



# “Your



# HOME MATTERS”

Have You Been HADD?

A Newsletter brought to you by the Volunteers of Homeowners Against Deficient Dwellings Jan 2005

## President’s Message

*The TRCC’s foundation is flawed.*

After two years the Texas Residential Construction Commission has proven to be of little help to homebuyers with a construction defect. Many of the problems are a direct result of provisions in the originating bill, HB730, passed in the 78<sup>th</sup> session and will require changes by our elected officials. It is hoped that these changes will be considered and legislation sponsored during the 79<sup>th</sup> legislation session to correct the foundation of the TRCC.

The building industry, of course, have stated it is too early to suggest changes, but the facts based upon surveys of homeowners who have used the services of the TRCC, say otherwise. Consumers cannot wait for two more years to change the TRCC. This only guarantees two more years of failed policies.

***We are asking for help from all Representatives and Senators and will be willing too discuss these suggestions in detail at their convenience.***

In this issue HADD has provided suggestions on how to fix the TRCC so it will provide the protection for consumers as promised by the homebuilding industry.

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## Recommended Changes to the TRCCA

*Leveling the foundation of the TRCC.*

Although HADD was given a much-appreciated opportunity to help with the drafting of the standards and policies, many of our comments could not be considered because of the wording in HB730. We believe the suggestions below concerning the TRCC’s policies, warranty standards, and arbitration is common sense and should be considered.

- The TRCC lacks any enforcement of the results of the third party neutral inspection process. Even after a lengthy appeal process the TRCC cannot hold the builder to the recommended repairs suggested by the inspector.
- The State Sponsored Inspection and Resolution Process (SIRP) should be free for the consumer. Currently the cost ranges from \$350-\$700 just for the filing fee. This does not include any “experts” the homeowner has hired to prove the defect.

- The SIRP Process applies only to the homeowners. If a builder decides to force the consumer into arbitration, they are not required to follow the SIRP process.
- The right to discovery applies only to the builders. The homeowner, as part of the SIRP, must provide all evidence of a defect to the builder, but the builder does not have the same requirement.
- Repeal of the Residential Construction Liability Act (RCLA) since the TRCCA is a duplication of the RCLA.
- Balancing of the Commission. The Commission has a lack of consumer representation.
- The abuse of arbitration in new home contracts. This is a very serious problem considering that four studies have been conducted on the issue yet no action has been taken. Arbitration should always be an alternative, but never mandated by the building industry.
- The warranty standards are too restrictive allowing for cracks in the walls, ceilings, tile, and bricks in just the first year. The standards should provide basis coverage for at least 5 years.

Based upon surveys of homeowners who have been through the process and homeowners with construction defects, these changes are necessary and should be considered as soon as possible.

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## Arbitration Update

*It still isn't pretty*

### Interim Study on Arbitration

The Senate Jurisprudence Committee held a hearing on the abuse of arbitration specifically concerning the American Arbitration Association. This hearing as the three hearings before focused on the homebuilding industry with invited testimony from the homebuilding industry, the TRCC, and from HADD. The Executive Director of the TRCC was hammered on why the arbitration task force, created by the TRCC, lacked any consumer representation. After the hearing four representatives from the consumer side of the issue were added to the task force.

Their report, although lacking in many aspects can be found at

<http://www.trcc.state.tx.us/publications/050104%20Arbitration%20Report.pdf>

### Another Study by the TRCC

The TRCC's arbitration task force issued their study on arbitration. It is very well written and includes a report from Texas Watch. The report can be found on the TRCC's website at <http://www.trcc.state.tx.us>.

### KB Home changes arbitration rules for owners.

In December of 2004 KB Home notified their owners that all arbitrations would be paid for entirely by KB. They also made the process non-binding, as dictated by the Federal Trade Commission consent decree in



1979. The arbitration process is still mandatory, but it is free and non-binding. Unfortunately this applies only to homebuyers who choose KB's 10-year warranty. KB offers homebuyers a 12-year warranty that includes a binding arbitration clause. It is still mandatory and free, but it is binding.

The fact KB now has a process that is free and non-binding shoots huge holes in the building industry's argument that arbitration is not a costly definite process. If one of the largest, if not the largest builders

in America can make the arbitration process free and non-binding, then why can't the entire building industry follow?

A letter to all KB homeowners can be found at <http://www.hadd.com/kbletter.pdf>

### **Perry Homes did not honor arbitration award**

In many hearings the builder's attorneys claim that arbitration is “final” implying that long drawn out appeals are eliminated, as if this is good for the consumer.

Yet, in Dec 2002 Perry Homes lost in arbitration and as of today has not paid the award. The homeowner in this matter received approximately \$750,000, \$250,000 for repurchase of the home, \$250,000 for punitive damages, and \$250,000 for pain and suffering.

We are not aware of the details of the defects since it is a private matter, but regardless of the details, the fact remains, the award has not been paid and Perry Homes is using every legal maneuver to delay payment.

Again this shoots huge holes into the claim that arbitration is “final”. The arbitration award can be found at <http://www.hadd.com/documents/perry.pdf>.

### **David Weekley in the Supreme Court again**

David Weekley Homes attempted to hold the young children of an Austin couple to an arbitration clause for a personal injury claim. This case was settled before oral arguments were to be held in 2004, but there is yet another case with the same issues pending in the Texas Supreme Court. The homebuilding industry led by David Weekley is attempting to hold everyone, even those who have not signed the agreement to the use of arbitration even for personal injury awards. This case had oral arguments in late 2004 and a ruling is expected in 2005.

If history is any indication of how this will be resolved, the decision is expected to be against the consumer. Details can be found at <http://www.supreme.courts.state.tx.us/ebriefs/04/04011902.pdf>

### **Citizens of Frisco, Texas**

There is a grassroots drive to force homebuilders to disclose the details of arbitration and allow the homeowner to decline the mandatory arbitration clause in the new home contract. The building industry as well as the Texas Residential Construction Commission is very concerned about this initiative that will be voted upon in the near future. Again, if arbitration was as fast, fair, and inexpensive as the building industry claims, then they should not be afraid of this initiative. This again puts huge holes in the claim that arbitration is fast, fair, and inexpensive. If this were the case, why would they be afraid of disclosing this to the consumer?

Unfortunately, after collecting the required number of signatures, the Frisco City Council has yet to put this on the ballot.

Details can be found at

<http://www.takebackyourrights.com>

## **Cleanup Texas Politics**

*They're rich and what they are doing to Texas is filthy.*

According to Cleanup Texas Politics, Homebuilders in Texas gave at least \$8,985,619 in identifiable contributions to state candidates, parties, and PACs over the last four years. In the 2004 election cycle (not including contributions made on or after election day), the homebuilders' PACs and executives gave \$3,976,086 to state executive and legislative candidates, political parties and PACs.

Only in Texas can a builder donate \$7 million to state officials, get his Senior Vice-President and Corporate Council appointed to the Residential Construction Commission, and then claim money has no influence in politics.  
-John Cobarruvias, Homeowners Against Deficient Dwellings

The ever-generous Bob Perry of Perry Homes leads the way with \$3,177,250 in 2004 and \$3,720,000 in 2002. Cleanup Texas Politics will attempt to reign in the big donors by passing a campaign finance reform bill. To view the entire report “Homeowners Left out

in the Cold", visit  
<http://www.cleantexaspolitics.com>

To connect the dots between the builders, Governor Perry and others, read the following article by Rick Casey of the Houston Chronicle.

## Power tale: Mugging Dr. Welby

By RICK CASEY

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A recent study showing that homebuilders have contributed \$9 million to state officials in the past four years raised a simple question.

What are they getting for their money?

The Austin-based reform organization that conducted the study, Campaigns for People, accused legislators of responding by setting up the Texas Residential Construction Commission.

The reformers say this commission, headed by gubernatorial appointees, most of whom have ties to the industry, is a cruel hoax on homebuyers.

[You can read the complete story at the Houston Chronicle Website at <http://www.chron.com/cs/CDA/printstory.mpl/metropolitan/casey/3025506>

You can write to Rick Casey at P.O. Box 4260, Houston, TX 77210, or e-mail him at [rick.casey@chron.com](mailto:rick.casey@chron.com).

## Closing Thoughts

### Insurance Commission Declines a 3<sup>rd</sup> Term.

First the good news: Texas Insurance Commissioner Jose Montemayor will not seek a third term and will resign at the end of his current appointment.

Now the bad news: With Montemayor gone, no one will be held accountable for the record breaking insurance rate increases over the last 3 years.

Montemayor reigned over the worst legislation session in history for consumers. While insurance reforms, which provided the industry with plum concessions, were being passed, insurance rates across Texas doubled, tripled, and many lost coverage on mold, foundation, water, and sewer damage. At the very least for the consumers, Montemayor will not be able to preside over medical insurance reform.

HADD hopes a new Commissioner will be appointed that will represent all Texans, not just the insurance companies.



### Protesting Continues Against Tremont Homes

Mrs. Jordon, Fogal of Houston, continues to protest Tremont Homes for non-disclosure of defects among other things. Many articles have been written on Mrs Fogal on especially is in the Houston Chronicle "Owners, builder in standoff over home" at the following:

<http://www.chron.com/cs/CDA/ssistory.mpl/thisweek/zone08/news/3007893>

## A Homeowners Story

Allowing the homebuilding industry to advocate for the consumer is like a convicted mugger advocating for victim's rights. A case in point is the homebuilding industry praising the Texas Residential Construction Commission's defect resolution process. They have no credibility when discussing this issue. I should know. I was one of the first to go through the process.

Like many homebuyers, my family and I sacrificed and saved to purchase our "American Dream" only to be subjected to a nightmare of a costly, time consuming, bureaucratic process, created by the state legislature who created an agency with no enforcement power. And after a year of this process, we are still in the "negotiations" phase with our builder to repair our home.

After my builder's repairs failed and construction defects began occurring on a regular basis in my new home built in 2003, I applied for the TRCC's "State Sponsored Inspection and Resolution Process" (SIRP). At the time, our defects were popping up like the shingles on our roof.

The builders have a very simplistic view of the process. Yes, the homeowner has the opportunity to have an independent third party inspector verify the defects as a means to mediate the problem, but that is not the full story. The process is so complicated it requires an attorney to maneuver through the timetables and legal pitfalls. I spent hours and hours on the phone and reading the rules to make sure we didn't miss a deadline or forget to supply reports or "evidence" which could lead to a delay in the process. The processing fee is \$350, not to mention the \$30 registration fee borne by the homeowner, and the time to complete the inspection process could take up to 4 months or more.

More important, after spending the time and money to complete the process, including any appeals, the TRCC has absolutely no authority to direct the builder to make the necessary repairs as per the recommendations of the third party inspector. Instead the homeowner must now enter the "Residential

Construction Liability Act" or "RCLA", which also stands for "Requires Competent Legal Assistance". This is also a very complicated process that requires months of preparation. With all this bureaucracy, where is the incentive for the builder to repair our home?

So after subjecting myself to this process at a great expense to my family's financial and mental health, my home still has the defects with no end to our "negotiation" process. To add insult to injury, I have learned I cannot sue the builder, but instead must be subjected to arbitration, a process that has been the subject of four investigations including one by the TRCC. And as if this is not enough, few if any attorneys are willing to take my case. Yet the building industry claims the TRCC is "evenhanded"? Where is the protection in the single largest investment an American will make at any given point and time?

On a positive note, my appreciation of the TRCC staff is enormous. They do their job well, return calls, answer questions, offer a sympathetic ear, and point you in the right direction. The service I received was greatly appreciated. The TRCC has a lot of growing pains to go through and I wish anyone attempting this process the best of luck.

As for my builder, one can hope we will be able to reach a resolution.

"Ms Brooks is one of the first consumers to attempt to use the TRCC's mediation process. As a result of this ordeal is now a new member of Homeowners Against Deficient Dwellings"

Mindy Brooks, Fort Worth Texas

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