer was not made.

The total damage cap should apply whether or not the contractor made an offer under sec. 27.004. One of the primary purposes of the RCLA is to limit to total amount of damages to the price of the home. The bill would allow that cap to be raised to the market value of the home before any repairs were made. Removing the limit would completely discourage contractors from using the otherwise carefully balanced provisions of the RCLA.

In keeping with the extension of the RCLA to older homes under the bill, subsequent owners would also be protected. The new damages calculation would allow subsequent purchasers to also receive a more reasonable damage calculation.

The mediation provision included in HB 1742 would give claimants under the RCLA the same rights and opportunities available under the DTPA to resolve claims without going to court.

OPPONENTS
SAY:

The court's opinion in the *Bullivant* case allowed the cap on total damages to be removed if the contractor failed to make a reasonable offer. The cap on total damages should be removed or, at least, increased if the contractor fails to make such an offer. One of the primary purposes of the RCLA is to encourage early settlement offers in residential construction claims. Limiting the damages would remove a significant incentive that force contractors to make reasonable offers early in the process of resolving the claim.

NOTES:

The companion bill, SB 867 by Cain, is currently pending in the Senate Jurisprudence Committee.