

TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT\*

*\*as revised by HB 1038, 80<sup>th</sup> R.S. of the Texas Legislature*

(Although care has been taken to accurately reflect revisions to the Act made by the 80<sup>th</sup> Legislature, this is not an official version of the revised Act).

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

Sec. 401.001. SHORT TITLE. This title may be cited as the Texas Residential Construction Commission Act.

Sec. 401.002. GENERAL DEFINITIONS. In this title:

(1) "Applicable building and performance standards" means:

(A) building and performance standards adopted under Section 430.001; or

(B) for homes constructed before the adoption of building and performance standards under Section 430.001, the building and performance standards under any express warranty provided in writing by the builder or, if there is no express warranty, the usual and customary residential construction practices in effect at the time of the construction.

(2) "Applicable warranty period" means:

(A) a warranty period established under Section 430.001; or

(B) for construction to which the warranty periods adopted under Section 430.001 do not apply, any other construction warranty period that applies to the construction.

(3) "Approved architect" means an architect licensed by this state and approved by the commission to provide services to the commission in connection with the state sponsored inspection and dispute resolution process.

(4) "Approved structural engineer" means a licensed professional engineer approved by the commission to provide services to the commission in connection with the state sponsored inspection and dispute resolution process.

(5) "Commission" means the Texas Residential Construction Commission.

(6) "Home" means the real property and improvements and appurtenances for a single family house or duplex.

(7) "Homeowner" means a person who owns a home or a subrogee or assignee of a person who owns a home.

(7-a) "Improvement to the interior of an existing home" means any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home. An improvement to the interior of an existing home does not include improvements to an existing home if the improvements are designed primarily to repair or replace the home's component parts.

(8) "Limited statutory warranty and building and performance standards" means the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001

(8-a) "Material improvement" means a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls, or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(9) "Nonstructural matter" has the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(10) "Request" means a request submitted under Section 428.001.

(11) "State inspector" means a person employed by the commission under Section 427.002.

(12) "State sponsored inspection and dispute resolution process" means the process by which the commission resolves a request.

(13) "Structural" means the load bearing portion of a home.

(14) "Structural failure" has the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(15) "Third party inspector" means a person appointed by the commission under Section 428.003.

(16) "Warranty of habitability" means a builder's obligation to construct a home or home improvement that is in compliance with the limited statutory warranties and building and performance standards adopted by the commission under Section 430.001 and that is safe, sanitary, and fit for humans to inhabit.

Sec. 401.003. DEFINITION OF BUILDER. (a) In this title, "builder" means any person who, for a fixed price, commission, fee, wage, or other compensation, sells, constructs, or supervises or manages the construction of, or contracts for the construction of or the supervision or management of the construction of:

(1) a new home;

(2) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(3) an improvement to the interior of an existing home when the cost of the work exceeds \$10,000.

(b) The term includes:

(1) an owner, officer, director, shareholder, partner, affiliate, subsidiary, or employee of the builder;

(2) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and

(3) a third party warranty company and its administrator.

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

(1) has been issued a license by this state or an agency of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued; or

(2) sells a new home and:

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

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

(d) The term does not include a nonprofit business entity that is exempt from taxation under Section 501(c)(3), Internal Revenue Code, if:

(1) the construction or supervision or management of the construction of the home, material improvement, or improvement sold by the nonprofit business entity is performed by a builder registered under this title;

(2) the builder contractually agrees to comply with the provisions of this title;

(3) the builder is contractually liable to the homeowner for the warranties and building and performance standards of this title; and

(4) the nonprofit business entity does not participate directly in the construction of the home, material improvement, or improvement.

Sec. 401.004. DEFINITION OF CONSTRUCTION DEFECT. (a) In this title, "construction defect" means:

(1) the failure of the design, construction, or repair of a home, an alteration of or a repair, addition, or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(2) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(b) The term does not include a defect that arises or any damages that arise wholly or partly from:

(1) the negligence of a person other than the builder or an agent, employee, subcontractor, or supplier of the builder;

- (2) failure of a person other than the builder or an agent, employee, subcontractor, or supplier of the builder to:
- (A) take reasonable action to mitigate any damages that arise from a defect; or
  - (B) take reasonable action to maintain the home;
- (3) normal wear, tear, or deterioration; or
- (4) normal shrinkage due to drying or settlement of construction components within the tolerance of building and performance standards.

Sec. 401.005. EXEMPTIONS. (a) This title does not apply to a home that is:

(1) built by the individual who owns the home, alone or with the assistance of the individual's employees or independent contractors; and

(2) used by the individual as the individual's primary residence for at least one year after the completion or substantial completion of construction of the home.

(b) This title does not apply to a homeowner or to a homeowner's real estate broker, agent, interior designer registered under Chapter 1053, Occupations Code, interior decorator, or property manager who supervises or arranges for the construction of an improvement to a home owned by the homeowner.

(c) An individual who builds a home or a material improvement to a home and sells the home immediately following completion of the building or remodeling and does not live in the home for at least one year following completion of the building or remodeling is responsible as a builder under the warranty obligation created by this title for work completed by the individual. Responsibility under this subsection does not automatically require an individual to register under Section 416.001.

Sec. 401.006. SUNSET PROVISION. The Texas Residential Construction Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this title expires September 1, 2009.

Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commission, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance. A person may appeal the order directly to district court in accordance with Chapter 2001, Government Code.

(b) Before issuing an order under this section, the commission shall set and give notice of a hearing before a hearings officer. The hearing is governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commission by order may find whether a violation has occurred.

(c) The commission, after providing notice and an opportunity to appear for a hearing, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of violation. In addition to any other remedy provided by law, the attorney general or the commission may institute in district court a suit for injunctive relief and to collect an administrative penalty. A bond is not required of the commission with respect to injunctive relief granted under this section. In the action, the court may enter as proper an order awarding a preliminary or final injunction.

(d) A suit by the attorney general under this section must be brought in Travis County.

(e) The attorney general and the commission may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) If a party seeks review of the order by the commission, the party shall file a petition initiating judicial review not later than the 30th day after the date of the issuance of the decision.

## SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

### CHAPTER 406. COMMISSION

Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION; MEMBERSHIP. (a) The Texas Residential Construction Commission consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) four members must be builders who each hold a certificate of registration under Chapter 416;
- (2) three members must be representatives of the general public;
- (3) one member must be a licensed professional engineer who practices in the area of residential construction; and
- (4) one member must be either a licensed architect who practices in the area of residential construction or a building inspector who meets the requirements set forth in Chapter 427 and practices in the area of residential construction.

(a-1) In making appointments under Subsection (a)(2), the governor shall consider individuals who can represent the interests of homeowners, including individuals who have experience representing consumer or homeowner interests.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(c) A person may not be a public member of the commission if the person or the person's spouse:

- (1) is a builder registered with the commission, or is otherwise registered, certified, or licensed by a regulatory agency in the field of residential construction;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the commission; or
- (4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Sec. 406.002. TERMS. (a) Commission members serve staggered six year terms, with three members' terms expiring February 1 of each odd numbered year. The terms of three of the builder representatives must expire in different odd numbered years. The term of one of the representatives of the general public must expire in each odd numbered year.

(b) A member of the commission may not serve more than two complete terms.

Sec. 406.003. PRESIDING OFFICER. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. At a regular meeting in February of each year, the commission shall elect from its membership a vice presiding officer and a secretary.

Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and their industry or profession as a whole in dealing with mutual business or professional problems, issues, and circumstances and in promoting the common interest of its members and their industry and profession as a whole.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

- (1) the person is an officer, employee, manager, or paid consultant of a Texas trade association or consumer association in the field of residential construction; or
- (2) the person's spouse is an officer, [a] manager, or paid consultant of a Texas trade association or consumer association in the field of residential construction.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code.

(d) A person may not be a commission employee described by Subsection (b) if the person is an employee or agent in the field of residential construction. This subsection does not apply to a person appointed to the commission.

Sec. 406.005. GROUND FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

- (1) does not have at the time of taking office the qualifications required by Section 406.001;
- (2) does not maintain during service on the commission the qualifications required by Section 406.001;
- (3) is ineligible for membership under Section 406.004;
- (4) cannot because of illness or disability discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Sec. 406.006. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the commission;
- (2) the programs operated by the commission;
- (3) the role and functions of the commission;
- (4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the commission;
- (6) the results of the most recent formal audit of the commission;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict of interest laws; and
- (8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 406.007. MEETINGS. The commission shall meet at least quarterly and at other times at the call of the presiding officer.

## CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

Sec. 407.001. EXECUTIVE DIRECTOR. The commission shall employ an executive director as the executive head of the agency.

Sec. 407.002. OTHER PERSONNEL. The commission may employ other personnel as necessary for the administration of this title.

Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the commission and to commission employees, as often as necessary, information regarding the requirements for office or employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 407.005. CAREER LADDER PROGRAM; PERFORMANCE EVALUATION. (a) The executive director or the executive director's designee shall develop an intra agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program must require intra agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

Sec. 407.006. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection

(b)(1); and

(3) be filed with the governor's office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 407.007. INFORMATION AND TRAINING ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

## CHAPTER 408. POWERS AND DUTIES

Sec. 408.001. RULES. The commission shall adopt rules as necessary for the implementation of this title, including rules:

(1) governing the state sponsored inspection and dispute resolution process, including building and performance standards, administrative regulations, and the conduct of hearings under Subtitle D;

(2) establishing limited statutory warranty and building and performance standards for residential construction;

(3) approving third party warranty companies; and

(4) approving third party inspectors.

Sec. 408.002. FEES. (a) The commission shall adopt fees as required by this title in amounts that are reasonable and necessary to provide sufficient revenue to cover the costs of administering this title.

(b) The commission may charge a late fee for late payment of any fee due to the commission. The late fee may be any amount that does not exceed the amount of the fee due.

(c) The commission may charge a reasonable fee for:

(1) a homeowner to submit a request for state-sponsored inspection under Subtitle D;

(2) providing public information requested under Chapter 552, Government Code, excluding information requested from the commission under Section 409.001; or

(3) producing, mailing, and distributing special printed materials and publications generated in bulk by the commission for use and distribution by builders.

(d) The commission may waive or reduce the fee for an inspection under Subtitle D for a homeowner who demonstrates an inability to pay the fee.

Sec. 408.003. ACCESSIBILITY. (a) The commission shall comply with federal and state laws related to program and facility accessibility.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English can obtain reasonable access to the commission's programs and services.

(c) The commission may procure and distribute to consumers informational materials and promotional items that contain commission contact details and outreach information.

Sec. 408.004. ANNUAL REPORT. (a) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 408.005. COLLECTION OF AMOUNTS DUE. The commission may seek reimbursement of any amounts due to the commission and restitution for any dishonored payment instrument presented for payment to the commission.

## CHAPTER 409. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 409.001. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission, the provisions of the limited statutory warranty and building and performance standards, the state sponsored inspection and dispute resolution process, and the procedures by which complaints or requests are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies and shall post the information on the commission's website.

(c) Within 30 days of the receipt by the commission of the registration required by Section 426.003, the commission shall mail a copy of the information of public interest described in Subsection (a) to the owner of the home as described in the registration.

Sec. 409.0011. BUILDER LIST. (a) In this section, "volume builder" means a builder who registers at least 100 homes each year as provided by Section 426.003.

(b) The commission shall create and make accessible to the public an electronic list and a hard-copy list of builders who:

(1) are registered with the commission; and

(2) provide in this state building services, including accessible floor plans, to persons with mobility-related special needs.

(c) The electronic list required under Subsection (b) shall provide, if available, the following information with respect to each listed builder:

(1) a link to the builder's website; and

(2) contact information for the builder, including the municipalities where the builder provides building services described by Subsection (b)(2).

(d) The commission shall contact all volume builders in this state and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs.

(e) The Veterans' Land Board shall make accessible to the public on its Internet website and in hard-copy format the electronic list required under Subsection (b).

Sec. 409.002. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 409.003. RECORDS OF COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation.

(d) The commission shall make available to the public information about each complaint that resulted in disciplinary action by the commission.

(e) The commission may not disclose the address of any individual home registered with the commission when making information available to the public under this title, except as necessary to implement this title.

(f) Notwithstanding Subsections (d) and (e), the commission may not disclose the address of an individual home registered with the commission:

(1) on the commission's Internet website; or

(2) in connection with an open records request under Chapter 552, Government Code.

Sec. 409.004. DIRECTORY OF BUILDERS. The commission shall make available to the public a list of each builder who holds a certificate of registration issued under Chapter 416.

## SUBTITLE C. BUILDER REGISTRATION

### CHAPTER 416. CERTIFICATE OF REGISTRATION

Sec. 416.001. REGISTRATION REQUIRED. A person may not act as a builder unless the person holds a certificate of registration under this chapter.

Sec. 416.002. APPLICATION FOR CERTIFICATE. (a) An applicant for an original or renewal certificate of registration must submit an application on a form prescribed by the commission.

(b) Each applicant must disclose in the application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony charge or a misdemeanor involving moral turpitude; or

(2) been convicted of a felony or a misdemeanor involving moral turpitude and the time for appeal has elapsed or the conviction has been affirmed on appeal.

(c) Disclosure under Subsection (b) is required regardless of whether an order granting the person community supervision suspended the imposition of the sentence.

(d) The commission may, on receipt of an application, conduct a criminal background check of the applicant or any person responsible for the application. The commission may obtain criminal history record



information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other local, state, or national governmental entity. Unless the information is a public record at the time the commission obtains the information under this subsection, the information is confidential, and the commission may not release or disclose the information to any person except under a court order or with the permission of the applicant.

(e) Based on a commission investigation of an alleged violation of Sections 418.001(a)(14)-(20), the commission may require an applicant for renewal of a certificate of registration to disclose to the commission every person with an ownership interest in the applicant's business as a builder. This subsection does not apply to a publicly traded company.

Sec. 416.003. This section expired January 1, 2005.

Sec. 416.004. FEES. (a) The commission shall charge and collect:

(1) a filing fee for an application for an original certificate of registration that does not exceed \$500;

(2) a fee for renewal of a certificate of registration that does not exceed \$300; and

(3) a late fee that does not exceed the amount of the fee due if payment of a registration application or renewal fee due under this title is late.

(b) The commission shall establish a fee schedule that takes into consideration the unit volume or dollar volume of potential applicants.

(c) All fees paid to the commission under this section are nonrefundable.

Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person may not receive a certificate of registration under this chapter unless:

(1) the person, at the time of the application:

(A) is at least 18 years of age; and

(B) is a citizen of the United States or a lawfully admitted alien; and

(2) the commission is satisfied with the person's honesty, trustworthiness, and integrity based on information supplied or discovered in connection with the person's application.

Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES. (a) To be eligible for an original or renewal certificate of registration under this chapter:

(1) a corporation must designate one of its officers as its agent for the purposes of this chapter;

(2) a limited liability company must designate one of its managers as its agent for the purposes of this chapter; and

(3) a partnership, limited partnership, or limited liability partnership must designate one of its managing partners as its agent for the purposes of this chapter.

(b) A corporation, limited liability company, partnership, limited partnership, or limited liability partnership is not eligible to be registered under this chapter and may not act as a builder unless the entity's designated agent is individually registered as a builder.

Sec. 416.007. ISSUANCE OF CERTIFICATE. (a) Not later than the 15th day after the date the commission receives an application from an applicant who meets the requirements of this chapter, the commission shall issue a certificate of registration to the applicant.

(b) The certificate of registration remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

(c) The commission shall issue one certificate of registration for each business entity registered under this chapter.

Sec. 416.008. DENIAL OF REGISTRATION. (a) If the commission denies an application for an original certificate of registration or a renewal application, the commission shall give written notice to the applicant not later than the 15th day after the date the commission receives the application.

(b) The applicant may appeal the denial of the application if, on or before the 30th day after the date the applicant receives notice under this section, the applicant files a written request for a hearing before the commission.

(c) The commission shall:

(1) set a time and place for the hearing not later than the 30th day after the date the commission receives the notice of the appeal; and

(2) give notice of the hearing to the applicant before the 15th day before the date of the hearing.

(d) The hearings officer may grant a motion for continuance of the hearing on the request of the commission or either party.

(e) The hearing shall be held before a hearings officer appointed by the commission. After the hearing, the hearings officer shall enter an appropriate order.

(f) The commission shall adopt procedural rules under which a decision by a hearings officer under this section is subject to appeal to the commission.

(g) A hearing under this section is governed by Chapter 2001, Government Code.

Sec. 416.009. EXPIRATION OF CERTIFICATE. (a) The commission may issue or renew a certificate of registration for a period that does not exceed 24 months.

(b) The commission by rule may adopt a system under which certificates of registration expire on several dates during the year. The commission shall adjust the date for payment of renewal fees accordingly.

(c) In a year in which the expiration date for a certificate of registration is changed, the renewal fee payable shall be prorated on a monthly basis so that the certificate holder pays only that portion of the fee that is allocable to the number of months during which the certificate of registration is valid. On renewal of the certificate of registration on the new expiration date, the total renewal fee is payable.

Sec. 416.010. OFFICE LOCATION; CHANGE OF ADDRESS; ASSUMED NAMES. (a) A builder shall maintain a fixed office location in this state. The address of the builder's principal place of business must be designated on the certificate of registration.

(b) Not later than the 30th day after the date a builder moves from the address designated on the certificate of registration, the builder shall submit an application, accompanied by the appropriate fee, for a certificate of registration that designates the new location of the builder's principal place of business. The commission shall issue a certificate of registration that designates the new location if the new location complies with the requirements of this section.

(c) If a builder operates under any name other than the name that is set forth on the builder's certificate of registration, the builder shall, within 45 days of operating under this other name, disclose this other name to the commission.

(d) This section does not require a builder to obtain a certificate of registration for each sales office.

(e) A builder may designate a United States Postal Service postal box for use in correspondence. The builder may not use the box as the builder's principal place of business for purposes of this section.

Sec. 416.011. TEXAS STAR BUILDER DESIGNATION. (a) The commission shall establish rules and procedures for a program through which a builder can be designated as a "Texas Star Builder." A builder's participation in the program is voluntary and is not a requirement for the issuance of a certificate of registration required under this chapter.

(b) A builder who participates in this program will be allowed to represent to the public that the builder is a "Texas Star Builder" and meets all of the requirements and qualifications that are set forth by the commission for the program.

(c) If the commission determines that a builder must meet certain education requirements to participate in the "Texas Star Builder" program, a builder may satisfy those requirements by completing education programs offered by a trade association or other organization whose education programs have been approved by the commission.

(d) The certification issued by the commission as a "Texas Star Builder" is valid for at most one year and renewable on a date to be determined at the commission's discretion.

Sec. 416.012. CONTINUING EDUCATION PROGRAMS. (a) The commission shall recognize or administer continuing education programs for builders registered by the commission. A registered builder must participate in the programs to the extent required by this section to maintain the builder's registration.

(b) A builder who registers for the first time on or after September 1, 2007, must complete, during the first year the builder is registered with the commission, five hours of continuing education, one hour of which must address ethics.

(c) A builder who is registered before September 1, 2007, and all other builders who register for the first time on or after September 1, 2007, and satisfy the requirements of Subsection (b), must complete five hours of continuing education every five years, one hour of which must address ethics.

(d) The commission shall permit a registered builder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of residential construction, including:

(1) successfully completing or auditing a course sponsored by an institution of higher education;

(2) successfully completing a course certified by a professional or trade organization;

(3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course on the practice of residential construction;

(4) participating in an in-house course sponsored by a corporation or other business entity;

(5) teaching a course described by Subdivisions (1)-(4);

(6) publishing an article, paper, or book on the practice of residential construction;

(7) making or attending a presentation at a meeting of a residential or builder association or organization or writing a paper presented at the meeting;

(8) participating in the activities of a residential or builder association, including serving on a committee of the organization; and

(9) engaging in self-directed study on the practice of residential construction.

(e) A registered builder may not receive more than two continuing education credit hours during each five-year period for engaging in self-directed study.

(f) At least two hours of the continuing education requirement under this section must address:

(1) limited statutory warranties;

(2) building and performance standards; and

(3) requirements of the International Residential Code as adopted under Section 430.001 and other statutes and rules that apply to builders under this title.

(g) A builder's agent or other designated individual may satisfy the requirements of this section for the builder if the builder is a corporation or other business entity.

## CHAPTER 417. CERTIFICATION OF RESIDENTIAL CONSTRUCTION ARBITRATORS

Sec. 417.001. CERTIFICATION. (a) The commission by rule shall establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator.

(b) The requirements established under this section must, at a minimum, require a certified arbitrator to:

(1) have at least five years' experience in conducting arbitrations between homeowners and builders involving construction defects;

(2) be familiar with the statutory warranties and building and performance standards established under Chapter 430 and with the provisions of Chapter 27; and

(3) meet continuing education requirements established by the commission.

(c) Nothing in the chapter prohibits an arbitrator who does not hold a certificate under this chapter from conducting an arbitration involving a residential construction defect.

Sec. 417.002. APPLICATION FOR CERTIFICATION. An applicant for certification under this chapter or for renewal of that certification must submit an application on a form prescribed by the commission and include the fee required by Section 417.003.

Sec. 417.003. FEES. (a) The commission shall charge and collect:

- (1) a filing fee for an application for certification under this chapter that does not exceed \$100;
- (2) a fee for renewal of a certification under this chapter that does not exceed \$50; and
- (3) a late fee that does not exceed the amount of the fee due if payment of a registration or application fee due under this title is late.

(b) All fees paid to the commission under this section are nonrefundable.

Sec. 417.004. PUBLICATION AND COMMENT PERIOD; CERTIFICATION. (a) The commission shall publish notice of each applicant's original application for certification under this chapter in the Texas Register and allow public comment on the application during the 21 days after the date the notice is published. During that period, any person may contest the application in writing submitted to the commission.

(b) If the commission finds that certification of the applicant is in the public interest, the commission shall certify the applicant under this chapter.

Sec. 417.005. DENIAL OF CERTIFICATION. The commission shall establish procedures under which a denial of a certification under this chapter may be contested by the applicant.

Sec. 417.006. EXPIRATION OF CERTIFICATION. The commission may issue or renew a certification under this chapter for a period that does not exceed 24 months.

Sec. 417.007. LIST OF CERTIFIED ARBITRATORS. The commission shall maintain an updated list of residential construction arbitrators certified under this chapter and make the list available to the public.

#### CHAPTER 418. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

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

- (1) fraud or deceit in obtaining a registration or certification under this subtitle;
- (2) misappropriation or misapplication of trust funds in the practice of residential construction, including a violation of Chapter 32, Penal Code, or Chapter 162, if found by a final nonappealable court judgment;
- (3) naming false consideration in a contract to sell a new home or in a construction contract;
- (4) discriminating on the basis of race, color, religion, sex, national origin, or ancestry;
- (5) publishing a false or misleading advertisement;
- (6) failure to honor, within a reasonable time, a check issued to the commission, or any other instrument of payment, including a credit or debit card or electronic funds transfer, after the commission has sent by certified mail a request for payment to the person's last known business address, according to commission records;
- (7) failure to pay an administrative penalty assessed by the commission under Chapter 419 or a fee due under Chapter 426;
- (8) failure to pay a final nonappealable court judgment arising from a construction defect or other transaction between the person and a homeowner;
- (9) failure to register a home as required by Section 426.003;
- (10) failure to remit the fee for registration of a home under Section 426.003;
- (11) failure to reimburse a homeowner the amount ordered by the commission as provided by Section 428.004(d);
- (12) engaging in statutory or common-law fraud or misappropriation of funds, as determined by the commission after a hearing under Section 418.003;
- (13) a repeated failure to participate in the state-sponsored inspection and dispute resolution process if required by this title;
- (14) failure to register as a builder as required under Chapter 416;

(15) using or attempting to use a certificate of registration that has expired or that has been revoked;

(16) falsely representing that the person holds a certificate of registration issued under Chapter 416;

(17) acting as a builder using a name other than the name or names disclosed to the commission;

(18) aiding, abetting, or conspiring with a person who does not hold a certificate of registration to evade the provisions of this title or rules adopted under this title, if found by a final nonappealable court judgment;

(19) allowing the person's certificate of registration to be used by another person;

(20) acting as an agent, partner, or associate of a person who does not hold a certificate of registration with the intent to evade the provisions of this title or rules adopted under this title;

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

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

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

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

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

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

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

(26) otherwise violating this title or a commission rule adopted under this title.

Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a) On a determination that a ground for disciplinary action under Section 418.001 exists, the commission may:

(1) revoke or suspend a registration or certification in the event of repeated prior violations that have resulted in disciplinary action;

(2) probate the suspension of a registration or certification;

(3) formally or informally reprimand a registered or certified person; or

(4) impose an administrative penalty under Chapter 419.

(b) The commission must consider the factors described by Section 419.002(b) before taking disciplinary action under this chapter.

(c) For purposes of Section 418.001(12), the commission may not conduct a hearing or revoke or suspend a registration or certification unless the determination of statutory or common-law fraud or misappropriation of funds has been made in a final nonappealable judgment by a court.

(d) Prior to imposing disciplinary action under Subsection (a)(1) based upon grounds that involve a transaction between a builder and a homeowner, there must be repeated prior violations that have resulted in disciplinary action that involve the greater of:

(1) at least three homes registered by the builder under Section 426.003; or

(2) at least one percent of the homes registered by the builder under Section 426.003 during the preceding 12 months.

(e) When the commission has information that a matter may be criminal in nature, the commission may refer the matter to a local district attorney or county attorney for investigation.

Sec. 418.003. HEARING. (a) If the commission proposes to take a disciplinary action against a person under Section 418.002, the person is entitled to a hearing before the commission.

(b) The commission shall adopt procedural rules by which all decisions to take disciplinary action under this chapter are subject to appeal to the commission.

(c) The commission shall prescribe the time and place of the hearing.

(d) A hearing under this section is governed by Chapter 2001, Government Code.

Sec. 418.004. APPEAL. (a) A person aggrieved by a ruling, order, or decision of the commission is entitled to appeal to a district court in the county in which the administrative hearing was held.

(b) An appeal under this section is governed by Chapter 2001, Government Code.

(c) An appeal to a district court of a final decision of the commission under this section regarding a revocation or suspension of a registration or certification is determined by substantial evidence.

Sec. 418.005. RESPONSIBILITY FOR ADMINISTRATIVE ACTIONS. (a) The commission may simultaneously take administrative action under this chapter against:

(1) a builder; and

(2) a person who owns or controls a majority ownership interest in the builder.

(b) A builder and a person who owns or controls a majority ownership interest in the builder are jointly and severally liable for any amounts due to the commission under this title.

## CHAPTER 419. ADMINISTRATIVE PENALTY

Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The commission may impose an administrative penalty on a person who violates this title or a rule adopted or order issued by the commission under this title.

Sec. 419.002. AMOUNT OF PENALTY (a) Except as provided by Subsection (c), an administrative penalty imposed under this chapter may not exceed \$10,000 for each violation.

(b) In determining the amount of an administrative penalty, the hearings officer or commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter justice may require.

(c) A violation of Section 418.001(2) or (12) is punishable by a penalty not to exceed \$100,000.

Sec. 419.003. PAYMENT OF PENALTY. The commission shall specify in an order imposing an administrative penalty under this chapter a date on or before the 30th day after the date the order becomes final and unappealable by which the person against whom the penalty is imposed must pay the penalty.

Sec. 419.004. ENFORCEMENT OF PENALTY. If a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, the commission may:

(1) refer the matter to the attorney general for collection of the penalty; or

(2) enforce any part of the order that specifies disciplinary action to be taken against the registered or certified person if the registered or certified person fails to pay the administrative penalty within the time prescribed.

## CHAPTER 420. BUILDING CONTRACT PROVISIONS

Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract must contain a notice to the consumer in at least 10-point bold type or the computer equivalent that gives the telephone number of the commission and states:

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN

EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

Sec. 420.002. REQUIRED CONTRACT PROVISIONS. In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract is not enforceable against a homeowner unless the contract:

- (1) contains the builder's name and certificate of registration number; and
- (2) contains the notice required by Section 420.001.

Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a) In a contract for the construction of a new home or the improvement of an existing home required to be registered under Section 426.003 and that contains a provision requiring the parties to submit a dispute arising under the contract to binding arbitration, the provision must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(b) A provision described by Subsection (a) is not enforceable against the homeowner unless the requirements of Subsection (a) are met.

#### SUBTITLE D. STATE SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS; STATUTORY WARRANTY AND BUILDING AND PERFORMANCE STANDARDS

#### CHAPTER 426. GENERAL PROVISIONS

Sec. 426.001. APPLICABILITY OF SUBTITLE. (a) This subtitle applies to a dispute between a builder and a homeowner if:

- (1) the dispute arises out of an alleged construction defect, other than a claim solely for:
    - (A) personal injury, survival, or wrongful death; or
    - (B) damage to goods; and
  - (2) a request is submitted to the commission not later than the 30th day after the 10th anniversary of:
    - (A) the date of the initial transfer of title from the builder to the initial owner of the home or the improvement that is the subject of the dispute; or
    - (B) if there is not a closing in which title is transferred, the date on which the construction of the improvement was substantially completed.
- (b) This subtitle does not apply to a dispute arising out of:
- (1) an alleged violation of Section 27.01, Business & Commerce Code;
  - (2) a builder's wrongful abandonment of an improvement project before completion; or
  - (3) a violation of Chapter 162.
- (c) For the purposes of this section, "damage to goods" does not include damage to a home.

Sec. 426.002. CONFLICT WITH CERTAIN OTHER LAW. To the extent of any conflict between this subtitle and any other law, including Chapter 27 and the Deceptive Trade Practices Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), this subtitle prevails.

Sec. 426.003. REGISTRATION OF HOME. (a) A builder shall register a new home with the commission on or before the 15th day of the month following the month in which the transfer of title from the builder to the homeowner occurs. The registration must include the information required by the commission by rule and be accompanied by the fee required by Subsection (c).

(b) A builder who enters a transaction governed by this title, other than the transfer of title of a new home from the builder to the seller, shall register the home involved in the transaction with the commission. The registration must:

- (1) include the information required by the commission by rule;
- (2) be accompanied by the fee required by Subsection (c); and
- (3) be delivered to the commission not later than the 15th day after the earlier of:
  - (A) the date of the substantial completion of the home or other residential construction project;
  - (B) the date the new home is occupied; or
  - (C) the date of issuance of a certificate of occupancy or a certificate of completion.

(c) A builder must remit to the commission a registration fee for each home registered with the commission in an amount determined by the commission. The fee set by the commission under this subsection may not exceed \$125.

(d) The commission may assess a late payment penalty that does not exceed \$500 against a builder who fails to pay a required registration fee in the time prescribed by this section.

Sec. 426.004. FEES. (a) A party who submits a request under this subtitle shall pay any amount required by the commission to cover the expense of the third party inspector.

(b) The commission shall adopt rules permitting a waiver or reduction of the inspection expenses for homeowners demonstrating a financial inability to pay the expenses.

(c) If the transfer of the title of the home from the builder to the initial homeowner occurred before January 1, 2004, or if the contract for improvements or additions between the builder and homeowner was entered into before January 1, 2004, the commission shall register the home and the builder shall pay the registration fee required by Section 426.003.

(d) The commission may reimburse an inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the amount collected under this section.

Sec. 426.005. PREREQUISITE TO ACTION. (a) A homeowner or builder must comply with this subtitle before initiating an action for damages or other relief arising from an alleged construction defect.

(b) An action described by Subsection (a) must be filed:

- (1) on or before the expiration of any applicable statute of limitations or by the 45th day after the date the third party inspector issues the inspector's recommendation, whichever is later; or
- (2) if the recommendation is appealed, on or before the expiration of any applicable statute of limitations or by the 45th day after the date the commission issues its ruling on the appeal, whichever is later.

(c) Any claim for personal injuries, damages to personal goods, or consequential damages or other relief arising out of an alleged construction defect must be included in any action concerning the construction defect.

(d) This section does not apply to an action that is initiated by a person subrogated to the rights of a claimant if payment was made pursuant to a claim made under an insurance policy.

(e) The legislature has not enacted an (e).

(f) A homeowner is not required to comply with this subtitle if:

- (1) at the time a homeowner and a builder enter into a contract covered by this title the builder was not registered; or
- (2) the certificate of registration of the builder has been revoked.



Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE RESOLUTION. (a) For an alleged defect discovered during an applicable warranty period, the state-sponsored inspection and dispute resolution process must be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 90th day after the date the applicable warranty period expires.

(b) If the alleged defect would violate the statutory warranty of habitability and was not discoverable by a reasonable, prudent inspection or examination of the home or improvement within the applicable warranty period, the state-sponsored inspection and dispute resolution process must be requested:

(1) on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect; and

(2) not later than the 10th anniversary of the date of the initial transfer of title from the builder to the initial owner of the home or improvement that is the subject of the dispute or, if there is not a closing, the date on which the contract for construction of the improvement is entered into.

Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person who submits a request for state-sponsored inspection and dispute resolution or responds to a request under Chapter 428 must disclose in the request or response the name of any expert who, before the request is submitted, inspected the home on behalf of the requestor or respondent in connection with the construction defect alleged in the request or response. If an expert's name is known to the requestor or respondent at the time of the request or response and is not disclosed as required by this section, the requestor or respondent may not designate the person as an expert or use materials prepared by that person in:

(1) the state-sponsored inspection and dispute resolution process arising out of the request; or

(2) any action arising out of the construction defect that is the subject of the request or response.

Sec. 426.008. REBUTTABLE PRESUMPTION OF THIRD PARTY INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS. (a) In any action involving a construction defect brought after a recommendation by a third party inspector or ruling by a panel of state inspectors on the existence of the construction defect or its appropriate repair, the recommendation or ruling shall constitute a rebuttable presumption of the existence or nonexistence of a construction defect or the reasonable manner of repair of the construction defect. A party seeking to dispute, vacate, or overcome that presumption must establish by a preponderance of the evidence that the recommendation or ruling is inconsistent with the applicable warranty and building and performance standards.

(b) The presumption established by this section applies only to an action between the homeowner and the builder. A recommendation or ruling under this subtitle is not admissible in an action between any other parties.

(c) For the purposes of admissibility of a third-party inspector's recommendation or a ruling by a panel of state inspectors, the recommendation or ruling shall be considered a business record under Rule 902, Texas Rules of Evidence.

## CHAPTER 427. INSPECTORS

Sec. 427.001. QUALIFICATIONS OF THIRD PARTY INSPECTORS. (a) A third party inspector approved by the commission must:

(1) meet the minimum qualifications prescribed by this section and any other qualifications prescribed by the commission by rule; and

(2) submit an application to the commission annually with an application fee in the amount required by the commission by rule.

(b) A third-party inspector who inspects an issue involving workmanship and materials must:

(1) have a minimum of three years' experience in the residential construction industry; and

(2) be certified as a residential combination inspector by the International Code Council.

(c) A third-party inspector who inspects an issue involving a structural matter or involving workmanship, materials, and a structural matter must:

- (1) be an approved structural engineer or approved architect; and
- (2) have a minimum of five years' experience in residential construction.

(c-1) A third-party inspector who inspects an issue involving a structural matter and an unrelated issue involving workmanship and materials matters must meet the requirements of Subsections (b) and (c).

(d) Each third-party inspector must receive, in accordance with commission rules:

- (1) initial training regarding the state-sponsored inspection and dispute resolution process and this subtitle; and
- (2) annual continuing education in the inspector's area of practice.

(e) A third party inspector may not receive more than 10 percent of the inspector's gross income in a federal income tax year from providing expert witness services, including retention for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action.

(f) In adopting rules under Subsection (d), the commission shall recognize any continuing education requirements established for engineers and architects.

Sec. 427.002. STATE INSPECTORS. (a) The commission shall employ state inspectors to:

- (1) review on an appeals panel the recommendations of third party inspectors;
- (2) provide consultation to third party inspectors; and
- (3) administer the state sponsored inspection and dispute resolution process.

(b) A state inspector must be certified as a residential combination inspector by the International Code Council.

Sec. 427.003. NO CIVIL LIABILITY. (a) A person who performs services for the commission as a third-party inspector or a state inspector who does not act with wanton and wilful disregard for the rights, safety, or property of another is not liable for civil damages for any act or omission within the course and scope of carrying out the person's duties or functions as a third-party inspector or state inspector.

(b) This section does not apply to an intentional act of misconduct or gross negligence.

## CHAPTER 428. STATE SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS

Sec. 428.001. REQUEST FOR RESOLUTION. (a) If a dispute between a homeowner and a builder arises out of an alleged construction defect, the homeowner or the builder may submit to the commission a written request for state sponsored inspection and dispute resolution.

(b) The request must:

- (1) specify in reasonable detail each alleged construction defect that is a subject of the request;
- (2) state the amount of any known out of pocket expenses and engineering or consulting fees incurred by the homeowner in connection with each alleged construction defect;
- (3) include any evidence that depicts the nature and cause of each alleged construction defect and the nature and extent of repairs necessary to remedy the construction defect, including, if available, expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure;
- (4) be accompanied by the fees required under Section 426.004; and
- (5) state the name of any person who has, on behalf of the requestor, inspected the home in connection with an alleged construction defect.

(c) Not later than the 30th day before the date a homeowner submits a request under this section, the homeowner must notify the builder in writing of each construction defect the homeowner claims to exist. After the notice is provided, the builder must be provided with a reasonable opportunity to inspect the home or have the builder's designated consultants inspect the home.

(d) At the time a person submits a request under this section, the person must send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each other party involved in the dispute.

(e) The commission by rule shall establish methods by which homeowners may be notified of the name, mailing address, and telephone number of the commission for the purpose of directing a request to the commission.

(f) The commission shall provide a person who files a request with a copy of the commission's policies and procedures relating to investigation and resolution of a request.

(g) The commission by rule shall establish a standard form for submitting a request under this section.

(h) The filing of a request under this section tolls the limitations period in any action between the homeowner and the builder arising out of the subject of the request until the 45th day after the date a final, nonappealable recommendation is issued under this title in response to the request.

Sec. 428.002. BUILDER'S RIGHT OF INSPECTION. (a) In addition to the right of inspection provided by Section 428.001(c), at any time before the conclusion of the state sponsored inspection and dispute resolution process and on the builder's written request, the builder shall be given reasonable opportunity to inspect the home that is the subject of the request or have the home inspected to determine the nature and cause of the construction defect and the nature and extent of repairs necessary to remedy the construction defect.

(b) The builder may take reasonable steps to document the construction defect and the condition of the home.

(c) If the homeowner delays the inspection for more than five days after the date of receiving the builder's written request, any period for subsequent action to be taken by the builder or the third party inspector shall be extended one day for each day the inspection is delayed after the fifth day.

Sec. 428.003. INSPECTION BY THIRD PARTY INSPECTOR. (a) On or before the 30th day after the date the commission receives a request, the commission shall appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under Subsection (c).

(b) The commission shall establish rules and regulations that allow the homeowner and the builder to each have the right to strike the appointment of a third party inspector one time for each request submitted.

(c) The commission shall adopt rules that allow for the commission to maintain a list of available third party inspectors for the various regions of the state, as required to satisfy the provisions of this title.

Sec. 428.004. INSPECTOR'S RECOMMENDATION. (a) If the dispute involves workmanship and materials in the home of a nonstructural matter, the third-party inspector shall issue a recommendation not later than the 30th day after the date the third-party inspector receives the appointment from the commission.

(b) If the dispute involves a structural matter in the home, the commission shall appoint an approved engineer to be the third party inspector. The third party inspector shall inspect the home not later than the 30th day after the date the request is submitted and issue a recommendation not later than the 60th day after the date the third party inspector receives the assignment from the commission, unless additional time is requested by the third party inspector or a party to the dispute. The commission shall adopt rules governing the extension of time under this subsection.

(c) The third party inspector's recommendation must:

(1) address only the construction defect, based on the applicable warranty and building and performance standards; and

(2) designate a method or manner of repair, if any.

(d) Except as provided by this subsection, the third party inspector's recommendation may not include payment of any monetary consideration. If the inspector finds for the party who submitted the request, the commission may order the other party to reimburse all or part of the fees and inspection expenses paid by the requestor under Section 426.004.

(e) The commission may not require a builder to reimburse fees or inspection expenses under this section if, before the inspection, the builder offered to make repairs or have repairs made substantially equivalent to those required by the findings of the final report confirming the defect requiring repair.

(f) If, before the inspection, the builder has made or offered to make repairs substantially equivalent to those required by the findings of the final report confirming the defect, the agency may not list the finding on the commission's Internet website.

Sec. 428.005. THREAT TO HEALTH OR SAFETY. A builder who receives written notice of a request relating to a construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the builder fails to cure the defect in a reasonable time, the homeowner may have the defect cured and recover from the builder the reasonable cost of the cure plus reasonable attorney's fees and expenses associated with curing the defect in addition to any other damages not inconsistent with this subtitle.

#### CHAPTER 429. APPEAL OF THIRD PARTY INSPECTOR'S RECOMMENDATION

Sec. 429.001. APPEAL. (a) A homeowner or builder may appeal a third party inspector's recommendation on or before the 15th day after the date the recommendation is issued.

(b) If a homeowner or builder appeals a third party inspector's recommendation, the executive director shall appoint three state inspectors to a panel to review the recommendation. If the recommendation involves a dispute regarding a structural failure, one of the state inspectors on the panel must be a licensed professional engineer.

(c) The panel shall:

(1) review the recommendation for compliance with this title as required by rules adopted by the commission;

(2) approve, reject, or modify the recommendation of the third-party inspector or remand the dispute for further action by the third-party inspector; and

(3) issue written findings of fact and a ruling on the appeal not later than the 30th day after the date the notice of appeal is filed with the commission.

#### CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

Sec. 430.001. LIMITED STATUTORY WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS. (a) The commission by rule shall adopt limited statutory warranties and building and performance standards for residential construction that comply with this section.

(b) The warranty periods shall be:

(1) one year for workmanship and materials;

(2) two years for plumbing, electrical, heating, and air conditioning delivery systems; and

(3) 10 years for major structural components of the home.

(c) The limited statutory warranties and building and performance standards must:

(1) require substantial compliance with the nonelectrical standards contained in the version of the International Residential Code for One and Two Family Dwellings published by the International Code Council that is applicable under Subsection (d) and the electrical standards contained in the version of the National Electrical Code that is applicable under Subsection (e);

(2) include standards for mold reduction and remediation that comply with Section 430.003;

(3) establish standards for performance for interior and exterior components of a home, including foundations, floors, ceilings, walls, roofs, drainage, landscaping, irrigation, heating, cooling, and electrical and plumbing components; and

(4) contain standards that are not less stringent than the standards required by the United States Department of Housing and Urban Development for FHA programs as set forth in 24 C.F.R. Sections 203.202 through 203.206.

(d) The International Residential Code for One and Two Family Dwellings that applies to nonelectrical aspects of residential construction for the purposes of the limited statutory warranties and building and performance standards adopted under this section is:

(1) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality under Section 214.212, Local Government Code;

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

(3) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the International Residential Code that existed on May 1, 2001.

(e) The National Electrical Code for One and Two Family Dwellings that applies to electrical aspects of residential construction for the purposes of this section is:

(1) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the National Electrical Code applicable to electrical aspects of residential construction in the municipality under Section 214.214, Local Government Code;

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the National Electrical Code applicable to electrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

(3) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the National Electrical Code that existed on May 1, 2001.

(f) Except as provided by a written agreement between the builder and the initial homeowner, a warranty period adopted under this section for a new home begins on the earlier of the date of:

(1) occupancy; or

(2) transfer of title from the builder to the initial homeowner.

(g) A warranty period adopted under this section for an improvement other than a new home begins on the date the improvement is substantially completed.

(h) The building and performance standards adopted by the commission under this section may be adopted in phases and amended or supplemented by the commission from time to time as the commission receives additional evidence or information from task forces or other sources regarding any improvements or developments in the areas of residential homebuilding practices, procedures, or technology.

**Sec. 430.002. WARRANTY OF HABITABILITY.** (a) The construction of each new home or home improvement shall include the warranty of habitability.

(b) For a construction defect to be actionable as a breach of the warranty of habitability, the defect must have a direct adverse effect on the habitable areas of the home and must not have been discoverable by a reasonable prudent inspection or examination of the home or home improvement within the applicable warranty periods adopted by the commission under Section 430.001.

**Sec. 430.003. MOLD REDUCTION AND REMEDIATION; TASK FORCE.** (a) The building and performance standards adopted under Section 430.001 must include measures that are designed to reduce the general population's exposure to mold often formed in water damaged building materials and that include:

(1) methods by which mold, water damage, and microbial volatile compounds in indoor environments may be recognized; and

(2) recommended management practices for:

(A) limiting moisture intrusion in a home, which may include the use of a water leak detection system listed by Underwriters Laboratories that is capable of shutting off a valve on the main water line coming into the structure immediately upon detecting a water leak in the structure; and

(B) mold remediation.

(b) The commission shall appoint a task force to advise the commission with regard to adoption of standards under this section. The task force must include representatives of public health officers of this state,

health and medical experts, mold abatement experts, and representatives of affected consumers and industries. The commission and the task force shall consider the feasibility of adopting permissible limits for exposure to mold in indoor environments.

Sec. 430.004. CERTAIN DESIGN RECOMMENDATIONS; ADVISORY COMMITTEE. The commission shall appoint a task force to develop design recommendations for residential construction that encourage rain harvesting and water recycling.

Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION. (a) For the purpose of this title, the only statutory warranty and building and performance standards that apply to residential construction in unincorporated areas of counties that are considered economically distressed areas as defined by Section 15.001(11) of the Water Code and located within 50 miles of an international border are the standards established for colonia housing programs administered by the Texas Department of Housing and Community Affairs, unless a county commissioners court has adopted other building and performance standards authorized by statute.

(b) This section does not exempt a builder in an area described by Subsection (a) from the registration requirements imposed by this title, including the requirements of Sections 416.001 and 426.003.

(c) An allegation of a postconstruction defect in a construction project in an area described by Subsection (a) is subject to the state-sponsored inspection and dispute resolution process described by this subtitle.

Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The warranties established under this chapter supersede all implied warranties. The only warranties that exist for residential construction or residential improvements are:

(1) warranties created by this chapter;

(2) warranties created by other statutes expressly referring to residential construction or residential improvements;

(3) any express, written warranty acknowledged by the homeowner and the builder; and

(4) warranties that apply to an area described by Section 430.005(a) as described by that section.

Sec. 430.007. WAIVER BY CONTRACT PROHIBITED. A contract between a builder and a homeowner may not waive the limited statutory warranties and building and performance standards adopted under this chapter or the warranty of habitability. This section does not prohibit a builder and a homeowner from contracting for more stringent warranties and building standards than are provided under this chapter.

Sec. 430.008. APPROVAL OF THIRD PARTY WARRANTY COMPANY. (a) The commission may approve as a third party warranty company for the purposes of Section 430.009:

(1) an entity that has operated warranty programs in this state for at least five years;

(2) a company whose performance is insured by an insurance company authorized to engage in the business of insurance in this state; or

(3) an insurance company that insures the warranty obligations of a builder under the statutory warranty and building and performance standards.

(b) A third party warranty company must submit to the commission an annual application and fee in the form and in the amount required by the commission by rule before the company may be approved under this section.

Sec. 430.009. THIRD PARTY WARRANTY COMPANY. (a) A builder may elect to provide a warranty through a third party warranty company approved by the commission.

(b) A transfer of liability under this section is not effective unless the company providing the warranty:

(1) agrees to perform the builder's warranty obligations under this chapter that are covered by the warranty provided through the third party warranty company; and

(2) actually pays for or corrects any construction defect covered by the warranty provided through the third party warranty company.

(c) A third party warranty company approved by the commission has all of the obligations and rights of a builder under this subtitle regarding performance of repairs to remedy construction defects or payment of money instead of repair.

(d) The third party warranty company may not assume liability for personal injuries or damage to personal property. A builder does not avoid liability for personal injuries or damage to personal property for which the builder would otherwise be liable under law by providing a written warranty from a third party warranty company.

(e) A company that administers a warranty for a third party warranty company is not liable for any damages resulting from a construction defect or from repairs covered under the warranty.

Sec. 430.010. MINIMUM STANDARDS FOR DETERMINATION OF DEFECT. A third party warranty company shall use defect inspection procedures substantially similar to the procedures adopted by the commission under this subtitle. A warranty company may adopt warranty standards in addition to the standards adopted by the commission. A third party warranty company may not reduce the limited statutory warranty and building and performance standards, except that a third party warranty company shall not be required to provide a warranty of habitability.

Sec. 430.011. EFFECT OF SUBTITLE ON OTHER RIGHTS AND OBLIGATIONS. (a) Except as permitted by this subtitle, an express, written contract between a homeowner and a builder may not limit the obligations of a builder under this title.

(b) After the issuance of written findings of fact and a ruling on an appeal under Chapter 429, a homeowner may bring a cause of action against a builder or third party warranty company for breach of a limited statutory warranty adopted by the commission under this subtitle. In an action brought under this subtitle, the homeowner may recover only those damages provided by Section 27.004.

(c) Breach of a limited statutory warranty adopted by the commission or breach of the statutory warranty of habitability shall not, by itself, constitute a violation of the Deceptive Trade Practices Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

#### CHAPTER 431. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM

Sec. 431.001. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM. (a) In this section, "National Housing Act" means Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C. Sections 1709(b), (i), and (k)).

(b) The commission, in consultation with the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System, the Texas Commission on Environmental Quality, and an advisory committee appointed by the commission, may establish an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003, Health and Safety Code, by 15 percent or more.

(c) If the commission establishes a program under this chapter, the commission, in consultation with the Energy Systems Laboratory, shall update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) If the commission establishes a program under this chapter, the program must include a checklist system to produce an energy-efficient building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the energy-efficient building or energy performance standards established under Chapter 388, Health and Safety Code.

Sec. 431.002. PUBLIC INFORMATION PROGRAM. The commission may establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

Sec. 431.003. MEASUREMENT SYSTEM FOR REDUCTION IN ENERGY AND EMISSIONS. If the commission establishes a program under this chapter, the Energy Systems Laboratory shall establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to the commission.

Sec. 431.004. CERTIFICATION FEE. If the commission establishes a program under this chapter, the commission may set a certification fee sufficient to cover the cost of administering the program and pay for any education efforts conducted under this chapter.

## SUBTITLE E. RESIDENTIAL CONSTRUCTION ARBITRATION

### CHAPTER 436. GENERAL PROVISIONS

Sec. 436.001. DEFINITIONS. In this subtitle:

- (1) "Arbitration" means the procedure for dispute resolution described by Section 154.027, Civil Practice and Remedies Code.
- (2) "Arbitration services provider" means a person that holds itself out as:
  - (A) managing, coordinating, or administering arbitrations;
  - (B) providing the services of arbitrators;
  - (C) making referrals or appointments to arbitrators; or
  - (D) providing lists of arbitrators.
- (3) "Arbitrator" means a neutral individual who hears the claims of the parties to a dispute and renders a decision and who is:
  - (A) chosen by the parties to the dispute;
  - (B) appointed by a court; or
  - (C) selected by an arbitration services provider under an agreement of the parties or applicable rules.

Sec. 436.002. APPLICABILITY. (a) This subtitle applies only to an arbitration of a dispute between a homeowner and a builder that involves an alleged construction defect.

(b) The requirements of this subtitle supplement Chapter 171, Civil Practice and Remedies Code, and the Federal Arbitration Act (9 U.S.C. Sections 1-16), as amended.

Sec. 436.003. VENUE. (a) An arbitration of a dispute involving a construction defect shall be conducted in the county in which the home alleged to contain the defect is located.

(b) The requirements of this section may not be waived by contract.

Sec. 436.004. RESIDENTIAL CONSTRUCTION ARBITRATION TASK FORCE. (a) The commission shall appoint a task force to study residential arbitrators and arbitration and advise the commission with respect to residential arbitrators and arbitration.

(b) This subsection expired September 1, 2007.

### CHAPTER 437. REPORTING REQUIREMENTS

Sec. 437.001. AWARD FILING. (a) If an arbitration award is filed in a court of competent jurisdiction in this state, the filer shall also, not later than the 30th day after the date an award is made in a residential construction arbitration, file with the commission a summary of the arbitration award that includes:

- (1) the names of the parties to the dispute;
- (2) the name of each party's attorney, if any;



- (3) the name of the arbitrator who conducted the arbitration;
- (4) the name of the arbitration services provider who administered the arbitration, if any;
- (5) the fee charged to conduct the arbitration;
- (6) a general statement of each issue in dispute;
- (7) the arbitrator's determination, including the party that prevailed in each issue in dispute and the amount of any monetary award; and
- (8) the date of the arbitrator's award.

(b) The commission shall establish rules to permit the voluntary filing of the information listed in Subsection (a) by any interested party. Any agreement prohibiting the disclosure of the information listed in Subsection (a) is unenforceable.

Sec. 437.002. ENFORCEMENT. (a) The commission by rule shall establish a fee not to exceed \$100 for the late filing of an arbitration award and procedures for the collection of that fee.

(b) A party to an arbitration, or an attorney for a party, may report an overdue filing of an arbitration award to the commission.

## CHAPTER 438. ENFORCEABILITY OF RESIDENTIAL CONSTRUCTION ARBITRATION AWARDS

Sec. 438.001. GROUNDS FOR VACATING AWARD. In addition to grounds for vacating an arbitration award under Section 171.088, Civil Practice and Remedies Code, on application of a party, a court shall vacate an award in a residential construction arbitration upon a showing of manifest disregard for Texas law.

### SUBTITLE F. INSPECTION OF NEW RESIDENTIAL CONSTRUCTION

#### CHAPTER 446. RESIDENTIAL CONSTRUCTION IN UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL INSPECTIONS

Sec. 446.001. APPLICABILITY OF CHAPTER. This chapter applies to residential construction described by Sections 401.003(a)(1), (2), and (3) in an unincorporated area and to other areas not subject to municipal inspections.

Sec. 446.002. INSPECTION REQUIRED. (a) A builder shall have a new home or other improvement to which this chapter applies inspected by a fee inspector.

(b) For new construction subject to this chapter, there shall be a minimum of three inspections performed during the project to ensure code compliance, as applicable, at the following stages of construction:

(1) foundation, prior to the placement of concrete;

(2) framing and mechanical systems prior to being covered with sheetrock or other interior wall covering; and

(3) final inspection when the home is completed.

(c) For improvements other than new construction, the inspections described in Subsection (b) shall occur as necessary based upon the scope of work of the project.

(d) The builder shall be responsible for contracting with a fee inspector authorized by this chapter to perform the inspections required by this section.

(e) The commission may establish fees necessary to administer this subtitle. Such fees may be included in the home registration fee required by and described in Section 426.003(c).

Sec. 446.003. ELECTRONIC REPORTING SYSTEM. (a) The commission shall establish an Internet-based process to implement this subtitle. The process shall be password protected. Inspectors will use the Internet-based process to report the satisfactory completion of the inspections required by Section 446.002 to the commission. Upon reporting of satisfactory completion of the inspections, the commission shall issue a certificate of completion which shall be forwarded to the homeowner within 30 days following the registration of a home, as required by Section 426.003.

(b) The commission shall allow for an alternative reporting system for persons who demonstrate to the commission an inability to comply with the electronic reporting requirements of Subsection (a).

Sec. 446.004. FEE INSPECTOR. A fee inspector must be either a licensed engineer, a registered architect, a professional inspector licensed by the Texas Real Estate Commission, or a third-party inspector qualified under Section 427.001(b). A builder may use the same or a different fee inspector for inspections required under this chapter.

Sec. 446.005. ELEMENTS OF INSPECTION. The commission by rule shall:

(1) establish the elements of the construction that must be inspected under this chapter in accordance with Section 446.002 to ensure compliance with the applicable code provisions as required by Section 430.001(d); and

(2) prescribe the form and the manner in which the results of the inspection will be reported in writing.

Sec. 446.006. CONSTRUCTION IN CERTAIN AREAS: ELIGIBILITY FOR CERTAIN WINDSTORM AND HAIL INSURANCE. (a) This section applies only to construction in an unincorporated area in which windstorm and hail insurance coverage is available under Chapter 2210, Insurance Code.

(b) In addition to an inspection required pursuant to Section 446.002, the builder must, if required by statute, obtain a certificate of compliance for the structure in the manner provided under Section 2210.251, Insurance Code.

Underlined portions are new provisions that are actions of the 80<sup>th</sup> Legislature and are effective 9/1/07, except the provisions of Subtitle F (Chapter 446) which is effective 9/1/08.