

Advantages of buying an Existing versus a New Home in Texas

Buying a home can be exciting but can also be risky and financially devastating. The decisions are complex – legally, financially and technologically – so smart buyers rely on the expertise of trusted advisors, including licensed professionals such as a realtor, real estate inspector and attorney. One of the first decisions is whether to buy an existing home or a new one.

Texas laws unfortunately give consumers more protection when buying existing homes than when buying new. Until this imbalance is corrected, it will remain safer to buy older homes, and demand for new homes will suffer. Here are some of the reasons why:

EXISTING HOME

Realtors are Licensed.

The Texas Real Estate Commission (TREC) assists and protects consumers of real estate services, thereby fostering economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

Real Estate Inspectors are Licensed.

TREC requires education, experience and liability insurance to become a real estate inspector. Inspections cover conditions that are present and visible but often unnoticed by buyers. They don't cover unseen structural elements that can cause problems later, such as what's behind walls or inside foundations.

State-approved Sales Contracts Protect Buyers.

TREC helps protect the public by requiring the use of State-approved contract forms for any agreement that binds the sale, exchange, option, lease or rental of real property and defines the legal rights of all parties. Licensees may only fill in the blanks provided and may not add to or strike standard wording.

Full Disclosure is Required.

TREC requires the seller to disclose the known condition of the property, including soil conditions, foundation, roof, ceilings and walls, water penetration, aluminum wiring, termites, range, oven/microwave, dishwasher, disposal, water heater, central A/C, security system, smoke detectors, intercom, plumbing, pool/spa, and garage door openers.

Home Warranty is an Option.

The Sellers's Disclosure of Property Condition is not a substitute for any inspections or warranties the purchaser may wish to obtain. Consumers can buy home warranty insurance to cover appliances and systems. Terms vary, but these policies generally don't cover more expensive problems that can occur in foundations and other structural elements.

Buyers have Flexible Legal Remedies.

If complaints are filed against licensed professionals, their license can be revoked. In addition, homeowners have various other options for resolving disputes with sellers, realtors, inspectors, attorneys, or title & mortgage companies, including mediation, arbitration and civil suit.

NEW HOME

Home Builders & Remodelers are NOT Licensed.

The Texas Residential Construction Commission (TRCC) was abolished in 2009 because it "did more harm than good." It gave buyers a false sense of security by only registering builders and remodelers. Without licensing, the agency couldn't ensure that builders were capable or honest and couldn't effectively weed out bad builders or help consumers find good ones.

Home Building Code Inspectors are NOT Licensed.

Code inspectors need to know building science and ideally should monitor the construction process from one stage to another. But unfortunately they are not licensed or regulated and may have long-established builder relationships.

TAB-provided Contracts Favor Builders.

Texas Association of Builders (TAB) offers a Contracts Package that can save members thousands of dollars in attorney fees. It includes mandatory Binding Arbitration clauses that generally are nonnegotiable and block homeowner access to courts. These provisions protect builders rather than homeowners.

Disclosure is Not Required.

Texas does not require builders to disclose construction defects, soil conditions or other known problems. Unscrupulous builders take advantage of this deficiency and do their best to conceal problems. Even when consumers were able to complain to the TRCC and defects were confirmed, the agency lacked the ability to compel builders to fix the problems.

New Home Warranties can have Illusory Terms.

Without the TRCC, the implied warranty of habitability and good workmanship is restored, thus replacing the TRCC's one year warranty for workmanship & materials, which covered most construction defects. Builders, however, can still shift their warranty responsibility to 3rd-party companies with terms and exceptions that make consumer protection illusory.

Buyers have Limited Legal Remedies.

The Residential Construction Liability Act (RCLA) still limits the recovery of damages and expenses, and binding arbitration clauses in sales contracts and warranty agreements still limits access to civil courts and class actions.