

PROPERTY CODE

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 on or before the 10th anniversary of 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, if there is not a closing, the date on which the contract for construction of the improvement was entered into.

(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.

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

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.

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

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 into 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 agreement that describes the transaction between the homeowner and the builder; or

(B) the commencement of the work on the home.

(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.

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

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 person who submits a request involving the home shall pay, in addition to the inspection expenses required by this section, the registration fee

required by Section 426.003.

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

Sec. 426.005. PREREQUISITE TO ACTION. (a) A homeowner 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. Added by Acts 2003, 78th Leg., ch. 458, Sec. 1.01, eff. Sept. 1, 2003.

Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE RESOLUTION. 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 30th day after the date the applicable warranty period expires.

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

Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person who submits a request for state-sponsored inspection and dispute resolution must disclose in the request the name of any person who, before the request is submitted, inspected the home on behalf of the requestor in connection with the construction defect alleged in the request. If a person's name is known to the requestor at the time of the request and is not disclosed as required by this section, the requestor 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.

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

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.

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