

Protect yourself and your new home investment



10 things to know

- 1. Caveat Emptor: Texas is the only growth state that does not regulate homebuilding and protect buyers.** This makes Texas a magnet for unscrupulous builders. Other states have found that builder licensing, along with education and insurance requirements, enhances professionalism and improves quality. (Accountability = Quality)
 - Licensing helps protect people from harm caused by unqualified or dishonest practitioners, which is why we license doctors, dentists, attorneys, engineers, and many other professions. In fact Texans also need a license to catch a fish, and we need both a license and insurance to drive a car. Even our barber or hair stylist, tattoo artist and tow truck operator needs a license. And the person we hire to decorate our homes needs a license. However, the general contractor we hire to build them doesn't, and we find that absurd.
 - To help address the absurdity of this policy, Rep. David Leibowitz (D-San Antonio) introduced HB 2243, which was initiated by HOT, last session. It was designed to replace the TRCC with **builder licensing** through the TDLR (Texas Department of Licensing and Regulation). TDLR has over 100 years of experience licensing professionals in multiple industries and is not subject to industry pressure. The bill, in addition to ensuring competency through education and testing, would have required a performance bond (insurance) for each home. The bond would protect buyers even if the builder skipped town or went bankrupt. The bill also listed a host of violations which, if proven, could cause the builder to have his or her license suspended or revoked. Unfortunately, the bill didn't reach the House floor, but we were still successful in our efforts to abolish the TRCC.
 - Without the TRCC, there are still considerably **more consumer protections for buying existing homes** than for buying new homes, as shown in our [side-by-side comparison](#). This fact may cause some buyers to consider older homes built before 1993 instead of newer ones built after Texas builders started changing the laws in their favor, because the older homes are often more structurally sound, even if they lack some modern amenities, energy-saving features, or access to suburban schools. The structural integrity and shorter commute of older homes near city centers should be weighed against their often smaller size or higher cost per square foot of newer ones in the suburbs.
 - Even when builders take your money and run, there's often no legal recourse for victims. Under our current regime, the Attorney general, district attorneys, and county attorneys are **reluctant to pursue criminal cases**, treating many cases as civil contract disputes. In the rare case where you can prove outright fraud in court and win a judgment against a builder, you may still not be able to recover damages. That's because it's so easy for builders to shield their assets to prevent the victim from collecting the judgment. In such cases it's frustrating to see the builder live in a million dollar ranch house (e.g. [Pete Stucky](#)) while the victim(s) face foreclosure and financial ruin.
 - When your builder hires subcontractors but doesn't pay them, you could end up with Mechanics Liens placed on your home by the subs; and if you don't pay them, they could foreclose on your property.
 - Firing a builder who is not fulfilling his part of the bargain is not easy. Your builder can hold hostage your Interim Construction Loan and demand compensation before enabling another builder to release his lien to the bank. Bank deadlines on repayment can pressure you into compliance, and you may be forced to accept the builder's demands just to get rid of him. Banks often won't wait for the outcome of lawsuits or arbitration, and unscrupulous builders know that and use it to their advantage.
- 2. Even after abolishing the TRCC, the laws and courts in Texas favor home builders, not buyers.** The laws got that way from years of powerful lobby influence of big volume builders, including Houston homebuilder Bob Perry. According to Andrew Wheat, research director for Texans for Public Justice, Perry contributed more than \$21 million to all but six Texas legislators and all nine Texas Supreme Court justices since 2006. *[We have many stories about Bob Perry on our site.]*
 - The Texas Residential Construction Commission, as described in [our TRCC Eulogy](#), was established in 2003 through the influence of big builders to oversee parts of the homebuilding industry and reduce lawsuits. The laws, however, were written without consumer representation; and Mr. John Krugh, senior VP and corporate counsel for Bob Perry Homes, drafted the bill establishing the commission. He was also appointed by Governor Rick Perry as the commission's first chairman. Based on TRCC's own records, reports from two state agencies, and overwhelming public testimony, Texans were worse off with the TRCC.

- HOT opposed builder-written legislation (HB 2295) that would have extended the TRCC for 6 years and worsened the plight of consumers. Instead, we convinced enough lawmakers to abolish the agency and revert back to prior law: DTPA (Texas Deceptive Trade Practices-Consumer Protection Act of 1973) and RCLA (Texas Residential Construction Liability Act of 1989).
 - Even with the TRCC gone (Its legal authority has expired, and it's currently winding down), the legal deck is still stacked heavily in favor of builders. RCLA insulates contractors and warranty companies from many of the consumer protections of DTPA. According to [this report by attorney Cheryl Turner](#), the special interest RCLA legislation was proposed "to encourage the resolution of construction disputes and protect and reward responsive contractors who timely fixed their mistakes." RCLA's objectives, however, "sometimes come at an extraordinary cost to homeowners." RCLA gives contractors the "opportunity to repair" construction defects before litigation. It also caps the amount of damages and limits the classes of damages that can be awarded. RCLA restricts class action suits and the ability to recover legal fees, punitive damages, and consequential damages, such as medical bills for mold-induced health problems due to construction defects. These builder protections apply even if builders "don't make an offer to repair, fail to make a reasonable offer, or fail to perform the agreed-upon repairs in a good and workmanlike manner."
3. **Contracts favor those who write them and often include binding arbitration clauses** such as, "Any dispute that arises between the builder and the purchaser will be decided in binding arbitration." We think it's unconscionable that builders use non-negotiable contracts to force buyers into pre-dispute arbitration agreements, and we're fighting to abolish the practice. Even if your builder refuses to negotiate contract terms, as most do, you should still hire your own legal counsel to help you understand the rights you have retained or have relinquished.
 4. **Expansive soil can crack foundations.** That's why we worked with the Texas Society of Professional Engineers to pass HB 2649, which now requires all Texas homes built on expansive soil to have engineered foundations. Our paper, [Soil Issues for Residential Construction in Texas](#), includes a reference to the US Department of Agriculture's "Interactive Soil Survey" that can tell you about the soil properties around your home. We find it odd that many builders don't use this free resource. They may intentionally not want to know the soil conditions, because pleading ignorance can help them avoid charges of fraud if the home is built on expansive soil.
 5. **Builders can sell homes built on contaminated soil with no liability or duty to disclose**, thanks to the Brownfields Law, which was signed into law early in the GW Bush administration. Examples include HuttoParke and Legends of Hutto – two neighborhoods built on land once used for cotton farming, where arsenic pesticides were used to control boll weevil infestations and (in higher concentration) as a defoliant to make it easier to harvest the cotton.
 6. **Home warranties are often illusory and provide a false sense of security.** The TRCC replaced the implied warranty of habitability with statewide warranty standards that had so many exemptions they were hardly worth the paper they were written on. Presented to buyers at closing as a "thank you" gift, builders have used third-party warranties to shield themselves from accountability and give them another way to force buyers into binding arbitration of disputes. By abolishing the TRCC and the Act that established it, Texas reverts back to the implied warranty. To make sure you don't lose the protection of that warranty, we strongly advise against signing any 3rd party warranty agreement without obtaining legal advice.
 7. **Cosmetics can hide structural problems.** Builders have learned where to cut corners and where not to, and they know how to stage model homes for maximum effect. Scaled-down furniture make rooms look larger, and grass planted where driveways will go makes the lot look bigger. Marble entries, textured walls with rounded corners and crown molding, and granite counter tops with Moën faucets imply quality. But what's behind the walls or under the concrete foundation? The cosmetics say nothing of the materials and workmanship on what counts – the home's infrastructure. Does the home comply with all building codes? How energy-efficient is it? Is it windstorm proof? Are neighborhood utilities up to standards?
 - Since no new home is perfect, it's common to call the builder to make repairs after you move in. We've found that many builders will return for simple, cosmetic repairs during the first month or year after closing the sale. However, they often refuse to take the time or go to the expense of fixing major defects without a fight. That's when they'll usually try to hide behind the laws put in place to protect them.
 - You may view the home as your castle, a peaceful refuge from a busy day, or a place of pride to raise a family of share with friends; but the builder views it as a one-time transaction, and they don't see you as a repeat customer. That's why retailers let your return products for a full refund if they are defective, don't fit, are the wrong color, or whatever, while builders rarely agree to buy-back a home even if it has serious defects. One possible solution to this behavior is a state-wide Lemon Law for homes, but it must require a performance bond for each new home to be viable.

8. **Inspections may not catch code violations, shoddy work, substandard materials, or structural defects.** Building codes are designed to protect the health, safety and welfare of the public, and public inspectors are supposed to ensure that homes are built according to code. But these unlicensed inspectors are often over-worked and driven to provide “rubber-stamp approval” or “drive-by inspections.” With no regulatory accountability or threat of losing their license, they’re naturally beholden to whoever hires them: the cities or the builders themselves.
- We recommend that buyers always hire their own inspectors with contractual authority to mandate repairs during the construction process. Ideally they’d inspect the home at every stage of construction and schedule inspections on their terms – not when builders dictate.
 - We also recommend that engineers involved in designing the foundation be required by contract to be present during the pouring process.
 - For completed homes or existing home sales, hire a Real Estate inspector. Unlike code inspectors, they are licensed (by the Texas Real Estate Commission, or TREC), and they could lose their license if they conceal serious defects and code violations. Unfortunately no one can see what’s inside the walls or concrete foundation once the home is finished.
9. **The Homebuyer Tax Credit artificially inflates home values by about \$8,000**, possibly leaving buyers with more debt than the value of the property. In [Texas Homebuilding and the Global Financial Collapse](#), we argue that inflated home values (the bubble) and the role of builder lobbyists contributed to this mess.
- We find it disturbing that the same housing industry that caused the bubble and economic crash recently pushed Congress to pass an extension of their Homebuyer Tax Credit through June 2010, as long as buyers sign purchase contracts by April 30. Unable to stand on its own, the bill was added as a last minute amendment to a "must pass" unemployment extension bill, which was approved almost unanimously on November 5. The bill’s sponsor, Senator Johnny Isakson (R-GA) is a 30-year realtor. From that perspective, he calls the tax credit a "Housing Stimulus". We call it a “[cash for lemons](#)” program that threatens taxpayers and the economy.
 - We also find it disturbing that the tax credit is encouraging more building, because overbuilding and a glut of supply caused the housing bubble to burst. We haven’t learned, and economically we think the tax credit is irresponsible in times of high unemployment.
 - Because homeownership tends to tie people down, many will consider renting instead. Renting gives people more flexibility to accept job opportunities anywhere. For those of us who own homes, the anticipated increased demand for rental property and over supply of homes for sale will keep prices low or drive them even lower.
10. **Unlike major cities, Texas counties don’t have rule-making authority to control homebuilding.** They can’t establish stronger building codes than the state allows. This means [they can’t require automatic fire sprinklers](#) even though they’ve been proven to save lives and are required in the latest version of the International Residential Code. Counties also can’t establish or enforce zoning laws, and they can’t require builders to get building permits before starting projects. In short, they have no real control over builders or the planning of developments.

Even Home Owner Associations have more power than Texas counties. HOAs can assess fees and impose fines and file liens on amounts owed. They can even foreclose on properties to collect – all with no judicial review or oversight. Imagine losing your home, or having it stolen from you, because you missed a HOA payment.

Dirty Politics in the final days of the legislative session: Below are links to the early and final copies of two bills (House Bill 2833 and Senate Bill 1410) that were introduced as well-crafted legislation with broad-based support. However, in the chaotic final days of the legislative session they were amended by friends of the builders’ lobbyists and were transformed into legislative nightmares. A comparison of the two versions of each bill gives insight into the political dirty tricks of powerful lobbyists and their legislative friends.

- **HB 2833** ([Introduced](#) | [Final](#)) began as a local bill that enabled El Paso County to control the growth and future development of grossly substandard colonias. It ended up as a bill with statewide impact allowing counties to approve only three virtually meaningless inspections that were a carryover from the TRCC. Ultimately this bill did nothing to regulate colonias. The amended bill was approved by the House on a 72 to 71 vote.
- **SB 1410** ([Introduced](#) | [Final](#)) originally amended licensing standards for plumbers but ended up prohibiting Texas cities from protecting their citizens’ health, safety and welfare and adopting requirements for fire sprinklers in new homes after January 1, 2009. This bill was approved by the Senate on the last day of the legislative session.

Two good Wall Street Journal sources are posted on our site:

1. [10 Things Builders Won’t Tell You](#)
2. [10 Things Contractors Won’t Tell You](#)