

PROPERTY CODE

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.

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

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.

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

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.

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

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.

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

Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION. 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.

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

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 warranties created by this chapter or by other statutes expressly referring to residential construction or residential improvements, or any express, written warranty acknowledged by the homeowner and the builder.

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

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.

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

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.

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

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.

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

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.

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

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).

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