

By: Leibowitz

H.B. No. 2896

A BILL TO BE ENTITLED

1 AN ACT
2 relating to requiring the Texas Residential Construction
3 Commission to adopt forms to be used by builders for contracts for
4 the sale or construction of a new home.

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

6 SECTION 1. Chapter 420, Property Code, is amended by adding
7 Section 420.004 to read as follows:

8 Sec. 420.004. STANDARD CONTRACT FORMS. (a) The commission
9 shall adopt rules in the public's best interest that require
10 builders to use contract forms prepared with the assistance of the
11 Texas Real Estate Broker-Lawyer Committee and adopted by the
12 commission for the sale or construction of a new home.

13 (b) The commission may not prohibit a builder from using a
14 contract form for the sale or construction of a new home that is:

15 (1) prepared by the purchaser; or

16 (2) prepared by an attorney and required by the
17 purchaser.

18 (c) A contract form adopted by the commission must comply
19 with this chapter, except that the commission may not adopt a
20 contract form that includes a provision that requires the parties
21 to submit a dispute arising under the contract to binding
22 arbitration.

23 SECTION 2. Section 418.001, Property Code, is amended to
24 read as follows:

1 Sec. 418.001. GROUND FOR DISCIPLINARY ACTION. A person,
2 including a builder or a person who is designated as a builder's
3 agent under Section 416.006, or a person who owns or controls a
4 majority ownership interest in the builder is subject to
5 disciplinary action under this chapter for:

6 (1) fraud or deceit in obtaining a registration or
7 certification under this subtitle;

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

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

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

16 (5) publishing a false or misleading advertisement;

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

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

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

- 1 (9) failure to register a home as required by Section
2 426.003;
- 3 (10) failure to remit the fee for registration of a
4 home under Section 426.003;
- 5 (11) failure to reimburse a homeowner the amount
6 ordered by the commission as provided by Section 428.004(d);
- 7 (12) engaging in statutory or common-law fraud or
8 misappropriation of funds, as determined by the commission after a
9 hearing under Section 418.003;
- 10 (13) a repeated failure to participate in the
11 state-sponsored inspection and dispute resolution process if
12 required by this title;
- 13 (14) failure to register as a builder as required
14 under Chapter 416;
- 15 (15) using or attempting to use a certificate of
16 registration that has expired or that has been revoked;
- 17 (16) falsely representing that the person holds a
18 certificate of registration issued under Chapter 416;
- 19 (17) acting as a builder using a name other than the
20 name or names disclosed to the commission;
- 21 (18) aiding, abetting, or conspiring with a person who
22 does not hold a certificate of registration to evade the provisions
23 of this title or rules adopted under this title, if found by a final
24 nonappealable court judgment;
- 25 (19) allowing the person's certificate of registration
26 to be used by another person;
- 27 (20) acting as an agent, partner, or associate of a

1 person who does not hold a certificate of registration with the
2 intent to evade the provisions of this title or rules adopted under
3 this title;

4 (21) a failure to reasonably perform on an accepted
5 offer to repair or a repeated failure to make an offer to repair
6 based on:

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

9 (B) the final holding of an appeal under Chapter
10 429;

11 (22) a repeated failure to respond to a commission
12 request for information;

13 (23) a failure to obtain a building permit required by
14 a political subdivision before constructing a new home or an
15 improvement to an existing home;

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

20 (25) a repeated failure to comply with the
21 requirements of Subtitle F; ~~or~~

22 (26) a failure to use a contract form required by the
23 commission under Section 420.004; or

24 (27) otherwise violating this title or a commission
25 rule adopted under this title.

26 SECTION 3. (a) The Texas Residential Construction
27 Commission shall adopt contract forms as required by Section

1 420.004, Property Code, as added by this Act, as soon as practicable
2 after the effective date of this Act.

3 (b) Section 418.001, Property Code, as amended by this Act,
4 applies only to the use of a contract form on or after the date on
5 which the commission adopts a contract form in accordance with
6 Section 420.004, Property Code, as added by this Act.

7 SECTION 4. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.