

## **WHY WE NEED A TEXAS HOMEOWNERS BILL OF RIGHTS NOW**

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The housing industry is in its worst slump in over 50 years, and home ownership is on a downward trend. Our home used to be our best investment, but for many Americans this is no longer true. Millions of Americans have lost their homes, their investments and their jobs. The housing collapse led to the stock market meltdown, huge losses in our retirement plans, and the most serious global recession in decades.

The root causes for this financial calamity lie in misguided government policies that enabled grossly irresponsible behavior to continue unabated for many years. As a result of federal financial deregulation and minimal risk of litigation and accountability by the financial services, homebuilding and real estate industries, millions of American homes were under-built, over-appraised and over-financed, resulting in massive numbers of foreclosures. In short millions of subprime loans were made on millions of subprime homes.

Fortunately, the Texas real estate market has fared much better than its counterparts across the nation because Texas financial institutions made relatively few subprime loans. This conservative lending policy was based on the painful lessons learned from the savings and loan crisis in the late 1980s.

Even though Texas incurred little damage from subprime loans, however, the state has suffered mightily from the problems caused by substandard homes. More new homes are built in Texas than in any other state, yet Texas is the only major homebuilding state in the nation that does not license homebuilders. 28 states license homebuilders, including 10 out of the 13 southern states where over half of the homebuilding occurs across the nation.<sup>1</sup> Homebuilders there are licensed for the same reasons that other professions and occupations are licensed: to protect the public's health, safety and welfare and minimize harm by unqualified or unscrupulous practitioners.

Texas homeowners have virtually no protection against unscrupulous homebuilders and the devastating consequences of financial fraud and major construction defects, even though the

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<sup>1</sup> Sunset Advisory Commission Final Report: Texas Residential Construction Commission, July 2009, p.13, [http://www.sunset.state.tx.us/81streports/trcc/trcc\\_fr.pdf](http://www.sunset.state.tx.us/81streports/trcc/trcc_fr.pdf)

home is the largest investment that most Texans will ever make. And incredibly, Texas licenses the professionals hired to decorate a home but not those contracted to build or remodel it. Many other Texas occupations and trades are licensed, including plumbers, electricians, HVAC contractors, interior decorators, barbers and tow truck operators. Adding homebuilders to the list would provide the needed accountability and almost certainly lead to licensing other trades key to a home's structural integrity and lasting value, such as roofers, framers, and foundation contractors.<sup>2</sup>

Texas Legislation should be introduced to achieve the following three policy objectives:

1. Texas homeowners deserve homes that are **safe, secure and structurally sound**.

**LEGISLATIVE ACTION:**

Introduce and approve a current version of House Bill 2243<sup>3</sup> (sponsored by Rep. David Leibowitz in the 81<sup>st</sup> Legislative Session) in the 82<sup>nd</sup> Legislative Session to require licensing of Texas homebuilders and remodelers by the Texas Department of Licensing and Regulation (TDLR). All general residential contractors would be required to pass a licensing examination on the latest version of the International Residential Code and obtain a surety bond for each home built or remodeled equal to the fair market value of the completed project free of construction defects. Persons engaging in residential construction without a license would be subject to a "Class A" Misdemeanor Offense. Such legislation would improve the construction quality of new homes and help protect homeowners from unscrupulous or unqualified builders.

2. Texas homeowners deserve a **fair way to resolve disputes with homebuilders**.

**LEGISLATIVE ACTION:**

Introduce and approve a current version of Senate Bill 222<sup>4</sup> (sponsored by Senator Royce West in the 81<sup>st</sup> Legislative Session) that would ban compulsory arbitration of disputes, including those related to Texas homesteads. Compulsory arbitration has been imposed on Texans by a series of Texas Supreme Court decisions that run counter to the public policy established in the Act so that it now applies to consumer and employment disputes among parties of grossly disparate bargaining power. Compulsory arbitration undermines consumer rights and is unfair because it is a private system in which arbitrators are not required to be lawyers and have almost total freedom to ignore the law since their decisions are essentially unappealable. In addition it is a system that strips consumers of their constitutional right to a trial by jury, is neither

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<sup>2</sup> Regulatory Oversight and Licensing in Texas, <http://www.homeownersoftexas.org/Bldr.-Licensing.html>

<sup>3</sup> <http://www.legis.state.tx.us/tlodocs/81R/billtext/doc/HB02243I.doc>

<sup>4</sup> <http://www.legis.state.tx.us/tlodocs/81R/billtext/doc/SB00222I.doc>

transparent nor publicly accountable, is heavily tilted in favor of business interests, and forces many consumers to arbitrate claims hundreds or thousands of miles from their homes at additional expense.<sup>5</sup>

This legislation would render all pre-dispute arbitration agreements void and unenforceable that address either employment or consumer purchases of goods, real or personal property, services, money or credit. Its application to disputes involving Texas homesteads is especially critical, since most homebuilders today have contracts and warranty agreements that include compulsory arbitration requirements. It is time to restore Texas homeowners' right to a trial by jury to resolve disputes involving their homesteads, which have been a cornerstone of the Texas Constitution for over 150 years.

3. Texas homeowners deserve to purchase homes **free from conflicts of interest.**

**LEGISLATIVE ACTION:**

Introduce and approve legislation that would prohibit conflicts of interest in the purchases of homesteads. This legislation would restore a critically important system of checks and balances to the home-buying process for Texans. Sellers of homesteads would be prohibited from owning either title, insurance, appraisal or mortgage companies. The ownership of such conglomerates, which constitute a major conflict of interest, led to many of the financial abuses which caused the financial collapse.<sup>6</sup> Home purchasers would also have a 10-day right of rescission, which is necessary for their protection since a home is the largest purchase most of them will ever make.

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<sup>5</sup> Mandatory Binding Arbitration: Unfair & Everywhere, <http://www.homeownersoftexas.org/ARBITRATION-mandatory-binding-unfair-and-everywhere.html>

<sup>6</sup> Texas Homebuilding and the Global Financial Collapse, <http://www.homeownersoftexas.org/collapse.pdf>