

PROPERTY CODE

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) A person who submits a request under this section 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 and provide a means to submit a request electronically.

(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.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 1.01, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 1.01, eff. Sept. 1, 2003.

Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR. (a) On or before the 15th 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.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 1.01, eff. Sept. 1, 2003.

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 15th 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.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 1.01, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 1.01, eff. Sept. 1, 2003.