

Regulatory Oversight and Licensing in Texas

A lack of accountability and regulatory oversight have turned Texas into **the Wild West of homebuilding** beset by rampant fraud and deception. Unscrupulous builders literally have a license to steal because homeowners have virtually no chance of recovering their actual damages. Texas leads the nation in homes built, yet it is the only major homebuilding state that does not license homebuilders.

Good builders struggle when forced to compete against unqualified or unscrupulous ones who cut corners, pass risks onto homeowners, and hide behind a legal and regulatory system that shields them from lawsuits. Since a new home purchase is usually the largest purchase that most homeowners will make in their lifetimes, the consequences of homebuilder fraud and deception are almost always financial disaster for the homeowner.

Builder Licensing versus Registration

The TRCC registration process did nothing to keep unqualified builders from operating or defrauding homeowners. Unfortunately registration was often portrayed as equivalent to licensing, and homeowners received a false sense of security that registered builders were qualified to build homes. The TRCC was abolished because it regulated homeowners instead of builders, resolved only 12% of the complaints filed, protected bad builders and caused financial ruin for thousands of Texas homeowners.

Licensing grants permission to do something that otherwise is forbidden. In most cases, a license is required for engaging in that activity. For instance, a driver's license is considered mandatory for the privilege of driving a car on public roads. Licensing also involves the police power of the state. That is, if one violates the licensing law, either by acting without a license, or failing to uphold the rules governing the license privilege, one is subject to prosecution under civil or criminal laws. **Texans deserve the same protections when buying a new home that they enjoy today when they pay for a haircut or for an operator to tow their disabled vehicle.**

Best Practices

Homeowners of Texas worked with Rep. David Leibowitz of San Antonio to sponsor House Bill 2243 in the 81st Legislative Session. The bill was well crafted using Best Practices from other states and placed licensing authority in the hands of the Texas Department of Licensing and Regulation, a state agency with impeccable credentials that recently celebrated its 100th anniversary. The bill required reasonable levels of liability insurance for all builders and required bonding for each new home built in Texas. It avoided micromanagement by granting rulemaking authority to TDLR and required that all homebuilders pass an exam based on the International Residential Code. The builder lobbyists fought a desperate battle using questionable tactics behind the scenes to keep the bill from reaching the House Floor. HOT will make sure this legislation is re-introduced in the 82nd Legislative Session in 2011.

28 other states license homebuilders, including 10 out of the 13 southern states where most of the home building is occurring. Texas, Oklahoma and Kentucky are the only southern states that don't license homebuilders. California has been licensing builders the longest, since 1929. Arizona has one of the strongest programs, giving builders the ability to check subcontractor licensing status to make sure they're qualified, and giving subcontractors the ability to file a complaint and go after the builder's license and insurance bond if they don't get paid.

Homebuilder licensing works to reduce litigation because an aggrieved homeowner can file an administrative complaint against a homebuilder which can result in the revocation of the homebuilder's license. The threat of revocation will make unscrupulous builders think twice before continuing their dishonest ways. With homebuilder licensing, many of them will leave the profession because they either won't be able to pass the licensing exam, or they will conclude that their opportunity to make ill-gotten gains is gone.

Who to license?

"Every craftsman in Texas should be licensed, not just electric, plumbing and HVAC," as Representative Allan Ritter said during Sunset Advisory Commission TRCC hearings on 9/28/2008.

We agree and believe that licensed builders will naturally encourage other trades to become certified and licensed too. Doing so will make it easier to find qualified and accountable subcontractors they can trust. They'll also want home inspectors licensed, because they know that finding and addressing construction defects early on is better and cheaper than risking code violations that endanger the health and safety of homeowners or the status of their professional license.

Reputable builders support licensing, as we found from interviews during the Texas Association of Builders' Lobby Day at the Capitol. They and practitioners from other professions know that licensing improves work quality and elevates their stature, respect and earning potential. Licensed and skilled practitioners are consistently better prepared to compete than unlicensed ones. Although many unlicensed workers are skilled and reputable too, that's not an excuse for not complying with license regulations.

Education

The TRCC's only requirements for homebuilder registration were that the builder be a legal resident of Texas, at least 18 years old, and "trustworthy." Only 2 hours per year of continuing education was required to maintain registration, and there was no journeyman program, on-the-job training or formal education requirement.

That makes us especially excited that Beaumont, Texas has produced model education programs for construction trades. Lamar University offers a Bachelor of Science degree and Lamar Institute of Technology has an Associate of Applied Science degree program. See [Education helps with homebuilder success and home buyer satisfaction](#).

Insurance

A recent study by [Angie's List Magazine](#) polled 1,300 members found that 90% of them said it was important to hire a licensed contractor, but 75% of them were unfamiliar with state licensing laws or insurance requirements. This puts them at great risk if a serious problem occurs and their homeowner's insurance won't cover it.

The study also found that licensing rules vary by state and there's considerable confusion among the different state and municipal laws regarding contractor licensing. Not everyone – homeowners of contractors – knows the rules; and not everyone plays by the rules

[Angie's List](#) has taken a strong stand against unlicensed contractors and won't let them advertise on the site or win service awards.

Texas Licensing

Here in Texas, you personally need a license and insurance to drive a car. You also need a license to catch a fish, and your barber or hair stylist needs a license to work in their field. So does the tow truck operator, tattoo artist, and interior designer you hire to pick paint colors and arrange furniture. But your homebuilder doesn't need a license, and neither do the trades that installed important structural elements of your home such as the foundation, framing and roof! HOW SICK IS THAT?

Here's a partial list of occupational and professional licenses required by the State of Texas. The Legislature has determined that they are "of a complexity that consumers cannot adequately evaluate the appropriateness of the service or the qualifications of the practitioner."

- **Acupuncturists** ([Texas Medical Board](#))
- **Air Conditioning Installers** ([Texas Dept of Licensing & Regulation](#))
- **Architects & Landscape Architects** ([Texas Board of Architectural Examiners](#))
- **Athletic Trainers** ([Texas Dept of State Health Services](#))
- **Auctioneers** ([Texas Dept of Licensing & Regulation](#))
- **Barbers** ([Texas Dept of Licensing & Regulation](#))
- **Body Piercing & Tattoo Studios** ([Texas Dept of State Health Services](#))
- **CPAs** ([Texas State Board of Public Accountancy](#))
- **Cosmetologists & Manicurists** ([Texas Dept of Licensing & Regulation](#))
- **Dentists** ([Texas State Board of Dental Examiners](#))
- **Doctors** ([Texas Medical Board](#))
- **Drivers** ([Texas Dept of Public Safety](#))
- **Electricians** ([Texas Dept of Licensing & Regulation](#))
- **Engineers** ([Texas Board of Professional Engineers](#))
- **Fishermen & Hunters** ([Texas Parks & Wildlife](#))
- **Interior Designer** ([Texas Board of Architectural Examiners](#))
- **Lawyers** ([State Bar of Texas](#))
- **Massage Therapists** ([Texas Dept of State Health Services](#))
- **Nurses** ([Texas Board of Nursing](#))
- **Plumbers** ([Texas State Board of Plumbing Examiners](#))
- **Realtors & Real Estate Inspectors** ([Texas Real Estate Commission](#))
- **Tow Truck Operators** ([Texas Dept of Licensing & Regulation](#))

So what's the justification of not licensing homebuilders, swimming pool contractors, and framing, foundation, roofing and flashing contractors? There is none.