



Homebuilder LICENSING



In Texas you personally need a license to drive a car or catch a fish. And your barber, hair stylist, manicurist and tattoo artist need a professional license to practice their art. But your homebuilder doesn't need a license, and neither do the trades that install structural elements of your home such as the foundation, framing and roof.

According to a recent Texas Sunset Commission staff report, *"Builders are subject to the least restrictive form of regulation – registration."* Instead of registration, Homeowners of Texas advocates licensing, *"the most restrictive form of regulation, generally requiring some level of skill or education and the passage of an examination to demonstrate proficiency."*

Licensing vs. Registration

Registration provides information to the public about the registrant. It does not, however, provide any controls and instead presumes that the activity is permitted by right. If those who register don't follow the rules, then registration may be withdrawn, but one cannot be denied the opportunity to participate in the activity.

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 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.

28 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. One factor behind recent licensing activity is fraud in the aftermath of big storms. Other factors include substandard construction, failure to repair defects, failure to pay subcontractors, builder insolvency, and poor contract management. Licensing helps to protect the public and prevent lawsuits by addressing the root cause of residential construction disputes.

California has been licensing builders the longest, since 1929; and 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.

Who to license?

As Representative Allan Ritter stated at the Sunset Advisory Commission TRCC hearings on September 28, 2008, *"Every craftsman in Texas should be licensed, not just electric, plumbing and HVAC."* That would include builders, remodelers, home inspectors, and foundation, framing, roofing, flashing and swimming pool contractors. We don't accept the argument that "that's too much change to handle at one time, so we won't license anyone." Home inspectors are especially critical since weak enforcement of building codes poses serious health and safety risks, and because unlicensed inspectors are often beholden to builders who hire them and may easily overlook serious defects with impunity. Real estate inspectors, by comparison, are already licensed.

Licensing elevates the stature, respect and earning potential of practitioners in all professions. Licensed and skilled practitioners are consistently better prepared to compete than unskilled or unscrupulous ones.

Although some builders resist licensing and education, TRCC Commissioner Jerry Garcia (a homebuilder) endorses mandatory homebuilder education, saying, *"They have to be educated... and able to read a set of plans."* Prerequisite and continuing education programs should cover building science, technical skills, estimating & proposal writing, project management, business acumen, and ethics & legal topics. This preparation will improve the quality and longevity of their work and help ensure their future success.

License Administration

The Texas Department of Licensing and Regulation (TDLR) is well suited to regulate home building because this agency best understands license administration.

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Buying a home can be exciting, but it can also be financially devastating. That's because making a sound buying decision is a complex matter – legally, financially and technologically. It requires the expertise of trusted allies, who often include licensed professionals such as a realtor, real estate inspector and attorney. Unfortunately, certain Texas homebuilders and their allies have prevented the enactment of the same types of consumer protections for new home purchases that already exist for existing homes. That's absurd, and until the Texas Legislature enacts these consumer protections, it will continue to be safer to buy an EXISTING home in Texas rather than a NEW home. Here are some of the reasons why:

Buying an Existing Home in Texas

Realtors are Licensed.

The Texas Real Estate Commission (TREC) assists and protects consumers of real estate services, thereby fostering economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

Real Estate Inspectors are Licensed.

TREC requires education, experience and liability insurance to become a real estate inspector. Inspections cover conditions that are present and visible. They don't cover unseen structural elements, such as what's behind walls or inside foundations, but such problems become apparent after a few years of occupancy.

State-approved Sales Contracts Protect Buyers.

TREC helps protect the public by requiring the use of State-approved contract forms for any agreement that binds the sale, exchange, option, lease or rental of real property and defines the legal rights of parties. Licensees may only fill in the blanks provided and may not add to or strike standard wording.

Full Disclosure is Required.

TREC requires the seller to disclose the know condition of the property, including: soil conditions, foundation, roof, ceilings and walls, water penetration, aluminum wiring, termites, range, oven/microwave, dishwasher, disposal, water heater, central A/C, security system, smoke detectors, intercom, plumbing, pool/spa, and garage door openers.

Home Warranty is an Option.

The Sellers's Disclosure of Property Condition is not a substitute for any inspections or warranties the purchaser may wish to obtain. Consumers can buy home warranty insurance to cover appliances and systems. Terms vary, but these policies generally don't cover the expensive problems that can occur in foundations and other structural elements.

Buyers have Flexible Legal Remedies.

If complaints are filed against licensed professions, their license can be revoked. In addition, homeowners have various other options for resolving disputes with sellers, realtors, inspectors, attorneys, or title & mortgage companies, including mediation, arbitration and civil suit.

Buying a New Home in Texas

Homebuilders & Contractors are NOT Licensed.

Texas has no way to ensure that builders are capable or honest. The Texas Residential Construction Commission (TRCC) simply "registers" builders. It does not license builders, remodelers, swimming pool contractors, or framing, foundation, roofing and flashing contractors. Instead, the TRCC functions to regulate homeowners.

Home Building Inspectors are NOT Licensed.

Home inspectors monitor the construction process from one stage to another and generally need a greater knowledge of building science. However they are not licensed or regulated, and some have long-established builder relationships.

TAB-provided Contracts Favor Builders.

The Texas Association of Builders (TAB) Contracts Package was prepared for exclusive use by its members, saving them thousands of dollars in attorney fees. These contracts can include mandatory Binding Arbitration clauses to block homeowner access to courts. They protect builder rights rather than homeowner rights and are generally nonnegotiable.

Disclosure is Not Required.

Unlike individual homeowners who must disclose problems when reselling, builders are not required to disclose defects. This even includes critical problems with structural elements such as foundation and framing, or dangerous soil conditions such as industrial waste and pesticide contamination. In fact they often do their best to conceal these problems.

New Home Warranties can have Illusory Terms.

Texas requires builders to provide minimum warranties of one year for workmanship and materials; two years for plumbing, electrical and HCAV systems; and ten years for major structural components and habitability. But the terms can be illusory because of TRCC defined exemptions, and builders can shift their responsibility to 3rd-party warranty companies.

Buyers have Limited Legal Remedies.

The Residential Construction Liability Act (RCLA) protects builders by preventing class action suits and the recovery of punitive damages and attorney fees. TRCC protects builders through its State Inspection Process. And builders protect themselves with contracts that mandate binding arbitration and with Limited Liability Corporation protection of personal assets.