

By: Thompson

H.B. No. 3182

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 4, Property Code, is amended by adding Chapter 30 to read as follows:

CHAPTER 30. TEXAS HOMEBUYER PROTECTION ACT

Sec. 30.001. SHORT TITLE. This chapter may be cited as the Texas Homebuyer Protection Act.

Sec. 30.002. DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the Texas Real Estate Commission.

(2) "Commission" means the Texas Real Estate Commission.

(3) "Contractor" means a person who, for compensation, engages in the construction, remodeling, repair, modification, or improvement of a building or a portion of a building used primarily for residential purposes.

(4) "Defect" means a condition that prevents a home from conforming to a contractor's warranty, including a warranty described by Section 30.008(c) or any other warranty provided by law.

(5) "Home" means a single-family house, duplex,

1 triplex, or quadruplex or a unit in a multiunit structure used for
2 residential purposes that is used or intended to be used as a
3 dwelling by one of the owners.

4 (6) "Homebuyer" means a person who:

5 (A) purchased a home from a contractor and is
6 entitled to enforce the terms of a contractor's warranty with
7 respect to the home;

8 (B) is a lessor or lessee, other than a
9 sublessee, who purchased or leased the home from a contractor; or

10 (C) is a transferee or assignee of a person
11 described by Paragraph (A) or (B) if the transferee or assignee is a
12 resident of this state and entitled to enforce the terms of a
13 contractor's warranty.

14 (7) "Serious safety hazard" means a life-threatening
15 malfunction, installation defect, or nonconformity that
16 substantially impedes a person's ability to live in or use a home or
17 that creates a substantial risk of fire, explosion, or exposure to a
18 toxic substance.

19 (8) "Warranty" means an express or implied warranty.

20 Sec. 30.003. APPLICABILITY OF CERTAIN OTHER LAW OR CONTRACT
21 PROVISIONS. (a) This chapter supersedes any other law or contract
22 provision that conflicts with this chapter.

23 (b) The remedies provided by this chapter supersede
24 remedies available under Chapter 27 or Title 16.

25 (c) Except as provided by this section, this chapter does
26 not limit the rights or remedies otherwise available to a homebuyer
27 under any other law.

1 (d) A contract provision that excludes or modifies the
2 remedies provided by this chapter is prohibited and is void as
3 against public policy unless the exclusion or modification is
4 included in a settlement agreement between a homebuyer and a
5 contractor.

6 Sec. 30.004. COMPLAINT. A homebuyer may seek a remedy
7 provided by this chapter by:

8 (1) providing to the contractor written notice
9 identifying each defect in the home that is covered by the
10 contractor's warranty; and

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

14 Sec. 30.005. HEARING. (a) The administrator may set a
15 hearing on any allegation in a complaint that is not privately
16 resolved between the homebuyer and the contractor.

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

19 Sec. 30.006. TIME FOR FILING COMPLAINT. (a) Except as
20 provided by Subsection (b), a homebuyer must file a complaint under
21 this chapter before the earlier of:

22 (1) the date the express warranty period expires; or

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

24 (b) A homebuyer may file a complaint to which Section 30.010
25 applies on or before the 10th anniversary of the closing date.

26 Sec. 30.007. AFFIRMATIVE DEFENSE. In a hearing before the
27 administrator under this chapter, a contractor 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 contractor.

5 Sec. 30.008. REPAIR REQUIRED. (a) Except as provided by
6 Section 30.010, if a defect exists, the contractor shall make the
7 repairs necessary to conform the home to the contractor's
8 warranties if:

9 (1) the homebuyer or the homebuyer's designated agent
10 reported the defect to the contractor or the contractor's agent
11 before the expiration of the applicable time limit under Section
12 30.006; or

13 (2) a breach of a warranty described by Subsection (c)
14 on the home is established.

15 (b) The contractor must make the repairs required under
16 Subsection (a) not later than the 120th day after the date the
17 notice of the defect required by Section 30.004 is received by the
18 commission.

19 (c) Notwithstanding any other law, there is a presumption
20 that a breach of a warranty on a home exists if the home does not
21 comply with:

22 (1) a building code applicable to the home;

23 (2) the version applicable in the jurisdiction in
24 which the home is constructed of:

25 (A) the International Building Code for One- and
26 Two-Family Dwellings;

27 (B) the National Electric Code for One- and

1 Two-Family Dwellings; or

2 (C) the manufacturer's specific installation
3 instructions for the part or component used in construction of the
4 home; or

5 (3) structural engineering standards or practices
6 intended to prevent structural damage or a decrease in the market
7 value of the home resulting from the failure of the foundation or
8 other load-bearing portions of the home, including standards or
9 practices used to ensure that a foundation is structurally
10 sufficient without artificial moisture controls or other
11 extraordinary maintenance by the homeowner.

12 Sec. 30.009. RETURN OR REPLACEMENT REQUIRED. (a) Except as
13 provided by Section 30.010, if the contractor is unable to cure a
14 defect within the period prescribed by Section 30.008(b) and the
15 defect creates a serious safety hazard, substantially impairs the
16 use of the home, or decreases the home's market value by more than
17 five percent, the contractor shall at the homebuyer's option:

18 (1) replace the home with a comparable home in the same
19 neighborhood; or

20 (2) accept return of the home from the homebuyer and
21 refund to the homebuyer the full purchase price and any closing
22 costs and reasonable moving costs.

23 (b) The administrator may not order a remedy under this
24 section unless the contractor has been provided at least the number
25 of days prescribed by Section 30.008(b) to cure the defect that is
26 subject to the remedy provided by this section. The period required
27 by this subsection is extended by the amount of time during which

1 repair services are not available to a homebuyer because of a war,
2 invasion, strike, or fire, flood, or other natural disaster.

3 Sec. 30.010. MOLD CONTAMINATION. (a) Not later than the
4 30th day after the date of the administrator's order of a remedy
5 under this section, the contractor shall accept return of the home
6 from the homebuyer and refund to the homebuyer the full purchase
7 price and any closing costs and moving costs if, in addition to a
8 notice of a defect required by Section 30.004, a homebuyer:

9 (1) provides to the contractor and the commission
10 written results of tests that:

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

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

16 (2) establishes that the contamination arises out of
17 the defect.

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

21 Sec. 30.011. REIMBURSEMENT OF EXPENSES. (a) If a
22 contractor is ordered to replace a home or refund the purchase price
23 under Section 30.009 or 30.010, the contractor shall reimburse the
24 homebuyer for:

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

27 (2) lost wages resulting from time required for

1 appointments with the contractor or the contractor's
2 representative that are necessary because of the defect.

3 (b) As necessary to promote the public interest, the
4 commission by rule:

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

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

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

13 Sec. 30.012. OTHER REMEDIES NOT PRECLUDED. This chapter
14 does not prevent a homebuyer from obtaining a remedy available to
15 the homebuyer under a new home warranty that provides remedies in
16 addition to those provided by this chapter.

17 Sec. 30.013. RIGHT TO FILE ACTION. (a) Except as provided
18 by this section, a homebuyer may not seek the remedies provided by
19 this chapter in a civil action unless the homebuyer files a
20 complaint against the contractor under this chapter and exhausts
21 the administrative proceedings provided by this chapter. A court
22 shall dismiss an action filed in violation of this section.

23 (b) If the hearing examiner does not issue a proposal for
24 decision and make a recommendation to the administrator for a final
25 order on or before the 150th day after the date a complaint is filed
26 under this chapter, the administrator shall provide written notice,
27 by certified mail, to the complainant and the contractor.

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

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

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

6 (d) After receiving a notice of the right to file an action
7 under Subsection (b), a complainant may file an action against a
8 contractor named in the complaint. The administrator's failure to
9 issue a notice of the right to file an action does not affect a
10 complainant's right to bring an action under this section.

11 Sec. 30.014. JUDICIAL REVIEW. A final order of the
12 administrator under this chapter:

13 (1) is the final action of the commission under this
14 chapter; and

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

18 Sec. 30.015. INITIATION OR REMOVAL OF ACTION. (a) Except
19 as otherwise provided by this chapter, an appeal initiated under
20 this chapter may be removed to the Third Court of Appeals District
21 if any party to the action files a notice of removal with the
22 district court before the trial in the district court begins.

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

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

27 (2) is governed from the time of filing by the Texas

1 Rules of Appellate Procedure.

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

5 (1) must be initiated in a Travis County district
6 court; or

7 (2) if initiated in the Third Court of Appeals
8 District, is subject to remand to a Travis County district court for
9 proceedings in accordance with instructions from the court of
10 appeals.

11 (d) Citation must be served on the administrator and each
12 party of record before the commission. For an appeal initiated in
13 the Third Court of Appeals District, the court shall cause citation
14 to be issued.

15 Sec. 30.016. DILIGENCE REQUIRED. (a) An appellant must
16 pursue an appeal with reasonable diligence. If an appellant fails
17 to prosecute an appeal in the six-month period after the appeal is
18 filed, the court shall presume that the appeal has been abandoned
19 and dismiss the appeal if a motion for dismissal is submitted by the
20 attorney general or another party.

21 (b) An appeal may not be dismissed under this section if the
22 appellant, after receiving notice and an opportunity to be heard,
23 demonstrates good cause for a delay.

24 Sec. 30.017. DISCLOSURE REQUIRED. (a) A contractor that is
25 ordered to refund the purchase price of or replace a home under this
26 chapter shall provide to the first retail purchaser of the home
27 after the home was repurchased or replaced by the contractor a

1 disclosure statement stating that the home was repurchased or
2 replaced by the contractor under this chapter.

3 (b) The disclosure statement must include the toll-free
4 telephone number established by the commission under Section
5 30.019.

6 (c) Before a home repurchased or replaced under this chapter
7 may be sold again, the deed that transfers title to the home must be
8 marked with a clear statement that indicates that the home was
9 repurchased or replaced under this chapter.

10 Sec. 30.018. RESTORATION OF WARRANTY REQUIRED. A
11 contractor who sells a home after repurchasing or replacing the
12 home under this chapter must:

13 (1) restore the home in a manner that conforms with
14 applicable building codes; and

15 (2) issue an express warranty for the home.

16 Sec. 30.019. TOLL-FREE TELEPHONE NUMBER. The commission
17 shall establish a toll-free telephone number for providing
18 information to persons who request information about a defect that
19 was the basis for ordering a remedy under this chapter. The
20 commission shall maintain an effective method of providing
21 information to persons who make requests.

22 Sec. 30.020. ANNUAL REPORT. (a) The commission shall
23 publish and make available to the public an annual report relating
24 to homes ordered repurchased or replaced by a contractor under this
25 chapter.

26 (b) The report must:

27 (1) list the number of homes by subdivision name, if

1 any;

2 (2) identify the contractor; and

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

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

7 Sec. 30.021. ADMINISTRATIVE PENALTY. (a) The commission
8 may impose an administrative penalty on a person who violates this
9 chapter or a rule or order adopted under this chapter.

10 (b) The imposition of a penalty is governed by Subchapter O,
11 Chapter 1101, Occupations Code.

12 Sec. 30.022. RULES. The commission, in consultation with
13 the Texas Real Estate Inspector Committee, shall adopt rules
14 necessary for the enforcement and administration of this chapter.

15 SECTION 2. (a) This Act takes effect September 1, 2009.

16 (b) This Act applies only to the sale of a new home for which
17 the closing date is on or after September 1, 2009. A sale of a new
18 home for which the closing date was before September 1, 2009, is
19 governed by the law in effect at the time of the sale, and that law
20 is continued in effect for that purpose.