

By: Smith of Tarrant

H.B. No. 2008

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of residential construction and the authority of the Texas Residential Construction Commission.

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

SECTION 1. Section 406.001, Property Code, is amended by amending Subsection (a) and adding Subsections (c), (d), (e), and (f) to read as follows:

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

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

(2) three members must be representatives of the general public, each of whom has demonstrated a continued interest in consumer protection;

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

(4) one member must be either a licensed architect who practices in the area of residential construction or a building inspector who meets the requirements set forth in Chapter 427 and practices in the area of residential construction.

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

1 (1) is a builder registered with the commission, or is
2 otherwise registered, certified, or licensed by a regulatory agency
3 in the field of residential construction;

4 (2) is employed by or participates in the management
5 of a business entity or other organization regulated by or
6 receiving money from the commission;

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

11 (4) uses or receives a substantial amount of tangible
12 goods, services, or money from the commission other than
13 compensation or reimbursement authorized by law for commission
14 membership, attendance, or expenses.

15 (d) A person may not be a member of the commission and may
16 not be a commission employee employed in a "bona fide executive,
17 administrative, or professional capacity," as that phrase is used
18 for purposes of establishing an exemption to the overtime
19 provisions of the federal Fair Labor Standards Act of 1938 (29
20 U.S.C. Section 201 et seq.) if:

21 (1) the person is an officer, employee, manager, or
22 paid consultant of a Texas trade association in the field of
23 residential construction; or

24 (2) the person's spouse is an officer, manager, or paid
25 consultant of a Texas trade association in the field of residential
26 construction.

27 (e) A person may not be a member of the commission or act as

1 general counsel to the commission if the person is required to
2 register as a lobbyist under Chapter 305, Government Code, because
3 of the person's activities for compensation on behalf of a
4 profession related to the operation of the commission.

5 (f) In this section, "Texas trade association" means a
6 cooperative and voluntarily joined statewide association of
7 business or professional competitors in this state designed to
8 assist its members and its industry or profession in dealing with
9 mutual business or professional problems and in promoting their
10 common interest.

11 SECTION 2. 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;

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

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

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

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

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

(12) failure to repair a defect as required by:

(A) a third-party inspector's recommendation under Section 428.004(c), that is not the subject of an ongoing appeal under Chapter 429 or in a district court; or

(B) the panel's ruling on appeal under Section 429.001(c) that is not the subject of an appeal in a district court; or

(13) repeated failure to meet the commission's building and performance standards.

SECTION 3. Chapter 418, Property Code, is amended by adding Sections 418.005 and 418.006 to read as follows:

Sec. 418.005. INJUNCTION. (a) The commission acting through the executive director may petition a district court for injunctive relief as provided by this section.

(b) If the district court finds that a person is violating this title, the district court may by injunction:

1 (1) prohibit the person from continuing the violation;
2 or
3 (2) grant any other injunctive relief warranted by the
4 facts.

5 (c) The attorney general shall institute and conduct a suit
6 authorized by this section at the request of the commission, acting
7 through the executive director, and in the name of the state.

8 (d) The suit for injunctive relief must be brought in Travis
9 County.

10 Sec. 418.006. CEASE AND DESIST ORDER. (a) If the commission
11 determines that a person who is not licensed under this chapter is
12 acting as a builder, the commission after notice and opportunity
13 for a hearing may issue a cease and desist order prohibiting the
14 person from acting as a builder.

15 (b) A violation of an order under this section constitutes
16 grounds for disciplinary action or imposition of an administrative
17 penalty under this subtitle.

18 SECTION 4. Sections 426.004(a) and (c), Property Code, are
19 amended to read as follows:

20 (a) If a [A] party [who] submits a request under this
21 subtitle [shall pay] any amount required by the commission to cover
22 the expense of the third-party inspector shall be paid by:

23 (1) the builder or other person found responsible, in
24 the inspector's recommendation under Section 428.004, for the
25 defect found, if a defect is found; or

26 (2) the person submitting the request, if no defect is
27 found.

1 (c) If ~~[the transfer of the title of the home from the~~
2 ~~builder to the initial homeowner occurred before January 1, 2004,~~
3 ~~or if the contract for improvements or additions between the~~
4 ~~builder and homeowner was entered into before January 1, 2004,]~~ a
5 ~~[the]~~ person ~~[who]~~ submits a request under this subtitle for a home
6 which is not registered as required by Section 426.003, the builder
7 of the home shall pay ~~[involving the home shall pay, in addition to~~
8 ~~the inspection expenses required by this section,]~~ the registration
9 fee required by Section 426.003.

10 SECTION 5. Section 426.005(a), Property Code, is amended to
11 read as follows:

12 (a) A homeowner may pursue a remedy provided under ~~[must~~
13 ~~comply with]~~ this subtitle before initiating an action for damages
14 or other relief arising from an alleged construction defect, or
15 forgo the procedures provided in this subtitle and pursue any other
16 remedy available in the courts of this state.

17 SECTION 6. Section 428.003(b), Property Code, is amended to
18 read as follows:

19 (b) The commission shall establish rules and regulations that
20 allow the homeowner and the builder to each have the right to strike
21 the appointment of a third-party inspector one time on or before the
22 5th day after the commission appoints the first inspector for each
23 request submitted.

24 SECTION 7. Sections 428.004(a) and (d), Property Code, are
25 amended to read as follows:

26 (a) If the dispute involves workmanship and materials in the
27 home of a nonstructural matter, the third-party inspector shall

1 issue a recommendation not later than the 20th ~~[15th]~~ day after the
2 date the third-party inspector receives the appointment from the
3 commission.

4 (d) The ~~[Except as provided by this subsection, the]~~
5 third-party inspector's recommendation may ~~[not]~~ include an amount
6 of monetary damages sufficient to compensate the homeowner for
7 expenses sufficient to repair the defect ~~[payment of any monetary~~
8 ~~consideration]~~. If the inspector finds for the party who submitted
9 the request, the commission shall ~~[may]~~ order the other party to pay
10 ~~[reimburse all or part of]~~ the fees and inspection expenses due
11 ~~[paid by the requestor]~~ under Section 426.004.

12 SECTION 8. Chapter 428, Property Code, is amended by adding
13 Section 428.0045 to read as follows:

14 Sec. 428.0045. AUTHORITY TO AWARD DAMAGES. If the
15 inspector's recommendation includes an amount of monetary damages
16 sufficient to compensate the homeowner for expenses sufficient to
17 repair the defect, the commission may require the other party to pay
18 to the homeowner an amount not greater than the amount recommended
19 by the inspector as compensation for the damages.

20 SECTION 9. Section 212.046, Local Government Code, is
21 amended to read as follows:

22 Sec. 212.046. RESTRICTION ON ISSUANCE OF BUILDING AND OTHER
23 PERMITS BY MUNICIPALITY, COUNTY, OR OFFICIAL OF OTHER GOVERNMENTAL
24 ENTITY. (a) The municipality, a county, or an official of another
25 governmental entity may not issue a building permit or any other
26 type of permit for development on lots or tracts subject to this
27 subchapter until a development plat is filed with and approved by

1 the municipality in accordance with Section 212.047.

2 (b) A municipality, county, or other governmental entity
3 may not issue a building permit for residential construction unless
4 the governmental entity has verified that the applicant for the
5 permit is or has contracted with a builder registered with the Texas
6 Residential Construction Commission as required by Chapter 416,
7 Property Code.

8 SECTION 10. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2007.