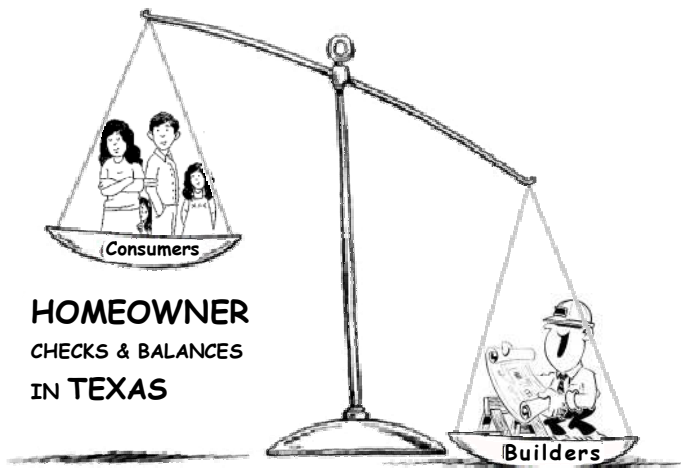


TRCC SUNSET REVIEW

Homebuilding is a top priority this session

The TRCC (Texas Residential Construction Commission) was established in 2003 to reduce lawsuits and oversee parts of the homebuilding industry, with an automatic Sunset scheduled for 9/1/2009 unless approved for an extension and additional funding. Some officials want to kill the agency while others want to fix its problems and turn it into a regulatory agency that protects the public.



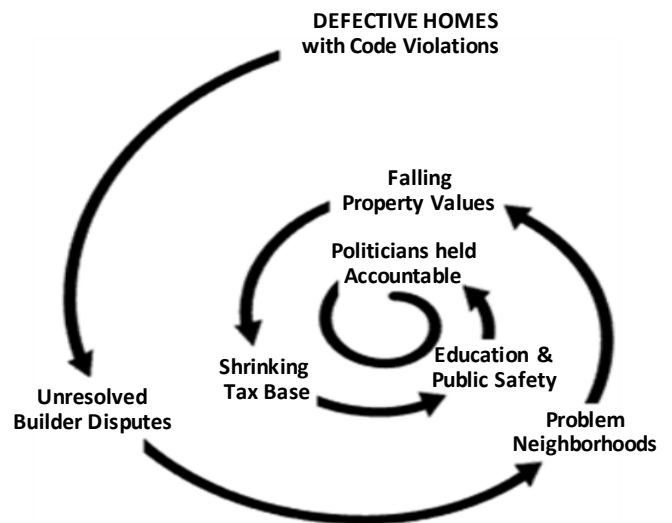
KILL IT: The Sunset Advisory Committee Staff, in a State-mandated review of the TRCC, recommended abolishing the agency, saying it *“fails to provide meaningful oversight and public protection ... is fundamentally flawed ... and does more harm than good.”* And Texas Comptroller Carole Keeton Streyhorn, in an older 2006 study, said, *“If it were up to me personally, I would blast this TRCC builder-protection agency off the bureaucratic books.”* (See back for a summary of Staff recommendations)

FIX IT: The Sunset Commission held public hearings and asked for alternatives that could save the agency. HOT provided testimony, comments and alternatives that include regulation through Licensing. (See back for a summary of our recommendations)

TRCC Unintended Consequences

By superseding DTPA (Texas Deceptive Trade Practices-Consumer Protection Act of 1973) and RCLA (Residential Construction Liability Act of 1989), the TRCC has had the effect of removing builder accountability and replacing it with regulation of homeowners, leaving them with limited access to courts. As a result, lives have been ruined and neighborhoods decimated.

Just as subprime loans contributed to record foreclosures and a global financial collapse, substandard construction impacts more than just individuals and families in your district. It also affects entire neighborhoods, towns, the state, and even the national and global economy.



Texas, with 118,000 single-family housing starts in 2007 (23% of the 776,000 U.S. total per U.S. Census), has become the nation's biggest homebuilding market, partially because of an abundant supply of cheap land & labor, but also because there's no accountability. In fact, Texas provides special builder protections that aren't found in any other State or industry. While 28 other states have licensing authority to keep builders accountable, Texas substitutes registration for regulation, making it a magnet for unscrupulous builders from out-of-state.



The Devastating Effects of Substandard Homes

As an example, Frank and Sandy Bradshaw must abandon their home, walk away from their mortgage and accept the financial consequences, because the home is defective and now unsafe. Built on a post-tension slab foundation that can't handle expansive clay soil, the house is crumbling around them and now filled with toxic mold. The mold exacerbates Frank's respiratory problems and will kill him if he stays, and the TRCC has been powerless to force a fix by the builder, who refuses to buy back the home. Surrounding homes have similar problems, and the relatively new neighborhood is already in decline.

TRCC Sunset Staff Recommendations (HOT Summary)

- **Consumer Distrust:** The report concludes that the TRCC is "*fundamentally flawed*" and should be entirely abolished because it has caused widespread harm to consumers by protecting builders from accountability and failing to protect homeowners while denying them timely access to the courts.
- **Diminished Access to Courts:** A Texas homeowner who has purchased or built a defective new home and cannot get the builder to repair the home is prohibited by state law from suing the homebuilder before first going through the State Inspection & Resolution Process (SIRP). According to the Staff Report, the average time to process SIRP requests is 147 days (about 5 months), and if the homeowner repairs defects while the inspection request is pending, the case is then administratively closed.
- **No Enforcement:** Once the State Inspection Process is complete and a defect is confirmed, the Commission lacks authority to ensure that confirmed defects are repaired. If a builder repeatedly refuses to submit an offer to repair, the Commission can take administrative action against the builder but, so far, the TRCC has not used this authority.
- **No Licensing:** In Texas you need a license to drive a car or catch a fish, and your barber, tow truck operator and tattoo artist need licenses to practice their art, but not your builder. 28 states license homebuilders, including 10 out of 13 southern states. Texas, Oklahoma and Kentucky are the only southern states that don't license homebuilders.
- **Registration is not Regulation:** The TRCC only requires builders to register, and they don't have to prove that they have either a basic knowledge of construction or that they are financially sound. The TRCC was obviously created to protect homebuilders, not homeowners.
- **Inspection Process:** There is no system in place to process urgent cases involving habitability issues, such as water leaks or problems with heating and air conditioning systems or structural components, and since the TRCC opened its doors in early 2004, only 12% of all State Inspection cases have resulted in a satisfactory offer of repair or compensation.

About Homeowners of Texas, Inc.



HOT is a Nonprofit Texas Corporation, formed on May 7, 2008 to achieve legislative reforms that make homebuilders accountable to homeowners. We advocate the development of new statutes and regulations to license homebuilders and remodelers as well as home inspectors, foundation, framing, roofing, flashing and swimming pool contractors in Texas. We also advocate adopting a Homeowners Bill of Rights that would extend the lemon law for automobiles to the purchase and construction of new homes in Texas.

HOT Blueprint for TRCC Reforms

Protect the Public; not the Practitioners

1. **First Do No Harm**, a premise of the Hippocratic Oath.
2. **Rename the Commission** because the TRCC has an image problem and lacks public trust.
3. **Change the TRCC Mission** to actually "protect consumers."
4. **Restructure the Commission** makeup with more public representatives.
5. **Institute a Consumer Rating System** that is "Market-Driven" like AngiesList.com.
6. **Improve Consumer Information** with online access and an automated public information line.
7. **Facilitate Consumer Surveys** by unlocking homeowner data, which has been unavailable, even to public record requests.
8. **Replace the TAB Sales Contract**, which includes an onerous and mandatory Binding Arbitration clause.
9. **Add a Q&A Section** to the TRCC website using Web 2.0 social network technologies.

Prevent Construction Defects (and the disputes they cause)

10. **Require a License** to practice construction trades, and provide the authority to grant and revoke.
11. **Require More Inspections** during the construction process to find and fix problems earlier.
12. **Improve Building Codes** state-wide and revise the Texas Engineering Practice Act to eliminate home exemptions.
13. **Require Geotechnical Soil Analysis** on all sites and/or enforce stronger foundation standards for expansive soils.
14. **Require 10-year Archival** of home and foundation plans by home builders and engineers.
15. **Adopt Best Practices** from states like FL, LA and CA, which established its Contractors License Bureau in 1929.

Help Resolve Conflicts with Flexible Alternatives

16. **Remove Legal Roadblocks.** SIRP adds time & expense and stacks the deck against homeowners, so make it optional.
17. **Promote Alternative Dispute Resolution Options** such as Mediation and Ombudsman.
18. **Require Builders to Carry Insurance** that covers liability and includes workman's comp.
19. **Require Builders to Provide Home Warranties** that are state-approved and insurance-backed.
20. **Establish a Victim Recovery Fund** for unforeseen situations.
21. **Establish a Homeowner's Bill of Rights**, similar to the Lemon Law we have now for cars.