

**10 TAC chapter 307,
sections 307.1 - 307.7,
Inspections of Homes in
Areas without Municipal
Inspections**

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**Texas Residential
Construction Commission**

**ORDER FOR ADOPTION OF
CHAPTER 307, SECTIONS 307.1 – 307.7, RELATING TO INSPECTIONS OF
HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS
FEBRUARY 13, 2008 OPEN MEETING**

The Texas Residential Construction Commission adopts new Chapter 307, §§307.3 and 307.5-307.7, as part of Texas Administrative Code, Title 10, Part 7, relating to inspections of homes in areas without municipal inspections, without changes to the text as published in the January 4, 2008, issue of the *Texas Register* (32 TexReg 5265). The Texas Residential Construction Commission adopts new sections 307.1, 307.2 and 307.4 with changes to the proposed text as discussed herein.

The new chapter implements new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038 (Act effective Sept. 1, 2007, 80th Leg., Regular Session), which includes changes to Title 16, Property Code. The chapter provides criteria for the inspection of homes which heretofore were not subject to the inspection codes of a municipality. The requirements of this chapter will result in homes that are in greater compliance with the accepted residential building standards, safer, and with fewer construction defects.

The commission will develop an online system for reporting inspection results. The commission will develop a numbering system that will accommodate a 24 character alpha-numeric identifier that allows builders and remodelers to assign project numbers that can be utilized by fee inspectors to report inspection results. At the time of home registration by the builder, the builder/remodeler will report the project number it assigned to the project so that inspection results and project registration can be associated. If a home registration for a project subject to inspection under this chapter is not associated with inspection results already reported, the builder/remodeler will be given an opportunity to correct any reporting errors before a completion certificate is forwarded to the homeowner.

The commission received a comment regarding the proposed new chapter from Steve Thompson of Damark Homes, Inc. Mr. Thompson expressed concern that the new chapter would introduce more opportunities for conflict between remodeling contractors and inspectors, stating that remodelers already have problems with real estate inspectors who try to force them to bring old residences into compliance with codes when it is not required.

The commission believes that the scope of a remodeling project will determine those elements of construction that must be inspected to ensure compliance with applicable code provisions. Elements that are not part of the remodeling project will not be subject to the inspection requirements. The commission acknowledges that disputes might arise regarding whether a particular element is part of a remodeling project that must be inspected. The commission will make determinations of such disputes on a case-by-case as they arise. In the event that particular types of disputes arise on a recurring basis, the commission may consider further rulemaking to clarify the elements of a remodeling project that must be inspected. Property Code section 446.005, as enacted by the 80th Texas Legislature as part of House Bill 1038, gives the commission specific authority to promulgate rules that establish the elements of a construction project that must be inspected to ensure compliance with applicable code provisions.

The commission made a minor modification to the text of section 307.1 as it was proposed to clarify that for material improvements and interior renovations on existing properties outside areas in which municipal inspections are available, inspections will be required for those listed stages of construction that are within the scope of the project.

The commission received five comments regarding the proposed new chapter from Ned Munoz on behalf of the Texas Association of Builders (TAB). The first comment addresses section 307.2 of the new rules related to windstorm insurance compliance inspections. Mr. Munoz expresses concern with the requirement in section 307.2 that, for residential construction in an unincorporated area in which windstorm coverage is available under Insurance Code chapter 2210, a builder or remodeler must obtain a certificate of compliance for the structure in the manner provided under Insurance Code section 2210.251, pursuant to the Texas Department of Insurance regulations. Mr. Munoz asserts that Property Code section 446.006(b), as enacted by

House Bill 1038, only requires a builder to obtain a certificate of compliance for the structure if the builder is required to do so by statute, and argues that there is no statutory requirement requiring builders to obtain a certificate of compliance for all homes in unincorporated areas. He suggests a revision of the proposed text of section 307.2 that would require a builder or remodeler to obtain a certificate of compliance for the structure only if required to do so by statute. To the extent that it is unclear that a builder is only required to obtain windstorm certification if it is required by the Act, the commission has made the requested change in 307.2 and 307.4.

Mr. Munoz' second comment relates to the 24-character alpha-numeric identifier that is referenced in the preamble to section 307.4 of the new rules as part of the reporting system for residential construction projects in unincorporated areas. Mr. Munoz states that TAB has received comments from some of its members that a 24-character identifier is too long and should be shortened. He asks the commission to keep this in mind as it develops the numbering system.

Prior to publishing the proposed chapter 307 rules, the commission received comments from the building industry at a public meeting. Industry members repeatedly expressed concern that the commission's project numbering system allow the builder or remodeler to use whatever project numbering system it currently used so that new numbering systems would not have to be created. With that in mind, the commission determined that it would provide enough character spaces to accept most project numbering systems. The rule preamble is not intended to suggest that each project will have to have a 24-character alpha-numeric identifier, but that the commission's system will accommodate up to 24 characters. Therefore, a builder or remodeler may use shorter project numbers if they so desire. The preamble language in this order reflects this intent.

Mr. Munoz' third comment is that section 307.4 of the new rules should not require that a certificate of compliance number be provided to the commission unless a certificate of compliance is required by statute, and reasserts his first comment regarding section 307.2 of the new rules as discussed above. The commission has modified section 307.4 as discussed above. The commission declines to make a change regarding the language for the alpha numeric identifier for the reasons stated in its response above to Mr. Munoz' first comment.

Mr. Munoz' fourth comment relates to the provision in section 307.5 of the new rules that, within 30 days following the registration of a home subject to the inspection provisions of chapter 307 of the rules, the commission shall issue a certificate of completion to the homeowner and the builder, if the inspection reports have been timely received. Mr. Munoz claims that the 30-day period is too long, that it will cause problems with closings of residential transactions, and that it will lead to an increase in the filings of mechanic's liens because construction funds will not be disbursed until the certificate of completion is issued. Mr. Munoz suggests that the certificates of completion be issued by the commission simultaneously with the registration of the home and the fee inspector's satisfactory inspection report.

Section 307.5 of the new rules tracks the language of Property Code section 446.002 that provides the commission 30 days to issue certificates of completion following registration of a home pursuant to Property Code section 426.003. Furthermore, the commission believes that "completion" in the context of this code section refers to a compliance with the inspection requirements. Thirty days is a reasonable deadline for the commission's staff to review the inspection reports and registrations of homes that are subject to the inspection requirements of Property Code section 446.002. It would be impossible for the commission to simultaneously issue certificates demonstrating compliance on the same date that inspection reports and home registrations are received due to the large volume of home registrations that the commission receives on a daily basis. Section 307.5 does not provide that the commission will take 30 days to issue the certificates of completion in all cases, only that it will have this period of time to issue a certificate of completion if circumstances warrant it. Certificates of completion will be issued as timely as permitted, and the commission anticipates that the amount of time that it takes to issue a certificate of completion will fluctuate depending on the number of filings it receives per period. This being the case, the commission believes that a 30-day period provides necessary flexibility to the commission staff to process the large volume of filings it receives and will receive under the new chapter without unduly prolonging closings. Therefore, the commission will not make changes to the text of section 307.5.

However, the commission will provide that the inspector who submits an inspection report will receive verification that the report has been provided as required by this section. The inspector can provide that verification to the builder to demonstrate that compliance with this chapter is complete.

Mr. Munoz' fifth comment relates to the preamble to the new chapter, in which the commission states the builder or remodeler will be given an opportunity to correct any reporting errors with regard to new inspection requirements. Mr. Munoz comments that TAB commends this, but requests that the commission adopt a formal right-to-cure procedure within the rules, and suggests that the commission delay the adoption of the new chapter until a right-to-cure procedure is added.

The commission believes that procedures regarding this issue are established in section 307.5(b) of the new chapter. Section 307.5(b) provides that, if the required inspection reports have not been received when a home is registered, the commission will issue a letter notifying the builder and homeowner that the registration was received but that the commission records do not show compliance with the statutory inspection standards for code compliance. It will be up to the builder or remodeler in such a case to effect a cure. The commission believes that section 307.5(b) as proposed has a sufficient procedure to address those situations in which a builder or remodeler must cure a particular inspection problem. The commission remains free to amend its procedure in the future if the need arises. Accordingly, the commission will not delay the adoption of new chapter 307.

The commission also received comments from Rick Herzberger representing Bureau Veritas. Mr. Herzberger suggests that the commission modify section 307.3 to require fee inspectors to show particular qualifications in order to act as fee inspectors under Property Code subtitle F. He further recommends that the commission create a list of approved county fee inspectors. Mr. Herzberger expresses Bureau Veritas's concern that, as written, all fee inspectors will not have the qualifications currently required of municipal building inspectors and thus the inspections provided under subtitle F will not be of the same quality of those performed by municipal inspectors. The commission declines to adopt these suggestions because the statute provides that any of the professionals listed in section 307.3(a) are qualified to perform the required inspections.

In addition, Mr. Herzberger requested modifications to section 307.1, noting that municipalities have five inspections to enforce the International Residential Construction Code, the National Electric Code, plumbing and mechanical codes and the International Energy Conservation Code. Mr. Herzberger reads the intent of subtitle F to replicate municipal inspections in areas in which municipal inspections are not available.

The commission declines to modify the rule as a result of Mr. Herzberger's comments. Section 307.1 provides for inspections at three separate stages of construction. It does not address the matters that will be inspected. The commission intends to address those issues through a uniform reporting format, which will be adopted pursuant to these rules.

The new chapter is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code.

The new rule is proposed to implement Property Code §408.001 and House Bill 1038.

No other statutes, articles, or codes are affected by the proposal.

IT IS HEREBY ORDERED by the Texas Residential Construction Commission that 10 TAC §§307.1-307.7, relating to inspections of homes in areas without municipal inspections, is adopted without changes to the proposed text. These rules are effective twenty days after filing with the Secretary of State.

ADOPTED BY A MAJORITY OF THE COMMISSION IN A DULY POSTED OPEN MEETING OF THE COMMISSION HELD IN AUSTIN, TEXAS, ON THE 13TH DAY OF FEBRUARY, 2008.

Patrick Cordero, Chairman

Date

Chapter 307. Inspections of Homes in Areas Without Municipal Inspections.

§307.1. Code Compliance Inspections Required.

(a) A builder or remodeler who enters into an agreement with a homeowner for a transaction governed by the Act and a home located in a geographic area of the state that is not subject to municipal inspection must hire a qualified fee inspector to inspect the construction for applicable code compliance as required by this chapter.

(b) A builder may use the same or a different fee inspector for the inspections required under this chapter.

(c) For new home construction subject to the inspection requirements of this chapter, a fee inspector shall conduct inspections of the construction project for compliance with the applicable codes at the following stages of construction:

(1) the foundation, prior to the placement of concrete;

(2) the framing and mechanical systems prior to the installation of insulation, wall board or other wall covering facing the home's interior; and

(3) the home upon substantial completion and if not occupied, prior to occupancy.

(d) For improvements to an existing home, a fee inspector shall conduct inspections for code compliance, as applicable, at the following stages of construction if those stages are included in the scope of the construction project:

(1) the foundation, prior to the placement of concrete;

(2) the framing and mechanical systems prior to the installation of insulation, wall board or other wall covering facing the home's interior; and

(3) the home upon substantial completion and if not occupied, prior to occupancy.

(e) When conducting inspections under this chapter, fee inspectors will utilize forms promulgated by the commission to record their findings and conclude whether the construction is code compliant.

§307.2. Windstorm Insurance Compliance Inspections.

For residential construction in an unincorporated area in which windstorm coverage is available under Chapter 2210, Insurance Code, if required by statute a builder or remodeler must obtain a certificate of compliance for the structure in the manner provided under §2210.251, Insurance Code, pursuant to the Texas Department of Insurance regulations.

§307.3. Qualified Fee Inspectors.

(a) To serve as a fee inspector under this chapter, an individual must be one of the following:

- (1) a professional engineer licensed by the Texas Board of Engineering;
- (2) an architect registered with the Texas Board of Architectural Examiners;
- (3) a professional inspector licensed by the Texas Real Estate Commission; or
- (4) a third-party inspector registered with the commission under chapter 303, subchapter C of this title.

(b) The license or registration issued by one of the state governmental bodies listed in subsection (a) of this section must be in an active status of good standing with the issuing body at the time of hire, for the individual to be eligible to serve as a fee inspector under this chapter.

§307.4. Reporting.

(a) The commission will create a unique project numbering system utilizing a builder's registration number for builders and remodelers to assign to each new residential construction project that is subject to the inspection requirements of this chapter. The commission will use the unique project number to track the inspections reported on each project.

(b) A fee inspector who conducts an inspection pursuant to §307.1 of this chapter will:

- (1) obtain a unique password from the commission in order to report the satisfactory completion of each inspection performed pursuant to this chapter to the commission; and
- (2) report the completion of the inspection using the assigned project number provided by the builder or remodeler via a commission-provided secure Web portal;

(c) Individual fee inspectors who are unable to submit inspection results via the commission's secure Web portal may submit a written request for a waiver. The commission will provide an alternate method for reporting inspection information.

(d) When registering a home subject to the inspection requirements of this chapter, a builder or remodeler will provide the unique project number it assigned to the property and provided to the fee inspector and, if required by statute to obtain a certificate of compliance under §307.2 of this chapter, will report the WI-8 certificate number at the time the home is registered.

§307.5. Certificate of Completion.

(a) Within 30 days following the registration of a home subject to the inspection provisions of this chapter, the commission shall issue a certificate of completion to the homeowner and the builder, if the inspection reports have been timely received.

(b) If the required inspection reports have not been received within 30 days following the registration of a home subject to the inspection provisions of this chapter, the commission will issue a letter notifying the builder and homeowner that the registration was received but that the commission records do not show compliance with the statutory inspection requirements for code compliance.

§307.6. Compliance Audits.

(a) At least annually the commission will conduct random compliance audits of home registration records for residential construction projects subject to this chapter.

(b) A builder or remodeler will maintain inspection records showing proof of compliance with the inspection requirements of this chapter for a period of five years following home registration under chapter 303, subchapter B of this title.

§307.7. Failure to Comply with Inspection Requirements.

A builder or remodeler who fails to comply with the inspection requirements of this chapter will be subject to disciplinary action pursuant to the provisions of chapter 305 of this title.