

By: Paxton

H.B. No. 1237

A BILL TO BE ENTITLED

AN ACT

1
2 relating to binding arbitration clauses in certain residential
3 construction contracts; providing an administrative penalty.

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

5 SECTION 1. Sections 418.001 and 418.002, Property Code, are
6 amended to read as follows:

7 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person is
8 subject to disciplinary action under this chapter for:

9 (1) fraud or deceit in obtaining a registration or
10 certification under this subtitle;

11 (2) misappropriation of trust funds in the practice of
12 residential construction;

13 (3) naming false consideration in a contract to sell a
14 new home or in a construction contract;

15 (4) discriminating on the basis of race, color,
16 religion, sex, national origin, or ancestry;

17 (5) publishing a false or misleading advertisement;

18 (6) failure to honor, within a reasonable time, a
19 check issued to the commission after the commission has sent by
20 certified mail a request for payment to the person's last known
21 business address, according to commission records;

22 (7) failure to pay an administrative penalty assessed
23 by the commission under Chapter 419;

24 (8) nonpayment of a final nonappealable judgment

1 arising from a construction defect or other transaction between the
2 person and a homeowner;

3 (9) failure to register a home as required by Section
4 426.003;

5 (10) failure to remit the fee for registration of a
6 home under Section 426.003; ~~or~~

7 (11) failure to reimburse a homeowner the amount
8 ordered by the commission as provided in Section 428.004(d); or

9 (12) failure to include the notice required under
10 Section 436.005 in a contract with a homeowner.

11 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a)
12 Except as provided by Subsection (b), on ~~or~~ a determination that a
13 ground for disciplinary action under Section 418.001 exists, the
14 commission may:

15 (1) revoke or suspend a registration or certification;

16 (2) probate the suspension of a registration or
17 certification; or

18 (3) formally or informally reprimand a registered or
19 certified person.

20 (b) On a determination that a ground for disciplinary action
21 under Section 418.001(12) exists, the commission may impose an
22 administrative penalty against the builder under Chapter 419.

23 SECTION 2. Chapter 436, Property Code, is amended by adding
24 Section 436.005 to read as follows:

25 Sec. 436.005. DISCLOSURE OF BINDING ARBITRATION REQUIRED.

26 (a) This section applies only to a written contract between a
27 builder and a homeowner that:

1 (1) is subject to this title;

2 (2) contains a provision that obligates the builder
3 and the homeowner to arbitrate a dispute under the contract; and

4 (3) binds the builder and the homeowner to the results
5 of that arbitration.

6 (b) A contract described under Subsection (a) must contain a
7 notice that reads substantially similar to the following notice and
8 that appears in the contract in 12-point boldfaced, uppercase
9 typewritten letters:

10 "THE PARTIES TO THIS CONTRACT AGREE TO SUBMIT ANY DISPUTE
11 ARISING UNDER THIS CONTRACT TO BINDING ARBITRATION. ARBITRATION IS
12 A FORUM IN WHICH EACH PARTY AND COUNSEL FOR EACH PARTY PRESENT THE
13 POSITION OF THE PARTY TO AN IMPARTIAL THIRD PARTY WHO RENDERS A
14 SPECIFIC DECISION OR AWARD. UNDER THE TERMS OF THIS CONTRACT, A
15 DECISION OR AWARD RENDERED IN ARBITRATION IS BINDING AS TO AND
16 ENFORCEABLE AGAINST EACH PARTY TO THE CONTRACT IN THE SAME MANNER AS
17 ANY OTHER CONTRACT OBLIGATION."

18 SECTION 3. The change in law made by this Act applies only
19 to a contract that is entered into on or after the effective date of
20 this Act. A contract that is entered into before the effective date
21 of this Act is governed by the law in effect at the time the contract
22 was entered into, and that law is continued in effect for that
23 purpose.

24 SECTION 4. This Act takes effect September 1, 2005.