

By: Farabee

H.B. No. 3059

Substitute the following for H.B. No. 3059:

By: Elkins

C.S.H.B. No. 3059

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to persons subject to liability for residential  
3 construction defects or regulation as a builder of residential  
4 construction.

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

6 SECTION 1. Section 59.011(a), Finance Code, is amended to  
7 read as follows:

8 (a) For purposes of Chapter 27, Property Code, and Title 16,  
9 Property Code, a federally insured financial institution, or a  
10 subsidiary or affiliate of the institution, regulated under this  
11 code is not a builder.

12 SECTION 2. Sections 5.016(a) and (c), Property Code, as  
13 added by Chapter 843 (H.B. 1038), Acts of the 80th Legislature,  
14 Regular Session, 2007, are amended to read as follows:

15 (a) A seller of residential real property that is exempt  
16 from Title 16 under Section 401.003(c)(3) or (e) or Section 401.005  
17 shall give to the purchaser of the property a written notice that  
18 reads substantially similar to the following:

19 NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES

20 AND BUILDING AND PERFORMANCE STANDARDS

21 The property that is subject to this contract is exempt from  
22 Title 16, Property Code, including the provisions of that title  
23 that provide statutory warranties and building and performance  
24 standards.

1 (c) This section does not apply to a transfer:

2 (1) under a court order or foreclosure sale;

3 (2) by a trustee in bankruptcy;

4 (3) to a mortgagee by a mortgagor or successor in  
5 interest or to a beneficiary of a deed of trust by a trustor or  
6 successor in interest;

7 (4) by a mortgagee or a beneficiary under a deed of  
8 trust who has acquired the land at a sale conducted under a power of  
9 sale under a deed of trust or a sale under a court-ordered  
10 foreclosure or has acquired the land by a deed in lieu of  
11 foreclosure unless the property acquired was a partially completed  
12 home that was subsequently completed;

13 (5) by a fiduciary in the course of the administration  
14 of a decedent's estate, guardianship, conservatorship, or trust;

15 (6) from one co-owner to another co-owner of an  
16 undivided interest in the real property;

17 (7) to a spouse or a person in the lineal line of  
18 consanguinity of the seller;

19 (8) to or from a governmental entity; or

20 (9) of only a mineral interest, leasehold interest, or  
21 security interest.

22 SECTION 3. Section 401.003, Property Code, is amended by  
23 amending Subsection (c) and adding Subsection (e) to read as  
24 follows:

25 (c) The term does not include a ~~any~~ person who:

26 (1) has been issued a license by this state or an  
27 agency of this state to practice a trade or profession related to or

1 affiliated with residential construction if the work being done by  
2 the entity or individual to the home is solely for the purpose for  
3 which the license was issued; [~~or~~]

4 (2) sells a new home and:

5 (A) does not construct or supervise or manage the  
6 construction of the home; and

7 (B) holds a license issued under Chapter 1101,  
8 Occupations Code, or is exempt from that chapter under Section  
9 1101.005, Occupations Code;

10 (3) guarantees or co-makes a construction loan and is  
11 not otherwise a builder under Subsection (a); or

12 (4) constructs or makes improvements to not more than  
13 one home in a 12-month period.

14 (e) The term does not include a federally insured financial  
15 institution or a subsidiary or affiliate of the institution.

16 SECTION 4. Section 426.003, Property Code, is amended by  
17 adding Subsection (e) to read as follows:

18 (e) Notwithstanding Subsections (a) and (b), a builder is  
19 not required to comply with this subtitle after completing  
20 construction of a partially completed home owned by a mortgagee or a  
21 beneficiary under a deed of trust who acquired the partially  
22 completed home:

23 (1) at a sale conducted under a power of sale under a  
24 deed of trust or a court-ordered foreclosure; or

25 (2) by a deed in lieu of foreclosure.

26 SECTION 5. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2009.