

By: Farrar

H.B. No. 3404

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of and claims against residential home
builders.

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

ARTICLE 1. CHANGES TO TEXAS RESIDENTIAL

CONSTRUCTION COMMISSION ACT

SECTION 1.01. Sections 401.003(a) and (b), Property Code,
are amended to read as follows:

(a) In this title, "builder" means any business entity or
individual who, for a fixed price, commission, fee, wage, or other
compensation, constructs or supervises or manages the construction
of:

(1) a new home;

(2) a material improvement to a home, other than an
improvement solely to replace or repair a roof of an existing home;
or

(3) an improvement to the interior of an existing home
~~[when the cost of the work exceeds \$20,000].~~

(b) The term includes:

(1) an owner, officer, director, shareholder,
partner, affiliate, subsidiary, or employee of the builder;

(2) a risk retention group governed by Article 21.54,
Insurance Code, that insures all or any part of a builder's
liability for the cost to repair a residential construction defect;

1 and

2 (3) a third-party warranty company and its
3 administrator.

4 SECTION 1.02. Chapter 401, Property Code, is amended by
5 adding Section 401.007 to read as follows:

6 Sec. 401.007. HOMEOWNER FEES NOT REQUIRED. A homeowner may
7 not be charged a fee in connection with:

8 (1) filing a complaint with the commission;

9 (2) a state-sponsored inspection or dispute
10 resolution process;

11 (3) an arbitration required by this title; or

12 (4) a complaint, request, or other proceeding under
13 Chapter 409 or Subtitle D or E.

14 SECTION 1.03. Section 406.001, Property Code, is amended by
15 amending Subsection (a) and adding Subsection (c) to read as
16 follows:

17 (a) The Texas Residential Construction Commission consists
18 of nine members appointed by the governor with the advice and
19 consent of the senate as follows:

20 (1) four members must be builders who each hold a
21 certificate of registration under Chapter 416;

22 (2) three members must be representatives of the
23 general public who have consistently shown an interest in consumer
24 protection;

25 (3) one member must be a licensed professional
26 engineer who practices in the area of residential construction; and

27 (4) one member must be either a licensed architect who

1 practices in the area of residential construction or a building
2 inspector who meets the requirements set forth in Chapter 427 and
3 practices in the area of residential construction.

4 (c) A person may not be a public member of the commission if
5 the person or the person's spouse:

6 (1) is registered, certified, or licensed by a
7 regulatory agency in the field of construction, a building trade,
8 or a related financial or insurance field;

9 (2) is employed by or participates in the management
10 of a business entity or other organization regulated by or
11 receiving money from the commission;

12 (3) owns or controls, directly or indirectly, more
13 than a 10 percent interest in a business entity or other
14 organization regulated by or receiving money from the commission;
15 or

16 (4) uses or receives a substantial amount of tangible
17 goods, services, or money from the commission other than
18 compensation or reimbursement authorized by law for commission
19 membership, attendance, or expenses.

20 SECTION 1.04. Section 416.004, Property Code, is amended to
21 read as follows:

22 Sec. 416.004. FEES. (a) The commission shall charge and
23 collect:

24 (1) a filing fee for an application for an original
25 certificate of registration of at least [~~that does not exceed~~]
26 \$500; and

27 (2) a fee for renewal of a certificate of registration

1 of at least [~~that does not exceed~~] \$300.

2 (b) The commission shall establish a fee schedule that takes
3 into consideration the unit volume or dollar volume of potential
4 applicants. The commission may raise registration and renewal fees
5 as necessary to provide public service in connection with
6 investigations of construction defect complaints filed by
7 homeowners under this title.

8 (c) A fee charged under Subsection (a) applies to each
9 builder, including a corporation, limited liability company,
10 partnership, limited partnership, limited liability partnership,
11 sole proprietor, and any subsidiary of those persons.

12 SECTION 1.05. Section 416.005, Property Code, is amended to
13 read as follows:

14 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person
15 may not receive a certificate of registration under this chapter
16 unless:

17 (1) the person, at the time of the application:

18 (A) is at least 18 years of age; [~~and~~]

19 (B) is a citizen of the United States or a
20 lawfully admitted alien; and

21 (C) provides proof of financial responsibility
22 as required by Section 416.012; and

23 (2) the commission is satisfied with the person's
24 honesty, trustworthiness, and integrity based on information
25 supplied or discovered in connection with the person's application.

26 SECTION 1.06. Section 416.010(c), Property Code, is amended
27 to read as follows:

1 (c) If a builder operates under any name other than the name
2 that is set forth on the builder's certificate of registration, the
3 builder shall, within 20 [~~45~~] days of operating under this other
4 name, disclose this other name to the commission.

5 SECTION 1.07. Sections 416.011(a) and (b), Property Code,
6 are amended to read as follows:

7 (a) The commission shall establish rules and procedures for
8 a program through which a builder can be designated as a "Texas Star
9 Builder." A builder's participation in the program is mandatory
10 [~~voluntary~~] and is [~~not~~] a requirement for holding and renewing
11 [~~the issuance of~~] a certificate of registration required under this
12 chapter.

13 (b) A builder shall [~~who participates in this program will~~
14 ~~be allowed to~~] represent to the public that the builder is a "Texas
15 Star Builder" and meets all of the requirements and qualifications
16 that are set forth by the commission for the program.

17 SECTION 1.08. Chapter 416, Property Code, is amended by
18 adding Sections 416.012, 416.013, and 416.014 to read as follows:

19 Sec. 416.012. INSURANCE REQUIREMENTS. (a) To be eligible
20 for an original or renewal certificate of registration under this
21 chapter, a builder must provide proof of financial responsibility
22 to the commission by maintaining a general liability insurance
23 policy with a limit of at least \$500,000 that covers the failure of
24 a builder to:

- 25 (1) comply with building standards; or
26 (2) address warranty issues in a timely manner.

27 (b) The commission may increase the insurance requirements

1 based on the builder's unit or dollar volume.

2 Sec. 416.013. CONTINUING EDUCATION REQUIREMENTS. (a) To
3 renew a certificate of registration under this chapter, a builder
4 must provide proof of completion of at least four hours of
5 continuing education during the preceding registration period.

6 (b) The commission may adopt rules regarding continuing
7 education requirements.

8 Sec. 416.014. CERTIFICATE OF COMPLETION. A builder shall
9 provide to a homeowner a certificate of completion after the
10 builder completes construction of a new home.

11 SECTION 1.09. Section 418.001, Property Code, is amended to
12 read as follows:

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

15 (1) fraud or deceit in obtaining a registration or
16 certification under this subtitle;

17 (2) misappropriation of trust funds in the practice of
18 residential construction;

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

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

23 (5) publishing a false or misleading advertisement;

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

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

3 (8) nonpayment of a final nonappealable judgment
4 arising from a construction defect or other transaction between the
5 person and a homeowner;

6 (9) failure to register a home as required by Section
7 426.003;

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

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

12 (12) failure by the builder to complete a home under
13 the contract terms with a homeowner;

14 (13) failure by the builder to correct a failure to
15 comply with building codes or standards;

16 (14) failure by the builder to comply with
17 architectural drawings specified in a contract to build or purchase
18 a home;

19 (15) failure by the builder to comply with an
20 engineering design of a home, including the home's foundation; or

21 (16) failure by the builder to satisfy a court
22 judgment or a judgment in a binding arbitration.

23 SECTION 1.10. Section 426.001(b), Property Code, is amended
24 to read as follows:

25 (b) This subtitle does not apply to a dispute arising out
26 of:

27 (1) an alleged violation of Section 27.01, Business &

1 Commerce Code; or

2 (2) [~~a builder's wrongful abandonment of an~~
3 ~~improvement project before completion; or~~

4 [~~3~~] a violation of Chapter 162.

5 SECTION 1.11. Sections 428.001(a), (b), and (d), Property
6 Code, are amended to read as follows:

7 (a) If a dispute between a homeowner and a builder arises
8 out of an alleged construction defect, the homeowner [~~or the~~
9 ~~builder~~] may submit to the commission a written request for
10 state-sponsored inspection and dispute resolution.

11 (b) The request must:

12 (1) specify in reasonable detail each alleged
13 construction defect that is a subject of the request;

14 (2) state the amount of any known out-of-pocket
15 expenses and engineering or consulting fees incurred by the
16 homeowner in connection with each alleged construction defect; and

17 (3) [~~include any evidence that depicts the nature and~~
18 ~~cause of each alleged construction defect and the nature and extent~~
19 ~~of repairs necessary to remedy the construction defect, including,~~
20 ~~if available, expert reports, photographs, and videotapes, if that~~
21 ~~evidence would be discoverable under Rule 192, Texas Rules of Civil~~
22 ~~Procedure,~~

23 [~~4~~] ~~be accompanied by the fees required under Section~~
24 ~~426.004, and~~

25 [~~5~~] state the name of any person who has, on behalf
26 of the homeowner [~~requestor~~], inspected the home in connection with
27 an alleged construction defect.

1 (d) A person who submits a request under this section must
2 send by certified mail, return receipt requested, a copy of the
3 request[~~, including evidence submitted with the request,~~] to each
4 other party involved in the dispute.

5 SECTION 1.12. Section 428.002(a), Property Code, is amended
6 to read as follows:

7 (a) In addition to the right of inspection provided by
8 Section 428.001(c), [~~at any time~~] before the conclusion of the
9 state-sponsored inspection and dispute resolution process and on
10 the builder's written request, the builder shall be given
11 reasonable opportunity to inspect the home that is the subject of
12 the request or have the home inspected to determine the nature and
13 cause of the construction defect and the nature and extent of
14 repairs necessary to remedy the construction defect.

15 SECTION 1.13. Sections 428.004(b) and (d), Property Code,
16 are amended to read as follows:

17 (b) If the dispute involves a structural matter in the home,
18 the commission shall appoint an approved engineer to be the
19 third-party inspector. The third-party inspector shall inspect the
20 home not later than the 15th [~~30th~~] day after the date the request
21 is submitted and issue a recommendation not later than the 30th
22 [~~60th~~] day after the date the third-party inspector receives the
23 assignment from the commission[~~, unless additional time is~~
24 ~~requested by the third-party inspector or a party to the dispute.~~
25 ~~The commission shall adopt rules governing the extension of time~~
26 ~~under this subsection].~~

27 (d) Except as provided by this subsection, the third-party

1 inspector's recommendation may not include payment of any monetary
2 consideration. [~~If the inspector finds for the party who submitted~~
3 ~~the request, the commission may order the other party to reimburse~~
4 ~~all or part of the fees and inspection expenses paid by the~~
5 ~~requestor under Section 426.004.~~]

6 SECTION 1.14. Section 429.001(c), Property Code, is amended
7 to read as follows:

8 (c) The panel shall:

9 (1) review the recommendation without a hearing unless
10 a hearing is otherwise required by rules adopted by the commission;

11 (2) approve, reject, or modify the recommendation of
12 the third-party inspector or remand the dispute for further action
13 by the third-party inspector; and

14 (3) issue written findings of fact and a ruling on the
15 appeal not later than the 15th [~~30th~~] day after the date the notice
16 of appeal is filed with the commission.

17 SECTION 1.15. Section 430.001(b), Property Code, is amended
18 to read as follows:

19 (b) The warranty periods shall be:

20 (1) two years [~~one year~~] for workmanship and
21 materials;

22 (2) two years for plumbing, electrical, heating, and
23 air-conditioning delivery systems; and

24 (3) 10 years for major structural components of the
25 home.

26 SECTION 1.16. Chapter 430, Property Code, is amended by
27 adding Section 430.0075 to read as follows:

Sec. 430.0075. FULL DISCLOSURE WITH INFORMED CONSENT. (a)

Before a contract may be executed between a builder and seller and a buyer for construction of a new home and before money may be exchanged between the parties to the contract, the builder and seller must provide to the buyer a full disclosure and informed consent document that meets the following requirements:

(1) the buyer must receive from the builder and seller full disclosure of product installation, care and component warranties, building standards, risks, and hazards of the particular property and home to be purchased;

(2) the buyer must receive from the builder and seller full disclosure in understandable terms of any mandatory alternative dispute resolution provisions, including mandatory binding arbitration, and the associated costs of the various processes; and

(3) the buyer must consent in writing to accept the terms of the builder's and seller's disclosures and provisions for new home construction by signing and dating the consent document.

(b) The builder and seller shall fully disclose in writing:

(1) the products that are installed in the home;

(2) care and component warranties;

(3) building standards; and

(4) risks and hazards of the home.

SECTION 1.17. Section 430.008(a), Property Code, is amended to read as follows:

(a) The commission may approve as a third-party warranty company for the purposes of Section 430.009:

1 (1) ~~[an entity that has operated warranty programs in~~
2 ~~this state for at least five years,~~

3 ~~[(2)]~~ a company whose performance is insured by an
4 insurance company authorized to engage in the business of insurance
5 in this state; or

6 (2) ~~[(3)]~~ an insurance company that insures the
7 warranty obligations of a builder under the statutory warranty and
8 building and performance standards.

9 SECTION 1.18. Section 430.010, Property Code, is amended to
10 read as follows:

11 Sec. 430.010. MINIMUM STANDARDS FOR DETERMINATION OF
12 DEFECT. A third-party warranty company shall use defect inspection
13 procedures substantially similar to the procedures adopted by the
14 commission under this subtitle. A warranty company may adopt
15 warranty standards in addition to the standards adopted by the
16 commission. A third-party warranty company may not reduce the
17 limited statutory warranty and building and performance
18 standards~~[, except that a third-party warranty company shall not be~~
19 ~~required to provide a warranty of habitability].~~

20 SECTION 1.19. Section 430.011(c), Property Code, is amended
21 to read as follows:

22 (c) Breach of a limited statutory warranty adopted by the
23 commission or breach of the statutory warranty of habitability is
24 ~~[shall not, by itself, constitute]~~ a violation of the Deceptive
25 Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17,
26 Business & Commerce Code).

27 SECTION 1.20. Sections 416.011(c), 426.004, 426.007,

1 426.008(b), and 430.009(e), Property Code, are repealed.

2 SECTION 1.21. (a) On the effective date of this Act, the
3 terms of the three public members of the Texas Residential
4 Construction Commission serving on that date expire.

5 (b) Not later than the 30th day after the effective date of
6 this Act, the governor shall appoint three members to the Texas
7 Residential Construction Commission to comply with Section
8 406.001(a), Property Code, as amended by this article, as follows:

- 9 (1) one member for a term expiring February 1, 2007;
10 (2) one member for a term expiring February 1, 2009;
11 and
12 (3) one member for a term expiring February 1, 2011.

13 SECTION 1.22. Not later than March 1, 2006, the Texas
14 Residential Construction Commission shall adopt any rules
15 necessary to implement the changes in law made by this article,
16 including Section 416.011, Property Code.

17 ARTICLE 2. CHANGES TO RESIDENTIAL CONSTRUCTION LIABILITY CHAPTER

18 SECTION 2.01. Section 27.002(d), Property Code, is amended
19 to read as follows:

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

- 22 (1) a violation of Section 27.01, Business & Commerce
23 Code; or
24 (2) [~~a contractor's wrongful abandonment of an~~
25 ~~improvement project before completion, or~~
26 [~~3~~] a violation of Chapter 162.

27 SECTION 2.02. Sections 27.004(a), (b), (g), and (l),

1 Property Code, are amended to read as follows:

2 (a) In a claim not subject to Subtitle D, Title 16, before
3 the 60th day preceding the date a claimant seeking from a contractor
4 damages or other relief arising from a construction defect
5 initiates an action, the claimant shall give written notice by
6 certified mail, return receipt requested, to the contractor, at the
7 contractor's last known address, specifying in reasonable detail
8 the construction defects that are the subject of the complaint. [~~On~~
9 ~~the request of the contractor, the claimant shall provide to the~~
10 ~~contractor any evidence that depicts the nature and cause of the~~
11 ~~defect and the nature and extent of repairs necessary to remedy the~~
12 ~~defect, including expert reports, photographs, and videotapes, if~~
13 ~~that evidence would be discoverable under Rule 192, Texas Rules of~~
14 ~~Civil Procedure.~~] During the 20-day [~~35-day~~] period after the date
15 the contractor receives the notice, [~~and on the contractor's~~
16 ~~written request,~~] the contractor shall be given a reasonable
17 opportunity to inspect and have inspected the property that is the
18 subject of the complaint to determine the nature and cause of the
19 defect and the nature and extent of repairs necessary to remedy the
20 defect. The contractor may take reasonable steps to document the
21 defect. In a claim subject to Subtitle D, Title 16, a contractor is
22 entitled to make an offer of repair in accordance with Subsection
23 (b). A claimant is not required to give written notice to a
24 contractor under this subsection in a claim subject to Subtitle D,
25 Title 16.

26 (b) Not later than the 15th day after the date of a final,
27 unappealable determination of a dispute under Subtitle D, Title 16,

1 if applicable, or not later than the 45th day after the date the
2 contractor receives the notice under this section, if Subtitle D,
3 Title 16, does not apply, the contractor may make a written offer of
4 settlement to the claimant. The offer must be sent to the claimant
5 at the claimant's last known address or to the claimant's attorney
6 by certified mail, return receipt requested. The offer may include
7 either an agreement by the contractor to repair or to have repaired
8 by an independent contractor partially or totally at the
9 contractor's expense or at a reduced rate to the claimant any
10 construction defect described in the notice and shall describe in
11 reasonable detail the kind of repairs which will be made. The
12 repairs shall be made not later than the 20th [~~45th~~] day after the
13 date the contractor receives written notice of acceptance of the
14 settlement offer, unless completion is delayed by the claimant or
15 by other events beyond the control of the contractor. If a
16 contractor makes a written offer of settlement that the claimant
17 considers to be unreasonable:

18 (1) on or before the 25th day after the date the
19 claimant receives the offer, the claimant shall advise the
20 contractor in writing and in reasonable detail of the reasons why
21 the claimant considers the offer unreasonable; and

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

26 (g) In [~~Except as provided by Subsection (e), in~~] an action
27 subject to this chapter the claimant may recover only the following

1 economic damages proximately caused by a construction defect:

2 (1) the reasonable cost of repairs necessary to cure
3 any construction defect;

4 (2) the reasonable and necessary cost for the
5 replacement or repair of any damaged goods in the residence;

6 (3) reasonable and necessary engineering and
7 consulting fees;

8 (4) the reasonable expenses of temporary housing
9 reasonably necessary during the repair period;

10 (5) the reduction in current market value, if any,
11 after the construction defect is repaired if the construction
12 defect is a structural failure; and

13 (6) reasonable and necessary attorney's fees.

14 (1) If Subtitle D, Title 16, applies to the claim and the
15 contractor's offer of repair is accepted by the claimant, the
16 contractor, on completion of the repairs and at the contractor's
17 expense, shall engage the third-party inspector who provided the
18 recommendation regarding the construction defect involved in the
19 claim to inspect the repairs and determine whether the residence,
20 as repaired, complies with the applicable limited statutory
21 warranty and building and performance standards adopted by the
22 commission. [~~The contractor is entitled to a reasonable period not~~
23 ~~to exceed 15 days to address minor cosmetic items that are necessary~~
24 ~~to fully complete the repairs.~~] The determination of the
25 third-party inspector of whether the repairs comply with the
26 applicable limited statutory warranty and building and performance
27 standards adopted by the commission establishes a rebuttable

1 presumption on that issue. A party seeking to dispute, vacate, or
2 overcome that presumption must establish by clear and convincing
3 evidence that the determination is inconsistent with the applicable
4 limited statutory warranty and building and performance standards.

5 SECTION 2.03. Section 27.0042(c), Property Code, is amended
6 to read as follows:

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

9 (1) the contractor shall pay the current market value
10 [~~original purchase price~~] of the residence determined as if the
11 residence did not have the construction defects, and closing costs
12 incurred by the homeowner and the cost of transferring title to the
13 contractor under the election;

14 (2) the homeowner may recover:

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

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

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

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

27 SECTION 2.04. Sections 27.004(e) and (f), Property Code,

1 are repealed.

2 SECTION 2.05. The changes in law made by this article apply
3 only to a cause of action that accrues on or after the effective
4 date of this Act. A cause of action that accrues before the
5 effective date of this Act is governed by the law in effect
6 immediately before that date, and that law is continued in effect
7 for that purpose.

8 ARTICLE 3. EFFECTIVE DATE

9 SECTION 3.01. This Act takes effect September 1, 2005.