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Homeowners Group Helps Reform State Agency

In this David v. Goliath story, a year old non-profit group takes on an army of high-powered lobbyists for the \$35 billion Texas home building industry

AUSTIN, TX (PRWEB) May 11, 2009 — The Texas House of Representatives passed a Sunset bill (HB 2295) that protects the home building industry more than the public, according to Tom Archer, President of Homeowners of Texas (H.O.T.). Thanks to his new non-profit, the bill is not all that builder lobbyists had hoped for.

The Texas Residential Construction Commission (TRCC) is a state agency that's up for a Sunset review this year, and if legislators don't pass a bill to keep it, it goes away by law. "Abolish the agency" was the overwhelming cry of public testimony and the strong recommendation of an August 2008 Texas Sunset Commission staff report, as well as a 2006 Texas Comptroller's report. But rather than abolish the agency, the Texas Sunset Commission introduced a bill to extend it six more years.

Rep. Ruth Jones McClendon (D-San Antonio) served on the Sunset Commission and sponsored the Sunset bill. In her opening comments she said, *"This is not a bill that builders love."*

Unfortunately, says Archer, the Sunset bill was written by builder lobbyists and attorneys and does little to include reforms that McClendon described in her 5-page *Texas Builder* magazine interview (<http://tinyurl.com/onn2cc>). Instead, the bill is written to *"look consumer-friendly"* while continuing to protect home builders and their agency.

"This 62-page bill was horribly deceptive, convoluted and misleading. It constantly linked to different sections of the bill or to different statutes entirely," he said. *"The only reason for doing that is to hide its true intent, and only an experienced construction law attorney after lengthy study would discover the illusion of reforms."*

H.O.T. participated in the TRCC sunset process from the beginning and developed a thorough understanding of homeowner issues and Texas laws governing residential construction disputes. The group's in-depth analysis of the TRCC Sunset bill led to the introduction of some 22 amendments to protect homeowners. With the help of strong legislative sponsors, 16 of them were adopted.

ADOPTED AMENDMENTS INCLUDE:

- **Reinstate local arbitration.** A provision hidden deep in the Sunset bill would have permitted builders to force consumers to arbitrate disputes anywhere in Texas or in the builder's own state, governed by laws of that state. One of HOT's amendments reinstated local arbitration.
- **Restore judicial review.** The Sunset bill would have prohibited a judge from overturning an arbitration award that is in clear violation of Texas law, if it weren't for another HOT amendment.
- **Remove complaint fee.** If the bill passes as amended, homeowners with construction defects could file a complaint and request a state inspection without first paying today's \$250 or \$350 required fee.
- **Contracts with arbitration.** Contracts with binding arbitration provisions would be required to clearly spell out the fact that homeowners waive their Constitutional right to trial by jury.
- **Approved contracts.** The Texas Real Estate Commission would work with the commission to develop a standard set of contracts, and builders could only use their own contracts if they're first approved. Purchasers could use their own contract without approval.
- **Recovery fund.** Homeowners with court judgments against builders but unable to collect could tap a state fund to recover up to \$175,000.00 in damages, increasing the amount from \$75K in the bill.
- **Disclosure.** Builders would be required to disclose defects and repair actions on homes they buy back and resell.
- **Construction documents.** At closing, builders would be required to deliver copies of blueprints and lot plans.
- **Star Builder.** This good TRCC program was removed in the Sunset bill but reinstated by amendment.

- **Sunset.** A special purpose review of the agency, its management, effectiveness, and ability to implement the changes was initially set for 2013 but reset to 2011 by amendment – 4 years out instead of 6.
- **Mediation.** The bill has a section titled VOLUNTARY MEDIATION. But an analysis of the legal jargon shows that mediation only becomes a homeowner option if a builder requests a state inspection, according to H.O.T. general counsel, Lou McCreary. Because this is so unlikely, the group tried to clarify the language promising voluntary mediation, but that amendment was not brought to a vote. Still, they were able to require that mediation be in the county of the property. Both parties would have to agree to a change in venue, which could have been in another state.
- **Regulatory oversight.** Amendments aimed at regulatory oversight were not brought to a vote, so the bill provides only the illusion of regulatory oversight. It replaces the term builder "registration" with "licensing," but registered builders are automatically granted a license, and "grandfathered" builders don't have to prove they are qualified. Unless this is rectified in the Senate, H.O.T. fears that homeowners would have a false sense of security and unwittingly think that the state is regulating the industry to protect them when it's not.
- **Bonding.** No amendments were heard for bonding, so rather than require a performance bond for each home; builders only need a \$25K surety bond. For a company building 30K homes per year, that's less than \$1 per home.
- **Warranty.** An amendment that would have increased home warranties and statutes of limitations from two years to four was not brought to a vote.

H.O.T. considers Rep. David Leibowitz (D–San Antonio) a homeowner's hero and would also like to thank representatives Garnet Coleman, Jim Dunnam, Jessica Farrar, Abel Herrero, Diana Maldonado, Burt Solomons, and Senfronia Thompson.

Although eight Leibowitz amendments were adopted, he concluded that the TRCC reforms, even with amendments, were moderate and that much more work is needed to protect the public.

"We had an agency that didn't have any teeth," he said. "Now we've given it some baby teeth."

H.O.T. President Tom Archer was happy that his new organization helped to correct some of the more egregious provisions of the bill, but he worries about a political system that allows such deceptive legislation to go undiscovered by legislators and so-called "watch dog" organizations. H.O.T. is now working to make sure that other "land mines" don't make it through the Senate process.

Consumers distrust the TRCC and often call it the "Bob Perry Home Builder Protection Agency," according to Archer. That's because the agency was established in 2003 under laws written by Perry Homes' corporate counsel, John Krugh, to protect builders and remodelers from lawsuits. Krugh was later appointed by Governor Rick Perry as one of the first TRCC commissioners. Since then, Bob Perry has contributed more than \$21 million to political candidates and judges, including the nine Republican justices who make up the Texas Supreme Court, according to Andrew Wheat, research director for Texans for Public Justice.

ABOUT Homeowners of Texas, Inc.: H.O.T. is a 501(c)(4) nonprofit Texas Corporation, formed in May 2008 to make builders accountable to homeowners. H.O.T. has worked to achieve this objective by promoting the legislative and regulatory enactment of residential construction reform, including new laws and regulations to ensure that new construction and remodeling is properly engineered and built to protect homeowners from the devastating consequences of substandard construction. (Call for an interview or see www.trcc.us for details.)

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