

State revokes builder's license for 20 years

Action is toughest yet from Texas panel

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A state commission has banned Central Texas builder Michael Kelly from working in the residential construction industry in Texas for 20 years. It is the longest revocation ordered by the Texas Residential Construction Commission since it was created in 2003, said Patrick Fortner, the commission's director of communications and legislative affairs.

Kelly owns Primera Homes Ltd., an Austin-area building company, the commission said.

It took action against Primera Homes for numerous violations, including misappropriating trust funds and using false advertisements. Kelly and Primera Homes, which are in bankruptcy proceedings, were involved with several Austin-area subdivisions, including Maravilla and Maravilla Hills off RM 620 in the Lake Travis area.

Fortner said Kelly's is the 20th license revocation by the agency. Kelly was one of 14 builders that the commission took administrative action against at its Wednesday meeting. Five builders were in the Central Texas area, six in the Dallas area and three in the Rio Grande Valley.

"All these companies failed in some way to fulfill their obligations under the law," said Duane Waddill, the commission's executive director. "As a result, the commission took administrative action. Primera Homes failed most egregiously. It should come as no surprise that Primera Homes and its owner paid the most substantial price — Mr. Kelly and Primera Homes are effectively barred from working in the Texas home building industry for two decades."

Fortner said Kelly came to the agency's attention after several consumer complaints.

The agency's revocation order against Kelly and Primera outlines numerous problems for Maravilla homeowners, including unfinished homes and hundreds of thousands of dollars in unpaid subcontractors' and vendors' liens that they are now responsible to pay.

The document says Kelly drew loan funds from subdivision construction loans and accepted payments of construction funds from the homeowners, but did not use that money to pay for building their homes. Instead, it said, Kelly "retained, used, disbursed, or otherwise diverted the loan proceeds and other construction funds for purposes not related to the construction of the subdivision homes."

The document contends that Kelly and Primera's false advertisements included defaulting on all warranty obligations and failing to provide armed security as promised in the Maravilla subdivision, and failing to provide an amenities center, swimming pool, playground and other facilities in the Maravilla Hills subdivision.

In addition, homes in Maravilla are not energy-efficient, as Kelly and Primera had advertised, but instead, "homeowners' monthly energy bills have been substantially higher than the energy bills for an average home of the same size," according to the revocation order.

In Maravilla Hills, Kelly's and Primera's advertisements claimed that most of the homes were, or would be, occupied by their owners, but "most, if not all, homes" have been sold to investors who do not live there, the document states.

Kelly signed the document, which states that he agrees to the order "for the purpose of resolving the commission's disciplinary action currently pending against him ... without the necessity of a contested hearing." However, he does not "admit the truth of the findings of fact or conclusions of law set forth" in the order. He also waives all right of appeal, but retains "the right to contest or dispute these matters in a different forum in any pending or future litigation involving parties other than the commission."

Ray Fisher, an attorney the commission says is representing Kelly and Primera in pending bankruptcy proceedings, did not return calls seeking comment.

The commission's revocation order states that the agency, along with Maravilla homeowners, is a creditor in the bankruptcy proceedings.

The other Central Texas-area builders that were cited Thursday by the commission were D.Y.A. Construction in Goldthwaite; Crosstimbers Construction LLC in Lago Vista; and C. Wagner Construction Co. in Wimberley, all of which were fined for late registration, and CDCC Inc. in Pflugerville, which was fined for failure to register as a builder.

Checking out builders

Texas consumers can research whether a builder or remodeler is registered with the Texas Residential Construction Commission, and whether the state has found a defect the builder is not willing to repair as a result of a consumer complaint, by using the public record search on the agency's Web site, www.trcc.state.tx.us. For other information, call toll-free, (877) 651-8722.

Courtesy of JB Goodwin