

By: Ritter

H.B. No. 730

A BILL TO BE ENTITLED

AN ACT

relating to residential construction, including certain warranties, building standards, and dispute resolution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;

STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION; WARRANTIES AND BUILDING STANDARDS

SECTION 1.01. The Property Code is amended by adding Title 16 to read as follows:

TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION 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 standards" means:

(A) building standards adopted under Section 420.001; or

(B) for homes constructed before the adoption of building standards under Section 420.001, the building 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:

1 (A) a warranty period established under Section
2 420.001; or

3 (B) for construction to which the warranty
4 periods adopted under Section 420.001 do not apply, any other
5 construction warranty period that applies to the construction.

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

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

14 (5) "Builder" means any business entity or individual
15 who constructs or supervises or manages the construction of a home
16 or who, for a fixed price, commission, fee, wage, or other
17 compensation, undertakes or offers to undertake the construction of
18 an improvement to or supervise or manage the construction of an
19 improvement to an existing home when the cost of the work exceeds
20 \$5,000. The term includes:

21 (A) an owner, officer, director, shareholder,
22 partner, affiliate, or employee of the builder;

23 (B) a risk retention group registered under
24 Article 21.54, Insurance Code, that insures all or any part of a
25 builder's liability for the cost to repair a residential
26 construction defect; and

27 (C) a third-party warranty company and its

1 administrator.

2 (6) "Commission" means the Texas Residential
3 Construction Commission.

4 (7) "Home" means:

5 (A) the real property and improvements and
6 appurtenances for a single-family house, duplex, triplex, or
7 quadruplex; or

8 (B) a unit in a multiunit residential structure
9 in which title to the individual units is transferred to the owners.

10 (8) "Homeowner" means a person who owns a home or a
11 subrogee or assignee of a person who owns a home.

12 (9) "Limited statutory warranty and building
13 standards" means the limited statutory warranty and building
14 standards adopted by the commission under Section 420.001.

15 (10) "Nonstructural matter" has the meaning assigned
16 by the limited statutory warranty and building standards adopted by
17 the commission under Section 420.001.

18 (11) "Request" means a request submitted under Section
19 418.001.

20 (12) "Settlement agent" means an escrow officer, an
21 attorney, a mortgage company, or a bank providing closing services
22 for a home or a loan to finance the construction of or improvements
23 to a home.

24 (13) "State inspector" means a person employed by the
25 commission under Section 417.002.

26 (14) "State-sponsored inspection and dispute
27 resolution process" means the process by which the commission

1 resolves a request.

2 (15) "Structural" means the load-bearing portion of a
3 home.

4 (16) "Structural failure" has the meaning assigned by
5 the limited statutory warranty and building standards adopted by
6 the commission under Section 420.001.

7 (17) "Third-party inspector" means a person appointed
8 by the commission under Section 418.003.

9 Sec. 401.003. DEFINITION OF CONSTRUCTION DEFECT. (a) In
10 this title, "construction defect" means:

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

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

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

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

23 (2) failure of a person other than the builder or an
24 agent, employee, subcontractor, or supplier of the contractor to:

25 (A) take reasonable action to mitigate any
26 damages that arise from a defect; or

27 (B) take reasonable action to maintain the home;

1 (3) normal wear, tear, or deterioration; or

2 (4) normal shrinkage due to drying or settlement of
3 construction components within the tolerance of building
4 standards.

5 Sec. 401.004. SUNSET PROVISION. The Texas Residential
6 Construction Commission is subject to Chapter 325, Government Code
7 (Texas Sunset Act). Unless continued in existence as provided by
8 that chapter, the commission is abolished and this title expires
9 September 1, 2015.

10 [Chapters 402-405 reserved for expansion]

11 SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

12 CHAPTER 406. COMMISSION

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

17 (1) six members must be representatives of the
18 residential construction industry;

19 (2) two members must be representatives of the general
20 public; and

21 (3) one member must be a licensed professional
22 engineer.

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

26 Sec. 406.002. TERMS. (a) Commission members serve
27 staggered six-year terms with three members' terms expiring

1 February 1 of each odd-numbered year. The terms of two
2 representatives of the residential construction industry must
3 expire in each odd-numbered year. The terms of the two
4 representatives of the general public must expire in different
5 odd-numbered years.

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

8 Sec. 406.003. PRESIDING OFFICER. The governor shall
9 designate a member of the commission as the presiding officer of the
10 commission to serve in that capacity at the pleasure of the
11 governor.

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

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

26 (1) the person is an employee or paid consultant of a
27 Texas trade association in the field of residential construction;

1 or

2 (2) the person's spouse is a manager or paid consultant
3 of a Texas trade association in the field of residential
4 construction.

5 (c) A person may not be a member of the commission or act as
6 the general counsel to the commission if the person is required to
7 register as a lobbyist under Chapter 305, Government Code, because
8 of the person's activities for compensation on behalf of a
9 profession related to the operation of the commission.

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

12 (1) does not have at the time of taking office the
13 qualifications required by Section 406.001;

14 (2) does not maintain during service on the commission
15 the qualifications required by Section 406.001;

16 (3) is ineligible for membership under Section
17 406.004;

18 (4) cannot because of illness or disability discharge
19 the member's duties for a substantial part of the member's term; or

20 (5) is absent from more than half of the regularly
21 scheduled commission meetings that the member is eligible to attend
22 during a calendar year without an excuse approved by a majority vote
23 of the commission.

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

27 (c) If the executive director has knowledge that a potential

1 ground for removal exists, the executive director shall notify the
2 presiding officer of the potential ground. The presiding officer
3 shall then notify the governor and the attorney general that a
4 potential ground for removal exists. If the potential ground for
5 removal involves the presiding officer, the executive director
6 shall notify the next highest ranking officer of the commission,
7 who shall notify the governor and the attorney general that a
8 potential ground for removal exists.

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

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

16 (1) the legislation that created the commission;

17 (2) the programs operated by the commission;

18 (3) the role and functions of the commission;

19 (4) the rules of the commission, with an emphasis on
20 the rules that relate to disciplinary and investigatory authority;

21 (5) the current budget for the commission;

22 (6) the results of the most recent formal audit of the
23 commission;

24 (7) the requirements of:

25 (A) the open meetings law, Chapter 551,
26 Government Code;

27 (B) the open records law, Chapter 552, Government

1 Code;

2 (C) the administrative procedure law, Chapter
3 2001, Government Code; and

4 (D) other laws relating to public officials,
5 including conflict-of-interest laws; and

6 (8) any applicable ethics policies adopted by the
7 commission or the Texas Ethics Commission.

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

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

15 CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

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

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

20 Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission
21 shall develop and implement policies that clearly separate the
22 policymaking responsibilities of the commission and the management
23 responsibilities of the executive director and the staff of the
24 commission.

25 Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT
26 INFORMATION. The executive director or the executive director's
27 designee shall provide to members of the commission and to

1 commission employees, as often as necessary, information regarding
2 the requirements for office or employment under this title,
3 including information regarding a person's responsibilities under
4 applicable laws relating to standards of conduct for state officers
5 or employees.

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

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

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

24 (b) The policy statement must include:

25 (1) personnel policies, including policies relating
26 to recruitment, evaluation, selection, training, and promotion of
27 personnel, that show the intent of the commission to avoid the

1 unlawful employment practices described by Chapter 21, Labor Code;
2 and

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

7 (c) The policy statement must:

8 (1) be updated annually;

9 (2) be reviewed by the state Commission on Human
10 Rights for compliance with Subsection (b)(1); and

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

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

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

21 CHAPTER 408. POWERS AND DUTIES

22 Sec. 408.001. RULES. (a) The commission may not adopt a
23 substantive rule before submitting the proposed rule to the
24 attorney general for a ruling on the proposed rule's validity.

25 (b) The commission shall adopt rules as necessary for the
26 implementation of this title, including rules:

27 (1) governing the state-sponsored inspection and

1 dispute resolution process, including building standards,
2 administrative regulations, and the conduct of hearings under
3 Subtitle C;

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

6 (3) approving third-party warranty programs; and

7 (4) approving third-party inspectors.

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

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

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

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

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

26 CHAPTER 409. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

27 Sec. 409.001. PUBLIC INTEREST INFORMATION. (a) The

1 commission shall prepare information of public interest describing
2 the functions of the commission, the provisions of the limited
3 statutory warranty and building standards, the state-sponsored
4 inspection and dispute resolution process, and the procedures by
5 which complaints or requests are filed with and resolved by the
6 commission.

7 (b) The commission shall make the information available to
8 the public and appropriate state agencies.

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

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

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

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

24 [Chapters 410-415 reserved for expansion]

25 SUBTITLE C. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION
26 PROCESS; STATUTORY WARRANTY AND BUILDING STANDARDS

27 CHAPTER 416. GENERAL PROVISIONS

1 Sec. 416.001. APPLICABILITY OF SUBTITLE. (a) This
2 subtitle applies to a dispute between a builder and a homeowner if:

3 (1) the dispute arises out of an alleged construction
4 defect, other than a claim solely for:

5 (A) personal injury, survival, or wrongful
6 death; or

7 (B) damage to goods; and

8 (2) a request is submitted to the commission on or
9 before the 10th anniversary of the date of the initial transfer of
10 title from the builder to the initial owner of the home or the
11 improvement that is the subject of the dispute or, if there is not a
12 closing, the date on which the contract for construction of the
13 improvement was entered into.

14 (b) This subtitle does not apply to a dispute arising out
15 of:

16 (1) an alleged violation of Section 27.01, Business &
17 Commerce Code;

18 (2) a contractor's wrongful abandonment of an
19 improvement project before completion; or

20 (3) a violation of Chapter 162.

21 (c) For the purposes of this section, "damage to goods" does
22 not include damage to a home.

23 Sec. 416.002. CONFLICT WITH CERTAIN OTHER LAW. To the
24 extent of any conflict between this subtitle and any other law,
25 including Chapter 27 and the Deceptive Trade Practices-Consumer
26 Protection Act (Subchapter E, Chapter 17, Business & Commerce
27 Code), this subtitle prevails.

1 Sec. 416.003. REGISTRATION FEE. (a) A registration fee of
2 not more than \$125, as determined by the commission, shall be
3 charged at the closing of each sale of a home or as provided by
4 Subsection (c). The commission shall establish different levels of
5 fees based on the value of the improvements.

6 (b) Except as provided by Subsection (c), the settlement
7 agent shall collect the fee required by this section and remit the
8 fee to the commission not later than the 15th day of the month after
9 the month in which the fee is collected.

10 (c) If a sale or other transaction between a homeowner and a
11 builder does not involve a settlement agent, the registration fee
12 shall be remitted to the commission by the builder not later than
13 the 30th day after the earlier of:

14 (1) the date of the agreement between the homeowner
15 and the builder; or

16 (2) the commencement of the work on the home.

17 (d) The commission may assess a late payment penalty of \$500
18 against a builder who fails to pay the required registration fee.

19 Sec. 416.004. APPLICATION AND INSPECTION FEES. (a) A party
20 who submits a matter to the commission for the state-sponsored
21 inspection and resolution process shall pay to the commission:

22 (1) an application fee in an amount determined by the
23 commission; and

24 (2) any additional amount required by the commission
25 to cover the expense of the third-party inspector.

26 (b) The commission shall adopt rules permitting a waiver or
27 reduction of the application fee and inspection expenses for

1 homeowners demonstrating a financial inability to pay the fees and
2 expenses.

3 (c) If the transfer of title of the home from the builder to
4 the initial owner occurred before January 1, 2004, or, if no
5 transfer of title took place, the contract for improvements was
6 entered into before January 1, 2004, the party who submits a matter
7 to the commission for the state-sponsored inspection and dispute
8 resolution process shall pay, in addition to the application fee
9 and inspection expenses required under this section, the
10 registration fee required by Section 416.003.

11 Sec. 416.005. PREREQUISITE TO ACTION. (a) A homeowner must
12 comply with this subtitle before initiating an action for damages
13 or other relief arising from an alleged construction defect.

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

15 (1) on or before the 90th day after the date the
16 third-party inspector issues the inspector's determination; or

17 (2) if the determination is appealed, not later than
18 the 90th day after the date the commission issues its ruling on the
19 appeal.

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

24 Sec. 416.006. TIME FOR REQUESTING INSPECTION AND DISPUTE
25 RESOLUTION. The state-sponsored inspection and dispute resolution
26 process must be requested on or before the second anniversary of
27 discovery of the conditions claimed to be evidence of the

1 construction defect but not later than the 30th day after the date
2 the applicable warranty period expires.

3 Sec. 416.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
4 who submits a request for state-sponsored inspection and dispute
5 resolution must disclose in the request the name of any person who
6 has, on behalf of the requestor, inspected the home in connection
7 with the construction defect alleged in the request. If a person's
8 name is not disclosed as required by this subsection, the requestor
9 may not retain the person as an expert or use materials prepared by
10 that person in:

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

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

15 Sec. 416.008. EFFECT OF THIRD-PARTY INSPECTOR'S
16 DETERMINATION OR RULING BY PANEL OF STATE INSPECTORS. In any action
17 involving a construction defect brought after a determination by a
18 third-party inspector or ruling by a panel of state inspectors on
19 the existence of the construction defect or its appropriate repair,
20 the determination or ruling is presumed to be reasonable and
21 dispositive. A party seeking to dispute, vacate, or overcome that
22 presumption must establish by clear and convincing evidence that
23 the determination or ruling is inconsistent with the applicable
24 warranty and building standards.

25 CHAPTER 417. INSPECTORS

26 Sec. 417.001. QUALIFICATIONS OF THIRD-PARTY INSPECTORS.

27 (a) A third-party inspector approved by the commission must:

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

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

7 (b) A third-party inspector who inspects an issue involving
8 workmanship and materials must have a minimum of five years'
9 experience in the residential construction industry.

10 (c) A third-party inspector who inspects an issue involving
11 a structural matter must:

12 (1) be an approved structural engineer or approved
13 architect; and

14 (2) have a minimum of 10 years' experience in
15 residential construction.

16 (d) Each third-party inspector must:

17 (1) be certified to the International Residential Code
18 by the International Code Council; and

19 (2) receive, in accordance with commission rules:

20 (A) initial training regarding the
21 state-sponsored inspection and dispute resolution process and this
22 subtitle; and

23 (B) annual continuing education.

24 (e) A third-party inspector may not receive more than 10
25 percent of the inspector's gross income in a federal income tax year
26 from providing expert witness services, including retention for the
27 purpose of providing testimony, evidence, or consultation in

1 connection with a pending or threatened legal action.

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

5 Sec. 417.002. STATE INSPECTORS. (a) The commission shall
6 employ state inspectors to:

7 (1) review on an appeals panel the determinations of
8 the third-party inspectors;

9 (2) provide consultation to third-party inspectors;
10 and

11 (3) administer the state-sponsored inspection and
12 dispute resolution process.

13 (b) A state inspector must be certified to the International
14 Residential Code by the International Code Council.

15 CHAPTER 418. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION
16 PROCESS

17 Sec. 418.001. REQUEST FOR RESOLUTION. (a) If a dispute
18 between a builder and a homeowner arises out of an alleged
19 construction defect, the homeowner or the builder may submit to the
20 commission a written request for state-sponsored inspection and
21 dispute resolution.

22 (b) The request must:

23 (1) specify in reasonable detail each alleged
24 construction defect that is a subject of the request;

25 (2) state the amount of any known out-of-pocket
26 expenses and engineering or consulting fees incurred by the
27 homeowner in connection with each alleged construction defect;

1 (3) include any evidence that depicts the nature and
2 cause of each alleged construction defect and the nature and extent
3 of repairs necessary to remedy the construction defect, including
4 expert reports, photographs, and videotapes, if that evidence would
5 be discoverable under Rule 192, Texas Rules of Civil Procedure;

6 (4) be accompanied by the fees required under Section
7 416.004; and

8 (5) state the name of any person who has, on behalf of
9 the requestor, inspected the home in connection with an alleged
10 construction defect.

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

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

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

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

1 Sec. 418.002. BUILDER'S RIGHT OF INSPECTION. (a) In
2 addition to the right of inspection provided by Section 418.001(c),
3 at any time before the conclusion of the state-sponsored inspection
4 and dispute resolution process and on the builder's written
5 request, the builder shall be given reasonable opportunity to
6 inspect the home that is the subject of the request or have the home
7 inspected to determine the nature and cause of the construction
8 defect and the nature and extent of repairs necessary to remedy the
9 construction defect.

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

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

17 Sec. 418.003. INSPECTION BY THIRD-PARTY INSPECTOR. (a)
18 After receiving a request, the commission shall appoint a
19 third-party inspector to inspect the home and meet with the
20 homeowner and the builder.

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

25 Sec. 418.004. INSPECTOR'S RECOMMENDATION. (a) If the
26 dispute involves workmanship and materials in the home of a
27 nonstructural matter, the third-party inspector shall issue a

1 recommendation not later than the 15th day after the date the
2 third-party inspector receives the appointment from the
3 commission.

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

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

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

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

18 (d) Except as provided by this subsection, the third-party
19 inspector's recommendation may not include payment of any monetary
20 consideration. If the inspector finds for the party who submitted
21 the request, the commission may order the other party to reimburse
22 all or part of the fees and inspection expenses paid by the
23 requestor under Section 416.004.

24 Sec. 418.005. THREAT TO HEALTH OR SAFETY. A builder who
25 receives written notice of a request relating to a construction
26 defect that creates an imminent threat to the health or safety of
27 the inhabitants of the residence shall take reasonable steps to

1 cure the defect as soon as practicable. If the builder fails to
2 cure the defect in a reasonable time, the homeowner may have the
3 defect cured and recover from the builder the reasonable cost of the
4 cure plus reasonable attorney's fees and expenses associated with
5 curing the defect in addition to any other damages not inconsistent
6 with this subtitle.

7 CHAPTER 419. APPEAL OF THIRD-PARTY INSPECTOR'S RECOMMENDATION

8 Sec. 419.001. APPEAL. (a) If a homeowner or the builder
9 appeals a third-party inspector's determination, the executive
10 director shall appoint three state inspectors to a panel to review
11 the determination. If the determination involves a dispute
12 regarding a structural failure, one of the state inspectors on the
13 panel must be a licensed professional engineer.

14 (b) The panel shall:

15 (1) review the recommendation without a hearing unless
16 a hearing is otherwise required by rules adopted by the commission;

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

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

23 CHAPTER 420. WARRANTIES AND BUILDING STANDARDS

24 Sec. 420.001. LIMITED STATUTORY WARRANTIES AND BUILDING
25 STANDARDS. (a) The commission by rule shall adopt limited
26 statutory warranties and building standards for residential
27 construction that comply with this section.

1 (b) The warranty periods shall be:

2 (1) one year for workmanship and materials;

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

5 (3) 10 years for major structural components of the
6 home.

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

9 (1) require substantial compliance with the standards
10 contained in the version of the International Residential Code for
11 One- and Two-Family Dwellings published by the International Code
12 Council that is applicable under Subsection (d); and

13 (2) include recommended management practices for
14 limiting moisture intrusion in a home.

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

19 (1) for residential construction located in a
20 municipality, the version of the International Residential Code
21 applicable to residential construction in the municipality under
22 Section 214.212, Local Government Code; and

23 (2) for residential construction located in an
24 unincorporated area, the version of the International Residential
25 Code applicable to residential construction in the municipality
26 that is the county seat of the county in which the construction is
27 located.

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

- 4 (1) occupancy;
5 (2) issuance of a certificate of occupancy; or
6 (3) transfer of title from the builder to the initial
7 homeowner.

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

11 Sec. 420.002. STATUTORY WARRANTIES EXCLUSIVE. The
12 warranties established under this chapter supersede all implied
13 warranties. The only warranties that exist for residential
14 construction or residential improvements are warranties created by
15 this chapter or by other statutes expressly referring to
16 residential construction or residential improvements, or any
17 express, written warranty acknowledged by the homeowner and the
18 builder. A court may not discern or declare any other implied
19 warranty.

20 Sec. 420.003. APPROVAL OF THIRD-PARTY WARRANTY COMPANY.

21 (a) The commission may approve as a third-party warranty company
22 for the purposes of Section 420.004:

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

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

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

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

8 Sec. 420.004. THIRD-PARTY WARRANTY COMPANY. (a) If a
9 builder chooses to provide a third-party warranty company approved
10 by the commission, the builder may limit liability to a homeowner
11 under the terms of that warranty.

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

14 (1) agrees to perform the builder's warranty
15 obligations under this chapter; and

16 (2) actually pays for or corrects any construction
17 defect covered by the warranty.

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

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

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

4 Sec. 420.005. MINIMUM STANDARDS FOR DETERMINATION OF
5 DEFECT. A third-party warranty company shall use defect inspection
6 procedures substantially similar to the procedures adopted by the
7 commission under this subtitle. A warranty company may adopt
8 warranty standards in addition to the standards adopted by the
9 commission, but it may not reduce the limited statutory warranty
10 and building standards.

11 Sec. 420.006. EFFECT OF SUBTITLE ON OTHER RIGHTS AND
12 OBLIGATIONS. (a) This subtitle provides the sole rights and
13 obligations between a homeowner and a builder, unless additional
14 rights and obligations are provided in an express, written contract
15 between the homeowner and builder. Except as permitted by this
16 subtitle, an express, written contract between a homeowner and
17 builder may not limit the obligations of a builder under this title.

18 (b) Except as provided by this subtitle, a claim for a tort,
19 breach of contract, breach of warranty, statutory violation, or any
20 other cause of action to which this subtitle applies may not be
21 filed or pursued in any other manner against a builder. This
22 subtitle creates the only cognizable cause of action available
23 against a builder or third-party warranty company with regard to
24 construction defects.

25 SECTION 1.02. (a) As soon as possible after the effective
26 date of this Act, the governor shall appoint the members of the
27 Texas Residential Construction Commission in accordance with Title

1 16, Property Code, as added by this Act. In making the initial
2 appointments, the governor shall designate three members for terms
3 expiring February 1, 2005, three members for terms expiring
4 February 1, 2007, and three members for terms expiring February 1,
5 2009.

6 (b) The governor shall designate a person to perform the
7 ministerial acts necessary for posting notice of and holding the
8 first meeting of the commission.

9 (c) Section 406.006, Property Code, as added by this Act,
10 does not apply to a member of the Texas Residential Construction
11 Commission until March 1, 2004.

12 SECTION 1.03. As soon as possible after appointment of its
13 members, the Texas Residential Construction Commission shall adopt
14 limited statutory warranties and building standards under Section
15 420.001, Property Code, as added by this article. The warranties
16 and building standards adopted by the commission apply only to
17 residential construction that begins on or after the effective date
18 of those warranties and building standards as determined by the
19 commission. Residential construction that begins before the
20 effective date of those warranties and building standards is
21 governed by the warranties and building standards applicable to the
22 construction before that date.

23 ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

24 SECTION 2.01. Section 27.001, Property Code, is amended to
25 read as follows:

26 Sec. 27.001. DEFINITIONS. In this chapter:

27 (1) "Action" means a court or judicial proceeding or

1 an arbitration.

2 (2) "Appurtenance" means any structure or
3 recreational facility that is appurtenant to a residence but is not
4 a part of the dwelling unit.

5 (3) [~~(2)~~] "Construction defect" has the meaning
6 assigned by Section 401.003 for an action to which Subtitle C, Title
7 16, applies and for any other action means a matter concerning the
8 design, construction, or repair of a new residence, of an
9 alteration of or repair or addition to an existing residence, or of
10 an appurtenance to a residence, on which a person has a complaint
11 against a contractor. The term may include any physical damage to
12 the residence, any appurtenance, or the real property on which the
13 residence and appurtenance are affixed proximately caused by a
14 construction defect.

15 (4) [~~(3)~~] "Contractor" means a builder, as defined by
16 Section 401.002, and any person contracting with an owner for the
17 construction or sale of a new residence constructed by that person
18 or of an alteration of or addition to an existing residence, repair
19 of a new or existing residence, or construction, sale, alteration,
20 addition, or repair of an appurtenance to a new or existing
21 residence. The term includes:

22 (A) an owner, officer, director, shareholder,
23 partner, or employee of the contractor; and

24 (B) a risk retention group registered under
25 Article 21.54, Insurance Code, that insures all or any part of a
26 contractor's liability for the cost to repair a residential
27 construction defect.

1 (5) "Economic damages" means compensatory damages for
2 pecuniary loss proximately caused by a construction defect. The
3 term does not include exemplary damages or damages for physical
4 pain and mental anguish, loss of consortium, disfigurement,
5 physical impairment, or loss of companionship and society.

6 (6) [~~(4)~~] "Residence" means the real property and
7 improvements for a single-family house, duplex, triplex, or
8 quadruplex or a unit in a multiunit residential structure in which
9 title to the individual units is transferred to the owners under a
10 condominium or cooperative system.

11 (7) [~~(5)~~] "Structural failure" has the meaning
12 assigned by Section 401.002 for an action to which Subtitle C, Title
13 16, applies and for any other action means actual physical damage to
14 the load-bearing portion of a residence caused by a failure of the
15 load-bearing portion.

16 SECTION 2.02. Section 27.002, Property Code, is amended by
17 amending Subsections (a) and (b) and adding Subsection (d) to read
18 as follows:

19 (a) This chapter applies to:

20 (1) any action to recover damages or other relief
21 arising [~~resulting~~] from a construction defect, except a claim for
22 personal injury, survival, or wrongful death or for damage to
23 goods; and

24 (2) any subsequent purchaser of a residence who files
25 a claim against a contractor.

26 (b) To the extent of conflict between this chapter and any
27 other law, including the Deceptive Trade Practices-Consumer

1 Protection Act (Subchapter E, Chapter 17, Business & Commerce Code)
2 or a common law cause of action, this chapter prevails.

3 (d) This chapter does not apply to an action to recover
4 damages that arise from:

5 (1) a violation of Section 27.01, Business & Commerce
6 Code;

7 (2) a contractor's wrongful abandonment of an
8 improvement project before completion; or

9 (3) a violation of Chapter 162.

10 SECTION 2.03. Section 27.003, Property Code, is amended to
11 read as follows:

12 Sec. 27.003. LIABILITY. (a) In an action to recover
13 damages or other relief arising [~~resulting~~] from a construction
14 defect:

15 (1) a contractor is not liable for any percentage of
16 damages caused by:

17 (A) negligence of a person other than the
18 contractor or an agent, employee, or subcontractor of the
19 contractor;

20 (B) failure of a person other than the contractor
21 or an agent, employee, or subcontractor of the contractor to:

22 (i) take reasonable action to mitigate the
23 damages; or

24 (ii) take reasonable action to maintain the
25 residence;

26 (C) normal wear, tear, or deterioration;

27 (D) normal shrinkage due to drying or settlement

1 of construction components within the tolerance of building
2 standards; or

3 (E) the contractor's reliance on written
4 information relating to the residence, appurtenance, or real
5 property on which the residence and appurtenance are affixed that
6 was obtained from official government records, if the written
7 information was false or inaccurate and the contractor did not know
8 and could not reasonably have known of the falsity or inaccuracy of
9 the information; and

10 (2) if an assignee of the claimant or a person
11 subrogated to the rights of a claimant fails to provide the
12 contractor with the written notice and opportunity to inspect and
13 offer to repair [to the contractor] required by Section 27.004
14 [27.004(a)] or fails to request state-sponsored inspection and
15 dispute resolution under Chapter 418, if applicable, before
16 performing repairs, the contractor is not liable for the cost of any
17 repairs or any percentage of damages caused by repairs made to a
18 construction defect at the request of an assignee of the claimant or
19 a person subrogated to the rights of a claimant by a person other
20 than the contractor or an agent, employee, or subcontractor of the
21 contractor.

22 (b) Except as provided by this chapter [~~herein~~], this
23 chapter does not limit or bar any other defense or defensive matter
24 or other defensive cause of action applicable to an action to
25 recover damages or other relief arising [~~resulting~~] from a
26 construction defect.

27 SECTION 2.04. Section 27.004, Property Code, is amended to

1 read as follows:

2 Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) In a
3 claim not subject to Subtitle C, Title 16, before [~~Before~~] the 60th
4 day preceding the date a claimant seeking from a contractor damages
5 or other relief arising from a construction defect initiates an
6 action [~~files suit~~], the claimant shall give written notice by
7 certified mail, return receipt requested, to the contractor, at the
8 contractor's last known address, specifying in reasonable detail
9 the construction defects that are the subject of the complaint. On
10 the request of the contractor, the claimant shall provide to the
11 contractor any evidence that depicts the nature and cause of the
12 defect and the nature and extent of repairs necessary to remedy the
13 defect, including expert reports, photographs, and videotapes, if
14 that evidence would be discoverable under Rule 192, Texas Rules of
15 Civil Procedure. During the 35-day period after the date the
16 contractor receives the notice, and on the contractor's written
17 request, the contractor shall be given a reasonable opportunity to
18 inspect and have inspected the property that is the subject of the
19 complaint to determine the nature and cause of the defect and the
20 nature and extent of repairs necessary to remedy the defect. The
21 contractor may take reasonable steps to document the defect. In a
22 claim subject to Subtitle C, Title 16, a contractor is entitled to
23 make an offer of repair in accordance with Subsection (b).

24 (b) Not later than the 15th day after the date of a final,
25 unappealable determination of a dispute under Subtitle C, Title 16,
26 if applicable, or not later than the 45th day [~~Within the 45-day~~
27 ~~period~~] after the date the contractor receives the notice under

1 this section, if Subtitle C, Title 16, does not apply, the
2 contractor may make a written offer of settlement to the claimant.
3 The offer must be sent to the claimant at the claimant's last known
4 address or to the claimant's attorney by certified mail, return
5 receipt requested. The offer may include either an agreement by the
6 contractor to repair or to have repaired by an independent
7 contractor partially or totally at the contractor's expense or at a
8 reduced rate to the claimant any construction defect described in
9 the notice and shall describe in reasonable detail the kind of
10 repairs which will be made. The repairs shall be made not later
11 than the 45th day [~~within the 45-day period~~] after the date the
12 contractor receives written notice of acceptance of the settlement
13 offer, unless completion is delayed by the claimant or by other
14 events beyond the control of the contractor. If a contractor makes
15 a written offer of settlement that the claimant considers to be
16 unreasonable:

17 (1) on or before the 25th day after the date the
18 claimant receives the offer, the claimant shall advise the
19 contractor in writing and in reasonable detail of the reasons why
20 the claimant considers the offer unreasonable; and

21 (2) not later than the 10th day after the date the
22 contractor receives notice under Subdivision (1), the contractor
23 may make a supplemental written offer of settlement to the claimant
24 by sending the offer to the claimant or the claimant's attorney [~~For~~
25 ~~the purposes of this section, "independent contractor" means a~~
26 ~~person who is independent of the contractor and did not perform any~~
27 ~~of the work complained of in the claimant's notice. The claimant~~

1 ~~and the contractor may agree in writing to extend the periods~~
2 ~~described by this subsection].~~

3 (c) If compliance with Subtitle C, Title 16, or the giving
4 of the notice under Subsections (a) and (b) within the period
5 prescribed by those subsections is impracticable because of the
6 necessity of initiating an action [~~filing suit~~] at an earlier date
7 to prevent expiration of the statute of limitations or if the
8 complaint is asserted as a counterclaim, compliance with Subtitle
9 C, Title 16, or the [~~that~~] notice is not required. However, the
10 action [~~suit~~] or counterclaim shall specify in reasonable detail
11 each construction defect that is the subject of the complaint. If
12 Subtitle C, Title 16, applies to the complaint, simultaneously with
13 the filing of an action by a claimant, the claimant must submit a
14 request under Section 418.001. If Subtitle C, Title 16, does not
15 apply, [and] the inspection provided for by Subsection (a) may be
16 made not later than the 75th day after [~~during the 60-day period~~
17 ~~following~~] the date of service of the suit, request for
18 arbitration, or counterclaim on the contractor, and the offer
19 provided for by Subsection (b) may be made not later than the 15th
20 day after the date the state-sponsored inspection and dispute
21 resolution process is completed, if Subtitle C, Title 16, applies,
22 or not later than the 60th day after [~~within the 60-day period~~
23 ~~following~~] the date of service, if Subtitle C, Title 16, does not
24 apply. If, while an action [~~a suit~~] subject to this chapter is
25 pending, the statute of limitations for the cause of action would
26 have expired and it is determined that the provisions of Subsection
27 (a) were not properly followed, the action [~~suit~~] shall be abated

1 ~~[for up to 75 days in order]~~ to allow compliance with Subsections
2 (a) and (b).

3 (d) The court or arbitration tribunal shall dismiss an
4 action ~~[abate a suit]~~ governed by this chapter if Subsection (c)
5 does not apply and the court or tribunal, after a hearing, finds
6 that the contractor is entitled to dismissal ~~[an abatement]~~ because
7 the claimant failed to comply with the requirements of Subtitle C,
8 Title 16, if applicable, failed to provide the notice or failed to
9 give the contractor a reasonable opportunity to inspect the
10 property as required by Subsection (a), or failed to follow the
11 procedures specified by Subsection (b). An action ~~[A suit]~~ is
12 automatically dismissed ~~[abated]~~ without the order of the court or
13 tribunal beginning on the 11th day after the date a motion to
14 dismiss ~~[plea in abatement]~~ is filed if the motion ~~[plea in~~
15 ~~abatement]~~:

16 (1) is verified and alleges that the person against
17 whom the action ~~[suit]~~ is pending did not receive the written notice
18 required by Subsection (a), ~~[or]~~ was not given a reasonable
19 opportunity to inspect the property as required by Subsection (a),
20 or the claimant failed to follow the procedures specified by
21 Subsection (b) or Subtitle C, Title 16, Property Code; and

22 (2) is not controverted by an affidavit filed by the
23 claimant before the 11th day after the date on which the motion to
24 dismiss ~~[plea in abatement]~~ is filed.

25 (e) ~~[An abatement under Subsection (d) continues until the~~
26 ~~60th day after the date that written notice is served in compliance~~
27 ~~with Subsection (a).~~

1 ~~[(f)]~~ If a claimant [~~unreasonably~~] rejects a reasonable
2 ~~[an]~~ offer made under Subsection (b) [~~as provided by this section~~]
3 or does not permit the contractor or independent contractor a
4 reasonable opportunity to inspect or repair the defect pursuant to
5 an accepted offer of settlement, the claimant:

6 (1) may not recover an amount in excess of:

7 (A) the fair market value of the contractor's
8 last offer of settlement under Subsection (b) [~~reasonable cost of~~
9 ~~the offered repairs which are necessary to cure the construction~~
10 ~~defect and which are the responsibility of the contractor~~]; or

11 (B) the amount of a reasonable monetary
12 settlement or purchase offer made under Subsection (m) [~~(n)~~]; and

13 (2) may recover only the amount of reasonable and
14 necessary costs and attorney's fees as prescribed by Rule 1.04,
15 Texas Disciplinary Rules of Professional Conduct [~~and costs~~]
16 incurred before the offer was rejected or considered rejected.

17 (f) [~~(g)~~] If a contractor fails to make a reasonable offer
18 under Subsection (b) [~~this section~~], or fails to make a reasonable
19 attempt to fully perform under [~~complete the repairs specified in~~]
20 an accepted offer made under this section, or fails to complete, in
21 a good and workmanlike manner, the repairs specified in an accepted
22 offer made under this section, the limitations on damages [~~and~~
23 ~~defenses to liability~~] provided for in Subsection (e) [~~this~~
24 ~~section~~] shall not apply.

25 (g) [~~(h)~~] Except as provided by Subsection (e) [~~(f)~~], in an
26 action [~~a suit~~] subject to this chapter the claimant may recover
27 only the following economic damages proximately caused by a

1 construction defect:

2 (1) the reasonable cost of repairs necessary to cure
3 any construction defect, not exceeding the damages measured by the
4 difference in the value of the improvements as constructed and
5 their value had they been constructed without the defect [~~including~~
6 ~~any reasonable and necessary engineering or consulting fees~~
7 ~~required to evaluate and cure the construction defect, that the~~
8 ~~contractor is responsible for repairing under this chapter~~];

9 (2) the reasonable and necessary cost for the
10 replacement or repair of any damaged goods in the residence;

11 (3) reasonable and necessary engineering and
12 consulting fees;

13 (4) the reasonable expenses of temporary housing
14 reasonably necessary during the repair period;

15 (5) [~~3~~] the reduction in current market value, if
16 any, to the extent the reduction is due to structural failure; and

17 (6) [~~4~~] reasonable and necessary attorney's fees.

18 (h) A homeowner and a contractor may agree in writing to
19 extend any time period described in this chapter [~~(i) The total~~
20 ~~damages awarded in a suit subject to this chapter may not exceed the~~
21 ~~greater of the claimant's purchase price for the residence or the~~
22 ~~current fair market value of the residence without the construction~~
23 ~~defect~~].

24 (i) [~~j~~] An offer of settlement made under this section
25 that is not accepted before the 25th day after the date the offer is
26 received by the claimant is considered rejected.

27 (j) [~~k~~] An affidavit certifying rejection of a settlement

1 offer under this section may be filed with the court or arbitration
2 tribunal. The trier of fact shall determine the reasonableness of a
3 final [~~an~~] offer of settlement made under this section.

4 (k) [~~(l)~~] A contractor who makes or provides for repairs
5 under this section is entitled to take reasonable steps to document
6 the repair and to have it inspected.

7 (l) [~~(m)~~] Notwithstanding Subsections (a), (b), and (c), a
8 contractor who receives written notice of a construction defect
9 resulting from work performed by the contractor or an agent,
10 employee, or subcontractor of the contractor and creating an
11 imminent threat to the health or safety of the inhabitants of the
12 residence shall take reasonable steps to cure the defect as soon as
13 practicable. If the contractor fails to cure the defect in a
14 reasonable time, the owner of the residence may have the defect
15 cured and may recover from the contractor the reasonable cost of the
16 repairs plus attorney's fees and costs in addition to any other
17 damages recoverable under any law not inconsistent with the
18 provisions of this chapter.

19 (m) [~~(n)~~] This section does not preclude a contractor from
20 making a monetary settlement offer or an offer to purchase the
21 residence.

22 (n) A notice and response letter prescribed by this chapter
23 must be sent by certified mail, return receipt requested, to the
24 last known address of the recipient. If previously disclosed in
25 writing that the recipient of a notice or response letter is
26 represented by an attorney, the letter shall be sent to the
27 recipient's attorney in accordance with Rule 21a, Texas Rules of

1 Civil Procedure [~~(e) The inspection and repair provisions of this~~
2 ~~chapter are in addition to any rights of inspection and settlement~~
3 ~~provided by common law or by another statute, including Section~~
4 ~~17.505, Business & Commerce Code].~~

5 (o) [~~(p)~~] If the contractor provides written notice of a
6 claim for damages arising from a construction defect to a
7 subcontractor, the contractor retains all rights of contribution
8 from the subcontractor if the contractor settles the claim with the
9 claimant.

10 SECTION 2.05. Chapter 27, Property Code, is amended by
11 adding Section 27.0042 to read as follows:

12 Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written
13 agreement between a contractor and a homeowner may provide that,
14 except as provided by Subsection (b), if the reasonable cost of
15 repairs necessary to repair a construction defect that is the
16 responsibility of the contractor exceeds an agreed percentage of
17 the current fair market value of the residence, as determined
18 without reference to the construction defects, then, in an action
19 subject to this chapter, the contractor may elect as an alternative
20 to the damages specified in Section 27.004(g) that the contractor
21 who sold the residence to the homeowner purchase it.

22 (b) A contractor may not elect to purchase the residence
23 under Subsection (a) if the residence is more than five years old at
24 the time an action is initiated.

25 (c) If a contractor elects to purchase the residence under
26 Subsection (a):

27 (1) the contractor shall pay the original purchase

1 price of the residence and closing costs incurred by the homeowner
2 and at the cost of transferring title to the contractor under the
3 election;

4 (2) the homeowner may recover reasonable and necessary
5 attorney's and expert fees as identified in Section 27.004(g); and

6 (3) conditioned on the payment of the purchase price,
7 the homeowner shall tender a special warranty deed to the
8 contractor, free of all liens and claims to liens as of the date the
9 title is transferred to the contractor, and without damage caused
10 by the homeowner.

11 (d) An offer to purchase a claimant's home that complies
12 with this section is considered reasonable absent clear and
13 convincing evidence to the contrary.

14 SECTION 2.06. Section 27.007(a), Property Code, is amended
15 to read as follows:

16 (a) A written contract subject to this chapter must contain
17 next to the signature lines in the contract a notice printed or
18 typed in 10-point boldface type or the computer equivalent that
19 reads substantially similar to the following:

20 "This contract is subject to Chapter 27 of the Texas [7]
21 Property Code. The provisions of that chapter may affect your right
22 to recover damages arising from the performance of this contract.
23 If you have a complaint concerning a construction defect arising
24 from the performance of this contract and that defect has not been
25 corrected through normal warranty service, you must provide the
26 notice required by Chapter 27 of the Texas Property Code [~~regarding~~
27 ~~the defect~~] to the contractor by certified mail, return receipt

1 requested, not later than the 60th day before the date you file suit
2 to recover damages in a court of law or initiate arbitration. The
3 notice must refer to Chapter 27 of the Texas[7] Property Code, and
4 must describe the construction defect. If requested by the
5 contractor, you must provide the contractor an opportunity to
6 inspect and cure the defect as provided by Section 27.004 of the
7 Texas[7] Property Code."

8 SECTION 2.07. (a) The changes in law made by this article to
9 Sections 27.002, 27.003, and 27.004, Property Code, apply only to a
10 cause of action that accrues on or after the effective date of this
11 Act. A cause of action that accrues before the effective date of
12 this Act is governed by the law in effect immediately before that
13 date, and that law is continued in effect for that purpose.

14 (b) Section 27.0042, Property Code, as added by this article
15 and the changes in law made by this article to Section 27.007(a),
16 Property Code, apply only with respect to a contract between a
17 contractor and a homeowner that is entered into on or after the
18 effective date of this Act. With respect to a contract that is
19 entered into before the effective date of this Act, the law in
20 effect immediately before the effective date applies, and that law
21 is continued in effect for that purpose.

22 ARTICLE 3. DAMAGES IN CERTAIN ACTIONS INVOLVING RESIDENTIAL
23 PROPERTY

24 SECTION 3.01. Subtitle C, Title 2, Civil Practice and
25 Remedies Code, is amended by adding Chapter 42 to read as follows:

26 CHAPTER 42. DAMAGES IN CERTAIN ACTIONS INVOLVING RESIDENTIAL
27 CONSTRUCTION DEFECT

1 Sec. 42.001. DEFINITION. In this chapter, "residential
2 construction defect" has the meaning assigned to "construction
3 defect" by Section 27.001, Property Code.

4 Sec. 42.002. DAMAGES FOR MENTAL ANGUISH NOT RECOVERABLE.
5 In an action or arbitration, a person seeking damages arising from a
6 residential construction defect may not recover damages for mental
7 anguish.

8 SECTION 3.02. The changes in law made by this article apply
9 only to a cause of action that accrues on or after the effective
10 date of this Act. A cause of action that accrues before the
11 effective date of this Act is governed by the law in effect
12 immediately before the effective date of this Act, and that law is
13 continued in effect for that purpose.

14 ARTICLE 4. EFFECTIVE DATE

15 SECTION 4.01. This Act takes effect September 1, 2003.