

Amend CSHB 1038 by inserting the following appropriately numbered SECTIONS and renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Title 16, Property Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. HOMEOWNER REMEDIES

CHAPTER 445. NEW HOME BUYERS

Sec. 445.001. DEFINITIONS. In this chapter:

(1) "Defect" means a construction defect or any other condition that prevents a home from conforming to an applicable warranty.

(2) "Homebuyer" means a person who:

(A) purchased a home from a builder and is entitled to enforce the terms of the builder's warranty with respect to the home;

(B) is a lessor or lessee, other than a sublessee, who purchased or leased the home from the builder; or

(C) is a transferee or assignee of a person described by Paragraph (A) or (B) if the transferee or assignee is a resident of this state and entitled to enforce the terms of the builder's warranty.

(3) "Serious safety hazard" means a life-threatening malfunction, installation defect, or nonconformity that substantially impedes a person's ability to live in or use a home or that creates a substantial risk of fire, explosion, or exposure to a toxic substance.

(4) "Warranty" means the statutory warranties under Chapter 430 and any additional warranty provided by a builder in accordance with Sections 430.006 and 430.007.

Sec. 445.002. APPLICABILITY OF CERTAIN OTHER LAW OR CONTRACT PROVISIONS. (a) This chapter supersedes any other law or contract provision that conflicts with this chapter, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(b) The remedies provided by this chapter supersede remedies available under Chapter 27 or the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17,

Business & Commerce Code).

(c) If a dispute to which this chapter applies is also subject to Chapter 426, the homebuyer must comply with Subtitle D before pursuing a remedy under this chapter.

(d) Except as provided by this section, this chapter does not limit the rights or remedies otherwise available to a homebuyer under any other law.

(e) A contract provision that excludes or modifies the remedies provided by this chapter is prohibited and is void as against public policy unless the exclusion or modification is included in a settlement agreement between a homebuyer and a builder.

Sec. 445.003. COMPLAINT. A homebuyer may seek a remedy provided by this chapter by:

(1) providing to the builder written notice identifying each defect in the home that is covered by the builder's warranty; and

(2) filing a complaint with the commission that includes a copy of the notice provided under Subdivision (1) on or before the 30th day after the date the notice is provided.

Sec. 445.004. HEARING. (a) The commission may hold a hearing on any allegation in a complaint that is not privately resolved between the homebuyer and the builder.

(b) The contested case provisions of Chapter 2001, Government Code, apply to a hearing conducted under this chapter.

Sec. 445.005. TIME FOR FILING COMPLAINT. (a) Except as provided by Subsection (b), a homebuyer must file a complaint under this chapter before the earlier of:

(1) the date the applicable warranty period expires;
or

(2) the 10th anniversary of the closing date.

(b) If the dispute is submitted to the state-sponsored inspection and dispute resolution process, a complaint under this chapter must be submitted not later than the 30th day after the date the third-party inspector's recommendation is issued or, if the homebuyer appeals the inspector's recommendation, the 30th day after the date the appeals panel issues a ruling on the appeal.

Sec. 445.006. AFFIRMATIVE DEFENSE. In a hearing before the commission under this chapter, a builder may assert as an affirmative defense to an allegation of a defect made in a complaint filed under this chapter that the defect is the result of abuse, neglect, or modifications or alterations of the home made by a person other than the builder.

Sec. 445.007. REPAIR REQUIRED. (a) Except as provided by Section 445.009, if a defect exists, the builder shall make the repairs necessary to conform the home to the builder's warranties if:

(1) the homebuyer or the homebuyer's designated agent reported the defect to the builder or the builder's agent before the expiration of the applicable time limit under Section 445.005; or

(2) a breach of warranty on the home is established.

(b) The builder must make the repairs required under Subsection (a) not later than the 120th day after the date the notice of the defect required by Section 445.003 is received by the commission.

Sec. 445.008. RETURN OR REPLACEMENT REQUIRED. (a) Except as provided by Section 445.009, if the builder is unable to cure a defect within the period prescribed by Section 445.007(b) and the defect creates a serious safety hazard, substantially impairs the use of the home, or decreases the home's market value by more than five percent, the builder shall at the homebuyer's option:

(1) replace the home with a comparable home in the same neighborhood; or

(2) accept return of the home from the homebuyer and refund to the homebuyer the full purchase price and any closing costs and reasonable moving costs.

(b) The commission may not order a remedy under this section unless the builder has been provided at least the number of days prescribed by Section 445.007(b) to cure the defect that is subject to the remedy provided by this section. The period required by this subsection is extended by the amount of time during which repair services are not available to a homebuyer because of a war, invasion, strike, or fire, flood, or other natural disaster.

Sec. 445.009. MOLD CONTAMINATION. (a) Not later than the

30th day after the date of a hearing examiner's order of a remedy under this section, the builder shall accept return of the home from the homebuyer and refund to the homebuyer the full purchase price and any closing costs and reasonable moving costs if, in addition to notice of a defect required by Section 445.003, a homebuyer:

(1) provides to the contractor and the commission written results of tests that:

(A) are conducted by a mold testing laboratory certified for the purposes of this section; and

(B) demonstrate proof of unacceptable levels of toxic mold contamination that pose an imminent threat to the health, safety, or welfare of the inhabitants; and

(2) establishes that the contamination arises out of the defect.

(b) The commission by rule shall designate at least one private organization that certifies mold testing laboratories from whom certification is sufficient for the purposes of this section.

Sec. 445.010. REIMBURSEMENT OF EXPENSES. (a) If a builder is ordered to replace a home or refund the purchase price under Section 445.008 or 445.009, the builder shall reimburse the homebuyer for:

(1) reasonable incidental costs resulting from the loss of the use of the home because of the defect; and

(2) lost wages resulting from time required for appointments with the builder or the builder's representative that are necessary because of the defect.

(b) As necessary to promote the public interest, the commission by rule:

(1) shall define the incidental costs that are eligible for reimbursement under Subsection (a) and specify other requirements necessary to determine an eligible cost; and

(2) may set a maximum amount that is eligible for reimbursement, either by type of eligible cost or by a total for all costs.

(c) Refunds shall be made to the homebuyer and primary lienholder, as applicable.

Sec. 445.011. OTHER REMEDIES NOT PRECLUDED. This chapter

does not prevent a homebuyer from obtaining a remedy available to the homebuyer under a new home warranty that provides remedies in addition to those provided by this chapter.

Sec. 445.012. RIGHT TO FILE ACTION. (a) Except as provided by this section, a homebuyer may not seek the remedies provided by this chapter in a civil action unless the homebuyer files a complaint against the builder under this chapter and exhausts the administrative proceedings provided by this chapter. A court shall dismiss an action filed in violation of this section.

(b) If the hearing examiner does not issue a proposal for decision and make a recommendation to the commission for a final order on or before the 150th day after the date a complaint is filed under this chapter, the commission shall provide written notice, by certified mail, to the complainant and the builder.

(c) The notice must inform the recipient of:

(1) the date the period for issuing a final order under this chapter expires; and

(2) the complainant's right to file an action under this section.

(d) After receiving a notice of the right to file an action under Subsection (b), a complainant may file an action against a builder named in the complaint. The commission's failure to issue a notice of the right to file an action does not affect a complainant's right to bring an action under this section.

Sec. 445.013. JUDICIAL REVIEW. A final order of the commission under this chapter:

(1) is the final action of the commission under this chapter; and

(2) is subject to review only by judicial review as provided by Chapter 2001, Government Code, to the extent that chapter is not inconsistent with this chapter.

Sec. 445.014. INITIATION OR REMOVAL OF ACTION. (a) Except as otherwise provided by this chapter, an appeal initiated under this chapter may be removed to the Third Court of Appeals District if any party to the action files a notice of removal with the district court before the trial in the district court begins.

(b) An appeal initiated in or removed to the Third Court of

Appeals District:

(1) must be initiated under Chapter 2001, Government Code, as if initiated in a Travis County district court; and

(2) is governed from the time of filing by the Texas Rules of Appellate Procedure.

(c) If evidence outside the commission's record is to be admitted in an appeal under Chapter 2001, Government Code, or otherwise, the action:

(1) must be initiated in a Travis County district court; or

(2) if initiated in the Third Court of Appeals District, is subject to remand to a Travis County district court for proceedings in accordance with instructions from the court of appeals.

(d) Citation must be served on the commission and each party of record before the commission. For an appeal initiated in the Third Court of Appeals District, the court shall cause citation to be issued.

Sec. 445.015. DILIGENCE REQUIRED. (a) An appellant must pursue an appeal with reasonable diligence. If an appellant fails to prosecute an appeal in the six-month period after the appeal is filed, the court shall presume that the appeal has been abandoned and dismiss the appeal if a motion for dismissal is submitted by the attorney general or another party.

(b) An appeal may not be dismissed under this section if the appellant, after receiving notice and an opportunity to be heard, demonstrates good cause for a delay.

Sec. 445.016. DISCLOSURE REQUIRED. (a) A builder who is ordered to refund the purchase price of or replace a home under this chapter shall provide to the first retail purchaser of the home after the home was repurchased or replaced by the builder a disclosure statement stating that the home was repurchased or replaced by the builder under this chapter.

(b) The disclosure statement must include the toll-free telephone number established by the commission under Section 445.018.

(c) Before a home repurchased or replaced under this chapter

may be sold again, the deed that transfers title to the home must be marked with a clear statement that indicates that the home was repurchased or replaced under this chapter.

Sec. 445.017. RESTORATION OF WARRANTY REQUIRED. A builder who sells a home after repurchasing or replacing the home under this chapter must restore the home in a manner that conforms with the limited statutory warranties and building and performance standards.

Sec. 445.018. TOLL-FREE TELEPHONE NUMBER. The commission shall establish a toll-free telephone number for providing information to persons who request information about a defect that was the basis for ordering a remedy under this chapter. The commission shall maintain an effective method of providing information to persons who make requests.

Sec. 445.019. ANNUAL REPORT. (a) The commission shall publish and make available to the public an annual report relating to homes ordered repurchased or replaced by a builder under this chapter.

(b) The report must:

(1) list the number of homes by subdivision name, if any;

(2) identify the builder; and

(3) include a brief description of each defect that was the subject of a remedy provided by this chapter.

(c) The commission may charge a reasonable fee to recover the cost of the report.

Sec. 445.020. DISCIPLINARY PROCEEDINGS; ADMINISTRATIVE PENALTY. A builder who violates this chapter or a rule or order adopted under this chapter is subject to disciplinary action and an administrative penalty under Chapters 418 and 419.

SECTION _____. Subtitle F, Title 16, Property Code, as added by this Act, applies only to the sale of a new home for which the closing date is on or after the effective date of this Act. A sale of a new home for which the closing date was before the effective date of this Act is governed by the law in effect at the time of the sale, and that law is continued in effect for that purpose.