

TRCC Eulogy

Homeowners of Texas (HOT) gave homeowners a voice in the legislature to balance the power of special interests. The nonprofit advocacy group scored a stunning victory against the \$35 Billion Texas Home Building industry lobbyists by convincing lawmakers to abolish an abusive agency that the builders created - the Texas Residential Construction Commission (TRCC, pronounced "trick").

HOT also worked with the Texas Society of Professional Engineers to pass a law requiring engineered foundations for homes built on expansive soil.

It's good to see that the general public can still win when given a voice, proper insight, and a winning strategy. We thank all of our allies that contributed to this success.

The legislative battle of HOT versus the Builder's lobby was like *Underdog versus Dr. Simon Bar Sinister*, who put the "mad" in mad science (or "bad" in bad legislation). Evil forces wanted to save the builder-protection agency. They concocted a bill to extend the TRCC for 6 more years, adding provisions that "looked" like new consumer protections, but the bill was actually very bad for consumers. We hosted a mock funeral for the T.R.C.Comish to celebrate its passing on September 1, 2009. Here's the [obituary](#).

HOT "Thank You"

We sincerely thank the homeowners who shared their stories and the Texas lawmakers who prioritized their support of the public over that of industry and voted to disband the TRCC.

As the underdog in a fight against overwhelming odds, HOT stood firm in opposing the TRCC Sunset bill. Rather than truly reform the state agency, **HB 2295** was deceptively written to provide more protection for builders. It would have extended the abusive agency for six more years and caused even more harm to consumers. But thankfully HOT was able to analyze and expose the deception, draft key amendments adopted by the House to fix many of them, and garner enough Senate votes to prevent suspension of the rules that would have allowed a Senate floor vote. Instead of voting to pass a Sunset bill to keep the TRCC, the senators agreed to disband the agency by letting us enjoy a well deserved TRCC sunset.

HOT took on the Texas Association of Builders and its allies and won, but it also had to battle two co-opted consumer groups that functioned as [Astroturf organizations](#). For whatever reason, these groups abandoned their history of TRCC opposition and supported the builder legislation early in the legislative process, even lobbying for the 6-year extension.

HOT submitted an alternative bill (HB 2243) to abolish the TRCC "and" replace builder registration with licensing through the TDLR. The bill would have addressed the cause of construction disputes by preventing bad builders from operating in Texas and by keeping the foxes out of the regulatory hen house. HB 2243, however, never reached a floor vote due to a parliamentary error. HOT says this will again be a top priority next session. 28 states have already followed the approach that HOT proposed, by regulating the homebuilding industry with contractor licensing.

How HOT Helped Abolish the TRCC

HOT alone walked the halls of the Capitol to visit legislators and make the substantive case for defeating HB 2295 and abolishing the TRCC. We alone lobbied the House Calendars Committee with reasons to defeat HB 2295 by keeping the bill from reaching the House Floor until one week before the deadline. We alone proposed a legislative alternative to the TRCC, proving that HB 2243 with mandatory builder licensing was a far superior alternative to the builder-backed HB 2295. We alone proved that the key to winning a legislative victory was not the "compromise" advocated by the Astroturf consumer groups but making the case for abolishing the agency. We alone drafted and proposed consumer-friendly amendments approved by legislative counsel (12 made it to the House floor, proposed by 4 different legislators) when no one else was. We alone proposed two points of order that should have been sustained on the House Floor. We alone successfully explained to 12 key Senators what was wrong with HB 2295 and why it should be defeated. And we alone applied unrelenting pressure against HB 2295 and the TRCC throughout the 81st Legislative Session. In short, we set out to win the legislative battle, and we did.



The TRCC: Not Just Unintended Consequences

The Texas Residential Construction Commission 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***, which superseded DTPA (Texas Deceptive Trade Practices-Consumer Protection Act of 1973) and RCLA (Residential Construction Liability Act of 1989).



- Experimental agency with \$10.6 Million budget (in 2008)
- Mandatory Sunset Review scheduled in 6 years vs. 12
- Failed to protect the public or prevent the root causes of disputes (>29,000 calls in 1Q'09)
- Failed to instill public confidence (just 186 inspections in 1Q'09) and instead caused mistrust
- Disguised builder & home "registration" as licensing and regulatory oversight (misleading)
- Established illusory warranty terms, giving the public a false sense of security
- Blocked access to the legal system through a State Inspection & Resolution Process (SIRP)
 - SIRP was an expensive and time consuming (182 day avg. in 1Q'09) delay
 - Homeowners still needed their own attorney and experts to balance those of builders
 - Just 12% of closed cases had satisfactory outcomes
 - 88% sought other legal remedies after added cost and delays
 - TRCC staff made legally binding dispute resolution decisions without legal training
 - Allowed builders to delay making repairs, often extending past warranty expiration
- Attracted bad builders to Texas, shielding them from lawsuits and true regulatory oversight
- Removed builder accountability with lack of rule enforcement & criminal penalty
- Builders regularly disregarded the TRCC, and half of Dallas remodelers were not registered

Because Texas does not regulate the homebuilding industry, lives have been ruined and neighborhoods decimated; and property values, the tax base, and public service funding have been impacted.

Abolished TRCC now in 1-year shutdown process

The State's sunset provisions allow for a 1-year shutdown process before all assets must be returned, offices vacated, data archived, and employees dismissed or reassigned. At its 6/11/09 meeting, [the TRCC announced](#) a general timeline and action plan related to the implementation of the sunset. Here's [their FAQ](#) and our summary:

- **No new builder complaints** will be accepted after 8/31/09. Direct them instead to your local District Attorney, the Texas Attorney General (www.oag.texas.state.us) or the Federal Trade Commission (www.ftc.gov).
- **Existing complaints and inspection requests** will be handled as quickly as possible following commission rules, and ombudsmen will process post-inspection actions through 8/31/10.
- **No new Home and Builder registrations** are accepted, and the commission no longer shares registration information. Although this sacrifices some record keeping, it eliminates confusion between registration and licensing and the cause of a false sense of security.
- **The Implied Warranty of Habitability is restored**, making it harder for builders to hide behind 3rd party warranties.
- **Direct access to arbitration or a civil suit** is now available to homeowners who can't get contractors to fix warranty items can now opt-out of the SIRP inspection process. The choice of arbitration or civil suit depends on restrictions in contracts and warranty agreements, but consumers are usually forced into binding arbitration, which almost always favors builders.
- **Prior laws**, including RCLA (Residential Construction & Liability Act) and DTPA (Deceptive Trade Practices Act), now cover Construction Defect Complaints. [This paper by Cheryl Turner](#) explains the complex history of RCLA, which insulates contractors and warranty companies from the consumer protections of DTPA. According to 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." Its objectives, however, "sometimes come at an extraordinary cost to the homeowner." RCLA gives contractors an "opportunity to cure" construction defects before litigation, caps the amount of

damages, and limits the classes of damages that can be awarded. Because of amendments added between 1989 and 2003, these builder protections now apply even if they *"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."*

Avoid Four More Years of Homeowner Abuse

February 2nd was **Groundhog Day** and an opportunity for us to poke fun at Texas and its builder-friendly laws. We quietly distributed a [Media Alert](#) that questioned whether legislators would wake up to the light of constituents, or hide behind the shadow of big builders. The alert introduced a "spoof bill" to show what it would be like if all Texas professions, including doctors, nurses and lawyers were "regulated" like the homebuilding industry is.

Our spoof takes Governor Rick Perry's small-government, low-tax, limited lawsuits and "light touch" regulatory policies to new heights. It (1) rescinds licensing and removes barriers for entering once-restricted professions, (2) eliminates business risks by preventing lawsuits, and (3) returns Texas to the "Wild West Land of the Free and Home of the Brave."

If passed, the bill would have promised to lower the unemployment rate by making it easier for unemployed workers to start new careers without first investing the time and money once required for prerequisite education. It would have also lowered the cost of critical services like medical and dental care and legal representation.

The Media Alert pointed to [eight light-hearted posters](#) to promote the [Texas Business Relief and Economic Development Act of 2009](#).

HOT NEWS: Underdog overcomes bully tactics of \$35B industry

- [Vote to abolish TRCC: Consolidated News Coverage](#)
- [HOT press release 09/01/09: Burying TRCC and Next Steps for Helping Frustrated Texans](#)
- [HOT press release 05/28/09: a David v. Goliath story](#)
- [HOT press release 05/11/09: Homeowners Group Helps Reform State Agency](#)
- [Rep. Ruth McClendon's press release re. her TRCC Sunset Bill](#)
- [Home Builders' spin on McClendon's TRCC Sunset Bill](#)
- [TRCC press release: Commission Implements Sunset Provisions](#)

HOT REFERENCE MATERIAL

- [TRCC Act](#) (Title 16 of the Texas Property Code, abolished by 81st legislature)
- [TRCC Sunset Bill](#) (HB-2295)
- [Bill Analysis](#) (HB-2295)
- [HOT Analysis](#) (HB-2295)
- [Legislative Flyer 0](#) (TRCC: The ideal candidate for Sunset)
- [Legislative Flyer 1](#) (TRCC: A Top Priority and the Decision Options)
- [Legislative Flyer 2](#) (Licensing vs. Regulation and protections buying New homes vs. Existing)
- [Legislative Flyer 3](#) (Texas Homebuilding and the Global Economic Collapse, 1-pager)
- [Legislative Archive](#) (supporting information we provided to lawmakers)
- [Blueprint for TRCC Reforms](#) (HOT did the analysis and submitted workable alternatives)
- [Texas Comptroller Report](#) (Carole Keeton Strayhorn calls TRCC "builder protection agency")
- [Sunset Staff Report](#) ("Anything short of true regulation does more harm than good.")
- [Who testified in support or opposition to the TRCC](#) (Lists TRCC Supporters/Detractors)
- [Written Testimony](#) (Written testimony in support or opposition to the TRCC)
- [Oral Testimony](#) (summary of oral testimony, from HOT notes)
- [2-part NPR report](#) (Houston homebuilder Bob Perry Created the TRCC, [funds campaigns](#))
- [Misrepresentations](#) (Texas misleads homeowners by confusing Registration vs. Licensing.)
- [Soillssues.pdf](#) (White paper relating expansive clay soils to foundation failures)
- HOT Advice: [How homeowners can protect themselves](#) without the TRCC.
- HOT Advice: [How builders can protect themselves](#) without the TRCC.