

By: Leibowitz

H.B. No. 311

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain fees authorized by the Texas Residential
3 Construction Commission Act.

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

5 SECTION 1. Section 408.002, Property Code, is amended by
6 amending Subsections (c) and (d) to read as follows:

7 (c) The commission may charge a reasonable fee for:

8 (1) [~~a homeowner to submit a request for~~
9 ~~state-sponsored inspection under Subtitle D,~~

10 [~~(2)~~] providing public information requested under
11 Chapter 552, Government Code, excluding information requested from
12 the commission under Section 409.001; or

13 (2) [~~(3)~~] producing, mailing, and distributing
14 special printed materials and publications generated in bulk by the
15 commission for use and distribution by builders.

16 (d) The commission may not charge [~~waive or reduce the fee~~
17 ~~for an inspection under Subtitle D for~~] a homeowner a [~~who~~
18 ~~demonstrates an inability to pay the~~] fee in connection with a
19 complaint, request, or other proceeding under Chapter 409 or
20 Subtitle D.

21 SECTION 2. Section 418.001, Property Code, is amended to
22 read as follows:

23 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person,
24 including a builder or a person who is designated as a builder's

1 agent under Section 416.006, or a person who owns or controls a
2 majority ownership interest in the builder is subject to
3 disciplinary action under this chapter for:

4 (1) fraud or deceit in obtaining a registration or
5 certification under this subtitle;

6 (2) misappropriation or misapplication of trust funds
7 in the practice of residential construction, including a violation
8 of Chapter 32, Penal Code, or Chapter 162, if found by a final
9 nonappealable court judgment;

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

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

14 (5) publishing a false or misleading advertisement;

15 (6) failure to honor, within a reasonable time, a
16 check issued to the commission, or any other instrument of payment,
17 including a credit or debit card or electronic funds transfer,
18 after the commission has sent by certified mail a request for
19 payment to the person's last known business address, according to
20 commission records;

21 (7) failure to pay an administrative penalty assessed
22 by the commission under Chapter 419 or a fee due under Chapter 426;

23 (8) failure to pay a final nonappealable court
24 judgment arising from a construction defect or other transaction
25 between the person and a homeowner;

26 (9) failure to register a home as required by Section
27 426.003;

1 (10) failure to remit the fee for registration of a
2 home under Section 426.003;

3 (11) [~~failure to reimburse a homeowner the amount~~
4 ~~ordered by the commission as provided by Section 428.004(d)~~;

5 [~~(12)~~] engaging in statutory or common-law fraud or
6 misappropriation of funds, as determined by the commission after a
7 hearing under Section 418.003;

8 (12) [~~(13)~~] a repeated failure to participate in the
9 state-sponsored inspection and dispute resolution process if
10 required by this title;

11 (13) [~~(14)~~] failure to register as a builder as
12 required under Chapter 416;

13 (14) [~~(15)~~] using or attempting to use a certificate
14 of registration that has expired or that has been revoked;

15 (15) [~~(16)~~] falsely representing that the person
16 holds a certificate of registration issued under Chapter 416;

17 (16) [~~(17)~~] acting as a builder using a name other
18 than the name or names disclosed to the commission;

19 (17) [~~(18)~~] aiding, abetting, or conspiring with a
20 person who does not hold a certificate of registration to evade the
21 provisions of this title or rules adopted under this title, if found
22 by a final nonappealable court judgment;

23 (18) [~~(19)~~] allowing the person's certificate of
24 registration to be used by another person;

25 (19) [~~(20)~~] acting as an agent, partner, or associate
26 of a person who does not hold a certificate of registration with the
27 intent to evade the provisions of this title or rules adopted under

1 this title;

2 (20) [~~(21)~~] a failure to reasonably perform on an
3 accepted offer to repair or a repeated failure to make an offer to
4 repair based on:

5 (A) the recommendation of a third-party
6 inspector under Section 428.004; or

7 (B) the final holding of an appeal under Chapter
8 429;

9 (21) [~~(22)~~] a repeated failure to respond to a
10 commission request for information;

11 (22) [~~(23)~~] a failure to obtain a building permit
12 required by a political subdivision before constructing a new home
13 or an improvement to an existing home;

14 (23) [~~(24)~~] abandoning, without justification, any
15 home improvement contract or new home construction project engaged
16 in or undertaken by the person, if found to have done so by a final,
17 nonappealable court judgment;

18 (24) [~~(25)~~] a repeated failure to comply with the
19 requirements of Subtitle F; or

20 (25) [~~(26)~~] otherwise violating this title or a
21 commission rule adopted under this title.

22 SECTION 3. The heading to Section 426.004, Property Code,
23 is amended to read as follows:

24 Sec. 426.004. EXPENSES [~~FEES~~].

25 SECTION 4. Section 426.004(a), Property Code, is amended to
26 read as follows:

27 (a) A builder [~~party~~] who is involved in a dispute for which

1 a request is submitted [~~submits a request~~] under this subtitle
2 shall pay any amount required by the commission to cover the expense
3 of the third-party inspector.

4 SECTION 5. Section 428.001(b), Property Code, is amended to
5 read as follows:

6 (b) The request must:

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

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

12 (3) include any evidence that depicts the nature and
13 cause of each alleged construction defect and the nature and extent
14 of repairs necessary to remedy the construction defect, including,
15 if available, expert reports, photographs, and videotapes, if that
16 evidence would be discoverable under Rule 192, Texas Rules of Civil
17 Procedure;

18 (4) be accompanied by the fees required under Section
19 426.004, if applicable; and

20 (5) state the name of any person who has, on behalf of
21 the requestor, inspected the home in connection with an alleged
22 construction defect.

23 SECTION 6. (a) Sections 426.004(b) and (c), Property Code,
24 are repealed.

25 (b) Sections 428.004(d) and (e), Property Code, are
26 repealed.

27 SECTION 7. (a) This Act applies only to a request for

1 state-sponsored inspection and dispute resolution filed on or after
2 the effective date of this Act.

3 (b) A request for state-sponsored inspection and dispute
4 resolution that was filed before the effective date of this Act is
5 governed by the law as it existed immediately before the effective
6 date of this Act, and that law is continued in effect for that
7 purpose.

8 SECTION 8. This Act takes effect September 1, 2009.