

By: Thompson

H.B. No. 981

A BILL TO BE ENTITLED

AN ACT

relating to consumer protection for and remedies available to a homebuyer whose home does not comply with certain warranties; providing an administrative penalty.

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

SECTION 1. Title 16, Property Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. HOMEOWNER REMEDIES

CHAPTER 456. NEW HOME BUYERS

Sec. 456.001. 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

1 malfunction, installation defect, or nonconformity that
2 substantially impedes a person's ability to live in or use a home or
3 that creates a substantial risk of fire, explosion, or exposure to a
4 toxic substance.

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

8 Sec. 456.002. APPLICABILITY OF CERTAIN OTHER LAW OR
9 CONTRACT PROVISIONS. (a) This chapter supersedes any other law or
10 contract provision that conflicts with this chapter, including the
11 Deceptive Trade Practices-Consumer Protection Act (Subchapter E,
12 Chapter 17, Business & Commerce Code).

13 (b) The remedies provided by this chapter supersede
14 remedies available under Chapter 27 or the Deceptive Trade
15 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
16 Business & Commerce Code).

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

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

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

1 Sec. 456.003. COMPLAINT. A homebuyer may seek a remedy
2 provided by this chapter by:

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

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

9 Sec. 456.004. HEARING. (a) The commission may hold a
10 hearing on any allegation in a complaint that is not privately
11 resolved between the homebuyer and the builder.

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

14 Sec. 456.005. TIME FOR FILING COMPLAINT. (a) Except as
15 provided by Subsection (b), a homebuyer must file a complaint under
16 this chapter before the earlier of:

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

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

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

26 Sec. 456.006. AFFIRMATIVE DEFENSE. In a hearing before the
27 commission under this chapter, a builder may assert as an

1 affirmative defense to an allegation of a defect made in a complaint
2 filed under this chapter that the defect is the result of abuse,
3 neglect, or modifications or alterations of the home made by a
4 person other than the builder.

5 Sec. 456.007. REPAIR REQUIRED. (a) Except as provided by
6 Section 456.009, if a defect exists, the builder shall make the
7 repairs necessary to conform the home to the builder's warranties
8 if:

9 (1) the homebuyer or the homebuyer's designated agent
10 reported the defect to the builder or the builder's agent before the
11 expiration of the applicable time limit under Section 456.005; or

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

13 (b) The builder must make the repairs required under
14 Subsection (a) not later than the 120th day after the date the
15 notice of the defect required by Section 456.003 is received by the
16 commission.

17 Sec. 456.008. RETURN OR REPLACEMENT REQUIRED. (a) Except
18 as provided by Section 456.009, if the builder is unable to cure a
19 defect within the period prescribed by Section 456.007(b) and the
20 defect creates a serious safety hazard, substantially impairs the
21 use of the home, or decreases the home's market value by more than
22 five percent, the builder shall at the homebuyer's option:

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

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

1 (b) The commission may not order a remedy under this section
2 unless the builder has been provided at least the number of days
3 prescribed by Section 456.007(b) to cure the defect that is subject
4 to the remedy provided by this section. The period required by this
5 subsection is extended by the amount of time during which repair
6 services are not available to a homebuyer because of a war,
7 invasion, strike, or fire, flood, or other natural disaster.

8 Sec. 456.009. MOLD CONTAMINATION. (a) Not later than the
9 30th day after the date of a hearing examiner's order of a remedy
10 under this section, the builder shall accept return of the home from
11 the homebuyer and refund to the homebuyer the full purchase price
12 and any closing costs and reasonable moving costs if, in addition to
13 notice of a defect required by Section 456.003, a homebuyer:

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

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

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

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

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

26 Sec. 456.010. REIMBURSEMENT OF EXPENSES. (a) If a builder
27 is ordered to replace a home or refund the purchase price under

1 Section 456.008 or 456.009, the builder shall reimburse the
2 homebuyer for:

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

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

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

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

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

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

18 Sec. 456.011. OTHER REMEDIES NOT PRECLUDED. This chapter
19 does not prevent a homebuyer from obtaining a remedy available to
20 the homebuyer under a new home warranty that provides remedies in
21 addition to those provided by this chapter.

22 Sec. 456.012. RIGHT TO FILE ACTION. (a) Except as provided
23 by this section, a homebuyer may not seek the remedies provided by
24 this chapter in a civil action unless the homebuyer files a
25 complaint against the builder under this chapter and exhausts the
26 administrative proceedings provided by this chapter. A court shall
27 dismiss an action filed in violation of this section.

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

6 (c) The notice must inform the recipient of:

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

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

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

16 Sec. 456.013. JUDICIAL REVIEW. A final order of the
17 commission under this chapter:

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

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

23 Sec. 456.014. INITIATION OR REMOVAL OF ACTION. (a) Except
24 as otherwise provided by this chapter, an appeal initiated under
25 this chapter may be removed to the Third Court of Appeals District
26 if any party to the action files a notice of removal with the
27 district court before the trial in the district court begins.

1 (b) An appeal initiated in or removed to the Third Court of
2 Appeals District:

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

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

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

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

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

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

20 Sec. 456.015. DILIGENCE REQUIRED. (a) An appellant must
21 pursue an appeal with reasonable diligence. If an appellant fails
22 to prosecute an appeal in the six-month period after the appeal is
23 filed, the court shall presume that the appeal has been abandoned
24 and dismiss the appeal if a motion for dismissal is submitted by the
25 attorney general or another party.

26 (b) An appeal may not be dismissed under this section if the
27 appellant, after receiving notice and an opportunity to be heard,

1 demonstrates good cause for a delay.

2 Sec. 456.016. DISCLOSURE REQUIRED. (a) A builder who is
3 ordered to refund the purchase price of or replace a home under this
4 chapter shall provide to the first retail purchaser of the home
5 after the home was repurchased or replaced by the builder a
6 disclosure statement stating that the home was repurchased or
7 replaced by the builder under this chapter.

8 (b) The disclosure statement must include the toll-free
9 telephone number established by the commission under Section
10 456.018.

11 (c) Before a home repurchased or replaced under this chapter
12 may be sold again, the deed that transfers title to the home must be
13 marked with a clear statement that indicates that the home was
14 repurchased or replaced under this chapter.

15 Sec. 456.017. RESTORATION OF WARRANTY REQUIRED. A builder
16 who sells a home after repurchasing or replacing the home under this
17 chapter must restore the home in a manner that conforms with the
18 limited statutory warranties and building and performance
19 standards.

20 Sec. 456.018. TOLL-FREE TELEPHONE NUMBER. The commission
21 shall establish a toll-free telephone number for providing
22 information to persons who request information about a defect that
23 was the basis for ordering a remedy under this chapter. The
24 commission shall maintain an effective method of providing
25 information to persons who make requests.

26 Sec. 456.019. ANNUAL REPORT. (a) The commission shall
27 publish and make available to the public an annual report relating

1 to homes ordered repurchased or replaced by a builder under this
2 chapter.

3 (b) The report must:

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

6 (2) identify the builder; and

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

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

11 Sec. 456.020. DISCIPLINARY PROCEEDINGS; ADMINISTRATIVE
12 PENALTY. A builder who violates this chapter or a rule or order
13 adopted under this chapter is subject to disciplinary action and an
14 administrative penalty under Chapters 418 and 419.

15 SECTION 2. Subtitle G, Title 16, Property Code, as added by
16 this Act, applies only to the sale of a new home for which the
17 closing date is on or after the effective date of this Act. A sale
18 of a new home for which the closing date was before the effective
19 date of this Act is governed by the law in effect at the time of the
20 sale, and that law is continued in effect for that purpose.

21 SECTION 3. This Act takes effect September 1, 2009.