

By: Farias

H.B. No. 1887

A BILL TO BE ENTITLED

AN ACT

relating to consumer protection for and remedies available to a veteran who buys a home that 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 VETERAN HOMEBUYER PROTECTION ACT

Sec. 30.001. SHORT TITLE. This chapter may be cited as the Texas Veteran 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 the implied warranty that the home will conform to each applicable building code.

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

1 triplex, or fourplex 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 purchased a home
5 from a contractor and is entitled to enforce the terms of a
6 contractor's warranty with respect to the home.

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

12 (8) "Veteran" means a person who:

13 (A) has served in:

14 (i) the army, navy, air force, coast guard,
15 or marine corps of the United States; or

16 (ii) the Texas National Guard as defined by
17 Section 431.001, Government Code; and

18 (B) has been honorably discharged from the branch
19 of the service in which the person served.

20 (9) "Warranty" means an express or implied warranty.

21 Sec. 30.003. APPLICABILITY OF CHAPTER. This chapter
22 applies only to a homebuyer who, on the closing date of the initial
23 sale by the contractor, is a veteran.

24 Sec. 30.004. APPLICABILITY OF CERTAIN OTHER LAW OR CONTRACT
25 PROVISIONS. (a) This chapter supersedes any other law or contract
26 provision that conflicts with this chapter.

27 (b) Notwithstanding Section 27.002(b), the remedies

provided by this chapter supersede remedies available under Chapter 27.

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

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

Sec. 30.005. COMPLAINT. A homebuyer may seek a remedy provided by this chapter by:

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

(2) filing a complaint with the commission that includes a copy of the notice provided under Subdivision (1) on or before the later of:

(A) the 30th day after the date the notice is provided; or

(B) the expiration of the applicable time limit under Section 30.007.

Sec. 30.006. HEARING. (a) The administrator may set a hearing on any allegation in a complaint that is not privately resolved between the homebuyer and the contractor.

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

1 Sec. 30.007. TIME FOR FILING COMPLAINT. (a) Except as
2 provided by Subsection (b), a homebuyer must provide the notice
3 required by Section 30.005 and file a complaint under this chapter
4 before the earlier of:

5 (1) the date the express warranty period expires; or
6 (2) the 10th anniversary of the closing date of the
7 initial sale by the contractor.

8 (b) A homebuyer may file a complaint to which Section 30.011
9 applies on or before the 10th anniversary of the closing date of the
10 initial sale by the contractor.

11 Sec. 30.008. AFFIRMATIVE DEFENSE. In a hearing before the
12 administrator under this chapter, a contractor may assert as an
13 affirmative defense to an allegation of a defect made in a complaint
14 filed under this chapter that the defect is the result of abuse,
15 neglect, or modifications or alterations of the home made by a
16 person other than the contractor.

17 Sec. 30.009. REPAIR REQUIRED. (a) Except as provided by
18 Section 30.011, if a defect exists, the contractor shall make the
19 repairs necessary to conform the home to the contractor's
20 warranties if:

21 (1) the homebuyer or the homebuyer's designated agent
22 provided notice of the defect to the contractor or the contractor's
23 agent before the expiration of the applicable time limit under
24 Section 30.007; or

25 (2) a breach of an implied warranty on the home is
26 established.

27 (b) Unless the homebuyer agrees otherwise, the contractor

1 may not make more than three attempts to make a repair required by
2 Subsection (a). The contractor must make the required repairs not
3 later than the 120th day after the date the notice of the defect
4 required by Section 30.005 is received by the contractor. The cure
5 period prescribed by this subsection is extended by the amount of
6 time during which repair services are not available to the
7 homebuyer because of a war, invasion, strike, or fire, flood, or
8 other natural disaster.

9 (c) There is a presumption that a breach of an implied
10 warranty on a home exists if the home does not comply with:

11 (1) a building code applicable to the home;
12 (2) the version applicable in the jurisdiction in
13 which the home is constructed of:

14 (A) the International Residential Code for One-
15 and Two-Family Dwellings;

16 (B) the National Electrical Code; or

17 (C) the manufacturer's specific installation
18 instructions for the part or component used in construction of the
19 home; or

20 (3) structural engineering standards or practices
21 intended to prevent structural damage or a decrease in the market
22 value of the home resulting from the failure of the foundation or
23 other load-bearing portions of the home, including standards or
24 practices used to ensure that a foundation is structurally
25 sufficient without artificial moisture controls or other
26 extraordinary maintenance by the homeowner.

27 Sec. 30.010. RETURN OR REPLACEMENT REQUIRED. (a) Except as

provided by Section 30.011, if a defect creates a serious safety hazard, substantially impairs the use of the home, or decreases the home's market value by more than five percent and the contractor makes three attempts to cure the defect without success or does not cure the defect before the cure period prescribed by Section 30.009(b) expires, the contractor shall at the homebuyer's option:

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

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

(b) The administrator may not order a remedy under this section unless the contractor has made three attempts to cure the defect or the cure period prescribed by Section 30.009(b) for the defect that is subject to the remedy has expired.

Sec. 30.011. MOLD CONTAMINATION. (a) Not later than the 30th day after the date of the administrator's order of a remedy under this section, the contractor shall accept return of the home from the homebuyer and refund to the homebuyer the full purchase price and any closing costs and reasonable moving costs.

(b) The administrator shall order a remedy under this section if, in addition to providing the notice of a defect and filing a complaint as required by Section 30.005, a homebuyer:

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

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

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

4 (2) establishes that the contamination arises out of a
5 defect.

6 (c) The commission by rule shall designate at least one
7 private organization that certifies mold testing laboratories from
8 whom certification is sufficient for the purposes of this section.

9 Sec. 30.012. REIMBURSEMENT OF EXPENSES. (a) If a
10 contractor is ordered to replace a home or refund the purchase price
11 under Section 30.010 or 30.011, the contractor shall reimburse the
12 homebuyer for:

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

15 (2) lost wages resulting from time required for
16 appointments with the contractor or the contractor's
17 representative that are necessary because of the defect.

18 (b) As necessary to promote the public interest, the
19 commission by rule:

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

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

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

1 Sec. 30.013. OTHER REMEDIES NOT PRECLUDED. This chapter
2 does not prevent a homebuyer from obtaining a remedy available to
3 the homebuyer under a new home warranty that provides remedies in
4 addition to those provided by this chapter.

5 Sec. 30.014. RIGHT TO FILE ACTION. (a) Except as provided
6 by this section, a homebuyer may not seek the remedies provided by
7 this chapter in a civil action unless the homebuyer files a
8 complaint against the contractor under this chapter and exhausts
9 the administrative proceedings provided by this chapter. A court
10 shall dismiss an action filed in violation of this section.

11 (b) If the hearing examiner does not issue a proposal for
12 decision and make a recommendation to the administrator for a final
13 order on or before the 150th day after the date a complaint is filed
14 under this chapter:

15 (1) the homebuyer is considered to have exhausted the
16 administrative proceedings provided by this chapter; and

17 (2) the administrator shall provide written notice, by
18 certified mail, to the complainant and the contractor.

19 (c) The notice provided under Subsection (b) must inform the
20 recipient of:

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

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

25 (d) After receiving a notice of the right to file an action
26 under Subsection (b), a complainant may file an action against a
27 contractor named in the complaint. The administrator's failure to

1 provide a notice of the right to file an action does not affect a
2 complainant's right to bring an action under this section.

3 Sec. 30.015. JUDICIAL REVIEW. A final order of the
4 administrator under this chapter:

5 (1) is the final action of the commission under this
6 chapter; and

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

10 Sec. 30.016. INITIATION OR REMOVAL OF ACTION. (a) Except
11 as otherwise provided by this chapter, an appeal initiated under
12 this chapter may be removed to the Third Court of Appeals District
13 if any party to the action files a notice of removal with the
14 district court before the trial in the district court begins.

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

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

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

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

24 (1) must be initiated in a Travis County district
25 court; or

26 (2) if initiated in the Third Court of Appeals
27 District, is subject to remand to a Travis County district court for

1 proceedings in accordance with instructions from the court of
2 appeals.

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

7 Sec. 30.017. DILIGENCE REQUIRED. (a) An appellant must
8 pursue an appeal with reasonable diligence. If an appellant fails
9 to prosecute an appeal in the six-month period after the appeal is
10 filed, the court shall presume that the appeal has been abandoned
11 and dismiss the appeal if a motion for dismissal is submitted by the
12 attorney general or another party.

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

16 Sec. 30.018. DISCLOSURE REQUIRED. (a) A contractor that is
17 ordered to refund the purchase price of or replace a home under this
18 chapter shall provide to the first retail purchaser of the home
19 after the home was repurchased or replaced by the contractor a
20 disclosure statement stating that the home was repurchased or
21 replaced by the contractor under this chapter.

22 (b) The disclosure statement must include the toll-free
23 telephone number established by the commission under Section
24 30.020.

25 (c) Before a home repurchased or replaced under this chapter
26 may be sold again, the deed that transfers title to the home must be
27 marked with a clear statement that indicates that the home was

repurchased or replaced under this chapter.

Sec. 30.019. RESTORATION OF WARRANTY REQUIRED. A contractor who sells a home after repurchasing or replacing the home under this chapter must:

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

(2) issue an express warranty for the home.

Sec. 30.020. TOLL-FREE TELEPHONE NUMBER. The commission shall establish a toll-free telephone number for providing information to persons who request information about a defect that was the basis for ordering a remedy under this chapter. The commission shall maintain an effective method of providing information to persons who make requests.

Sec. 30.021. ANNUAL REPORT. (a) The commission shall publish and make available to the public an annual report relating to homes ordered repurchased or replaced by a contractor under this chapter.

(b) The report must:

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

(2) identify the contractor; and

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

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

Sec. 30.022. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person who violates this

1 chapter or a rule or order adopted under this chapter.

2 (b) The imposition of a penalty under this section is
3 governed by Subchapter O, Chapter 1101, Occupations Code.

4 Sec. 30.023. RULES. The commission, in consultation with
5 the Texas Real Estate Inspector Committee, shall adopt rules
6 necessary for the enforcement and administration of this chapter.

7 SECTION 2. Chapter 30, Property Code, as added by this Act,
8 applies only to the sale of a new home for which the closing date is
9 on or after September 1, 2013.

10 SECTION 3. This Act takes effect September 1, 2013.