

Subchapter A. General Provisions.

§304.1. General Provisions.

(a) Scope.

This chapter describes the minimum standards of performance for the various elements or components of a home as described. Third-party inspectors appointed pursuant to §313.11 of this title will make recommendations for repair or replacement of those elements or components of a home that do not meet these standards during the applicable warranty period based upon the expected level of performance described in these standards for residential construction to which the standards apply. If an element or component of a home is not described particularly in this chapter, the element or component shall be constructed in accordance with any written agreement or, if there is no agreement, in accordance with usual and customary residential construction practices and the element or component shall perform for the purpose for which it is intended for the period of the applicable warranty. All home construction shall comply with applicable Codes.

(b) Effective Date.

The provisions of this chapter shall apply to all applicable residential construction projects that must be registered with the commission pursuant to chapter 303, subchapter B, of this title if the construction commences on or after June 1, 2005. Construction commences on the earlier of the date that the parties enter into an agreement for a transaction governed by the Act or the date that work commences.

(c) Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) ***Adverse effect*** -- A tangible condition that substantially impairs the functionality of the habitable areas of the home.
- (2) ***Builder Responsibility*** -- A statement of the corrective action required by the builder to repair the construction defect and any other damage resulting from making the required repair. Parties may agree to an alternative remedy.
- (3) ***Code*** -- The International Residential Code or, if the context requires, the National Electrical Code.
- (4) ***Electrical Standard*** -- a standard contained in the version of the National Electrical Code (NEC), as follows:
 - (A) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the NEC applicable to electrical aspects of residential construction in the municipality under Local Government Code §214.214 and which is effective on the date of commencement of construction of the home;
 - (B) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the NEC 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 which is effective on the date of commencement of construction of the home; and

- (C) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the NEC that existed on May 1, 2001.
- (5) **Excessive or excessively** -- a quantity, amount or degree that exceeds that which is normal, usual or reasonable under the circumstance.
 - (6) **Exclusion** – items, conditions or situations not warranted or not covered by a performance standard.
 - (7) **Extreme Weather Condition(s)** -- weather conditions in excess of or outside of the scope of the design criteria stated or assumed for the circumstance or locale in the Code.
 - (8) **The International Residential Code (IRC)** -- substantial compliance with the non-electrical standards contained in the version of *the IRC for One- and Two-Family Dwellings* published by the International Code Council (ICC) as follows:
 - (A) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the IRC applicable to non-electrical aspects of residential construction in the municipality under Local Government Code §214.212 and which is effective on the date of commencement of construction of the home;
 - (B) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the IRC applicable to non-electrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located and which is effective on the date of commencement of construction of the home; and
 - (C) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the IRC that existed on May 1, 2001.
 - (9) **Habitable Area** -- a living space as defined in §301.1(14) of this title.
 - (10) **Homeowner Responsibility** -- an action required by the homeowner for proper maintenance or care of the home or the element or component of the home concerned. A homeowner's failure to substantially comply with a stated homeowner responsibility creates an exclusion to the warranty for the performance standard.
 - (11) **Major Structural Components** – the load-bearing portions of the following elements of a home:
 - (A) Footings and Foundations;
 - (B) Beams;
 - (C) Headers;
 - (D) Girders;

- (E) Lintels;
 - (F) Columns (other than a column that is designed to be cosmetic);
 - (G) Load-Bearing portions of walls and partitions;
 - (H) Roof framing systems, to include ceiling framing;
 - (I) Floor systems; and
 - (J) Masonry Arches.
- (12) **Manufactured Product** -- a component of the home that was manufactured away from the site of the home and that was installed in the home without significant modifications to the product as manufactured. Manufactured products commonly installed in residential construction include but are not limited to dishwashers, cook tops, ovens, refrigerators, trash compactors, microwave ovens, kitchen vent fans, central air conditioning coils and compressors, furnace heat exchangers, water heaters, carpet, windows, doors, light fixtures, fireplace inserts, pipes and electrical wires. For purposes of this chapter, a manufactured product includes any component of a home for which the manufacturer provides a warranty, provided that the manufacturer permits transfer of the warranty to the homeowner.
- (13) **Original Construction Elevations** – actual elevations of the foundation taken prior to substantial completion of the residential construction project. Such actual elevations shall include elevations of porches and garages if those structures are part of a monolithic foundation. To establish original construction elevations, elevations shall be taken at a rate of approximately one elevation per 100 square feet showing a reference point, subject to obstructions. Each elevation shall describe the floor. If no such actual elevations are taken then the foundation for the habitable areas of the home are presumed to be level +/- 0.75 inch (three-quarters of an inch) over the length of the foundation.
- (14) **Performance Standard(s)** -- the standard(s) to which a home or an element or component of a home constructed as a part of new home construction or a material improvement or interior renovation must perform.
- (15) **Span** -- the distance between two supports.
- (16) **Substantial Completion** -- the later of:
- (A) the stage of construction when a new home, addition, improvement, or alteration to an existing home is sufficiently complete that the home, addition, improvement or alteration can be occupied or used for its intended purpose; or
 - (B) if required, the issuance of a final certificate of inspection or occupancy by the applicable governmental authority.

(d) **Resolving conflicts among standards.**

When an inconsistency exists between the Code, manufacturer's instructions and specifications, the standard required by the United States Department of Housing and Urban Development for Federal Housing Administration or Veterans

Administration programs, ANSI/ASHRAE Standard (62.2-2003) or the commission-adopted performance standards, the most restrictive requirement shall apply.

§304.2. General Provisions Applicable to all Residential Construction for New Homes, Material Improvements and Interior Renovations.

(a) Builder Responsibilities for Compliance with Performance Standards and Repair Obligations.

- (1) Builder's Work. The builder is responsible for all work performed under the direction of the builder for the period of the applicable warranty. The builder is only responsible for construction defects about which the builder receives notice on or before the second anniversary of the date of discovery of the alleged construction defect but in no event later than thirty days following the applicable warranty period stated in §304.3(a) of this subchapter, unless otherwise expressly stated herein.
- (2) Repair of a construction defect. Any repair shall be performed in a manner and using such materials and methods as recommended by the third-party inspector in accordance with the inspector's duties under §313.14 of this title and consistent with the Code, the performance standard or in accordance with §304.2(a). In the event a third-party inspector determines that a construction defect is present but the inspector does not make a recommendation as to the procedure or method of repair, then the repair shall be in accordance with usual and customary building practices or as agreed by the parties. If the third-party inspector's report is appealed, then any repairs shall be performed in a manner and using such materials and methods as recommended by the appellate panel. If the appellate panel does not make a recommendation as to the procedure or method of repair, then the repair shall be made in accordance with the usual and customary business practices or as agreed by the parties.
- (3) Repair Condition. In connection with a repair of a construction defect, any repairs performed by the builder will include those components of the home that have to be removed or altered in order to repair the construction defect. Repair shall be made so that the condition is returned to its condition as it existed at the time immediately preceding the construction defect.
- (4) Finish. Surfaces altered incident to any repair will be finished or touched up to match the surrounding area as closely as practical. In connection with the repair of finish or surface material, such as paint, wallpaper, flooring or a hard surface, the builder will match the standard and grade as closely as reasonably possible. Builder will attempt to match the finish, but will not be responsible for discontinued patterns or materials, color variations or shade variations. When the surface finish material must be replaced and the original material has been discontinued, the builder is responsible for installing replacement material substantially similar in appearance to the original material.

- (5) Manufactured Products. The builder shall install all manufactured products in accordance with the manufacturer's instructions and specifications.
- (A) The builder shall use only new manufactured products and parts unless otherwise agreed in writing by the parties. If the builder did not install a manufactured product in accordance with the manufacturer's specifications or use newly manufactured parts as required, the builder shall take such action as is necessary to bring the variance within the standard.
- (B) The homeowner shall notify the builder of a known construction defect not later than the second anniversary of the date of discovery of the construction defect or not later than thirty days following the applicable warranty period provided in §304.3(a) of this subchapter.
- (6) Specialty Feature. Notwithstanding a performance standard stated in this chapter, a specialty feature, which is work performed or material supplied incident to certain design elements shown on the construction plans and specifications and agreed to in writing by the builder and the homeowner, shall be deemed to be compliant with the performance standards stated in this chapter so long as all items are compliant with the Code.

(b) Exceptions and Exclusions from Builder's Responsibilities.

- (1) The builder is not responsible for repair, loss or damage to a component or that part of a component of a home caused by or made worse by any of the following:
- (A) Work performed or material supplied incident to construction, modification or repair to the home performed by anyone other than the builder or persons providing work or material at the direction of the builder.
- (B) The negligence, improper maintenance, misuse, abuse, failure to follow manufacturer's recommendations, failure to take reasonable action to mitigate damage, failure to take reasonable action to maintain the residence or other action or inaction of anyone other than the builder or persons providing work or material at the direction of the builder.
- (C) Failure of the homeowner to comply with the homeowner's responsibilities as set forth in subsection (c) of this section or as may be stated separately elsewhere in this chapter.
- (D) Alterations to the grade of the soil that are not in compliance with the Code or applicable governmental regulations.
- (E) Normal wear and tear or normal deterioration to any component of the home.
- (F) Extreme weather conditions.
- (G) Riot, civil commotion, war, terrorism, vandalism, aircraft, vehicle or boat.

- (H) Fire, smoke or water damage unless such loss or damage is a direct result of a construction defect.
 - (I) Change in the underground water table that exerts pressure on, seeps, or leaks under the home, sidewalk, driveway, foundation or other structure or causes subsidence or sinkholes.
 - (J) Erosion or accretion of soils unless such loss or damage is a direct result of a construction defect.
 - (K) Insects, birds, rodents, vermin or other wild or domestic animals unless such loss or damage is a direct result of a construction defect.
 - (L) The quality and potability of water unless caused by a construction defect.
 - (M) While the home is being used primarily for nonresidential purposes.
 - (N) Use for which the home or the component of the home was not designed.
 - (O) Use that exceeds the normal design loads prescribed by the Code or the engineer of record.
 - (P) Homeowner delay in reporting a known construction defect or failing to take reasonable action necessary to prevent further damage to the home.
 - (Q) For remodeling projects, improvements, alterations or additions to an existing residence where the performance standard cannot be achieved due to an existing condition.
 - (R) Abuse or misuse of a home component or manufactured product by anyone other than the builder or persons providing work or material at the direction of the builder.
- (2) No Actual Physical Damage. The builder shall not be responsible for any condition that does not result in actual physical damage to the home, including, but not limited to the presence of radon gas, formaldehyde or other pollutants or contaminants, or the presence or effect of mold, mildew, toxic material, or volatile organic compound, unless such condition is a direct result of a construction defect.

(c) Homeowner's Responsibilities.

- (1) Home Maintenance. Maintenance of the home and the lot on which the home is located are essential to the proper functioning of the home. The homeowner is responsible for maintenance of the home and the lot on which it is located. The homeowner is responsible for maintenance items described in this paragraph and those maintenance items identified separately in the performance standards set forth in this chapter. Additionally, the homeowner is responsible for ongoing maintenance responsibilities that affect the performance of the home but that may not be expressly stated in this chapter. Such ongoing maintenance responsibilities include, but are not limited to, periodic repainting and resealing of finished surfaces as necessary, caulking for the life of the

home, regular maintenance of mechanical systems, regular replacement of HVAC filters, cleaning and proper preservation of grading around the home and drainage systems to allow for the proper drainage of water away from the home.

- (2) Manufactured Products. The homeowner shall use and perform periodic maintenance on all manufactured products according to the manufacturer's instructions and specifications. The misuse, abuse, neglect or other failure to follow manufacturer's specifications with regard to manufactured products may void the manufacturer's warranty.
- (3) Landscape Planting. The homeowner shall take measures to prevent landscaping materials or plants from contacting the exterior surface of the home and from interfering with the proper drainage of water away from the foundation. The homeowner should not improperly alter the proper drainage pattern or grade of the soil within ten feet of the foundation so that it negatively impacts the home's performance or fails to comply with the Code.
- (4) Humidity or Dryness in the Home. The homeowner should take the following actions to prevent excessive moisture accumulation by:
 - (A) properly using ventilation equipment;
 - (B) preventing excessive temperature fluctuation; and
 - (C) taking any other action reasonably necessary to avoid excessive moisture, dampness, humidity or condensation in the home that may lead to damage due to excessive moisture or dryness.
- (5) Proper Maintenance and Care of Home Components. The homeowner shall properly maintain each component of the home including proper cleaning, care and upkeep of the home. The homeowner shall use home components for the purposes for which they are intended and shall not damage, misuse or abuse home components.
- (6) Self-Help. Upon observation of a circumstance that may cause further damage to the home or a component of the home, the homeowner shall take reasonable action necessary to prevent further damage to the home.

§304.3. Limited Warranties.

- (a) ***Warranty periods.*** The minimum warranty periods for residential construction and residential improvements are:
 - (1) one year for workmanship and materials;
 - (2) two years for plumbing, electrical, heating, and air-conditioning delivery systems;
 - (3) ten years for major structural components of the home; and
 - (4) ten years for the warranty of habitability.
- (b) ***Manufactured Product Warranties.***

The builder will assign to the homeowner, without recourse, the manufacturer's warranty for all manufactured products that are covered by a manufacturer's warranty. Any rights that inure to the homeowner provided under a

manufacturer's warranty are the obligation of the manufacturer. The builder does not assume any of the obligations of the manufacturer resulting from a manufacturer's warranty, but shall coordinate with the manufacturer, suppliers or agents to achieve compliance with the performance standard. If the manufacturer does not comply with the manufacturer's warranty within a reasonable period of time, the builder will make the affected condition comply with the performance standard and seek redress from the manufacturer.

(c) **Workmanship and Materials Warranty and Performance Standards.**

Workmanship and materials in residential construction or residential improvements are warranted to perform to the performance standards that are set forth in this chapter for the minimum period established in subsection (a) paragraph (1) of this section, unless a greater period of warranty is agreed to by the parties.

(d) **Delivery Systems Warranty and Performance Standards.**

Plumbing, electrical, heating and air-conditioning delivery systems in residential construction and residential improvements shall be warranted to perform to the performance standards that are set forth in this chapter for the minimum period established in subsection (a) paragraph (2) of this section, unless a greater period of warranty is agreed to by the parties.

(e) **Structural Components Warranty and Performance Standards.**

Major structural components in residential construction and residential improvements shall be warranted to perform to the performance standards set forth in this chapter for the minimum period established in subsection (a) paragraph (3) of this section, unless a greater period of warranty is agreed to by the parties.

(f) **Warranty of Habitability.**

- (1) All residential construction shall include a warranty of habitability for the minimum period established in subsection (a) paragraph (4) of this section, unless a greater period of warranty is agreed to by the parties.
- (2) The warranty of habitability is a builder's obligation to construct a home or a home improvement that:
 - (A) is in compliance with the performance standards; and
 - (B) is safe, sanitary and fit for humans to inhabit.
- (3) An alleged construction defect under the warranty of habitability must have a direct adverse affect on the habitable areas of the home. The warranty applies to an alleged construction defect that would otherwise have been covered by the limited warranties of §304.3(a)(1) and (2), but arose after the termination of those warranty periods, and the alleged construction defect must not have been discoverable by a reasonable prudent inspection or examination of the home or home improvement within the applicable warranty periods.
- (4) A request to participate in the State-sponsored Inspection and Dispute Resolution Process (SIRP) for breach of the warranty of habitability must be filed with the commission within two years following the discovery of the condition but not later than thirty days after the tenth anniversary of

the effective date of the warranty as determined by subsection (g) of this section.

(g) **Effective Date of Warranties.**

- (1) Unless otherwise provided by a written agreement between the builder and the initial homeowner or by a manufacturer, a warranty period as described in this section for a new home begins on the earlier of the date of occupancy or transfer of title from the builder to the initial homeowner.
- (2) Unless otherwise provided by a written agreement between the builder and the homeowner, a warranty period as described in this section for an improvement other than a new home or for a partially built home, which by agreement between the homeowner and the builder, someone other than the builder will complete, begins on the date the improvement is substantially completed or the terms of the construction contract are substantially fulfilled.

(h) **Exclusive Warranties.**

- (1) The warranties established by the commission in this chapter supersede all implied warranties for new residential construction or residential improvements that commence on or after the effective date of this chapter.
- (2) The warranties established by the commission in this chapter are the only warranties applicable to new residential construction unless a particular warranty is created by a statute that expressly refers to residential construction or residential improvements or is created by any express warranty set forth in writing by the builder.

(i) **Waiver By Contract Prohibited.**

A contract between a builder and a homeowner may not waive or modify to lessen the warranty of habitability or the limited statutory warranties and building and performance standards adopted under this chapter.