

WHAT TO DO IF YOU HAVE A BUILDER/WARRANTY DISPUTE

This is given for information only, and is not legal/professional advice, nor should it be taken as a substitute for it. Construction defects and mortgage fraud cases are serious legal issues and it is recommended that you get competent legal and other professional help in addition to your research for consumer information. We hope that you will find this information helpful, and that you'll take action that would help fix this national epidemic, beyond just your own case. Thank you.

HADD anticipates the publication of a book, "New Home Nightmares," in 2009. Watch our site for it, and be aware that the book contains MUCH more information than this free web page, such as an extended list of resources, updated information on the scourge of arbitration, an overview of the building industry, predatory lending, a list of builders indicted for fraud, lists of some large builders' subsidiaries, and much more.

Older web pages sometimes go offline or change URL's. Googling the old URL and/or title or key words may turn up their new location if we have not yet updated our links. Google, <http://www.google.com> or The Wayback Machine, <http://www.archive.org> are two sites to try and find even pages that are no longer online, through their "cached" versions.

Be sure to check HADD's State Chapters pages for more state-specific information.

CONSTRUCTION DEFECTS

FAQ FROM ATTORNEY'S WEBSITE (Not an endorsement. For informational purposes only):

<http://www.vsss.com/CM/Custom/Construction-Defect-FAQs.asp> General info, may vary by state.

RIGHT TO REPAIR

Right to Repair is also known as Right to Cure, Notice of Opportunity to Repair, and other names. More than half the states have enacted these specific laws, written by and for builders. Right to Repair usually requires you to follow a specific set of steps when there's a dispute, and your attorney will need to be familiar with it.

THE PAPER TRAIL IS EXTREMELY IMPORTANT!

It's common for builders to say they were unaware a home buyer had problems, even if the home buyer notified them verbally. Without a paper trail to prove the builder was notified of problems within warranty or other deadlines, the homeowner might have no recourse once deadlines pass.

Writing to the builder needs to be done in compliance with Right to Repair laws if they exist in your state.

WRITE TO YOUR BUILDER, (or other entity you're complaining to). Make letters brief and factual. Send by CERTIFIED RETURN RECEIPT MAIL and keep the signed card you get back, so you can prove they got your letter. If delivery is refused, keep proof of refusal. Request a written reply within 14 days unless your state law specifies a different amount of time you must allow. Attach COPIES of any necessary documentation such as engineering reports, pictures etc. Keep originals; ONLY GIVE OUT COPIES. You may never get them back.

DOCUMENT EVERYTHING

RESEARCH: On HADD's Downloads page is a document on researching contractors. Though it may not seem to be of much use to a homeowner who's already been taken, it is of help to dig up evidence of a pattern of complaints, and possibly more. HADD changes its documents periodically; if you do not find this document on our downloads it's probably because older material was removed for being out of date. The book, anticipated to come out in 2009, will address it. Many of the links below will help you do research. Networking on our message board, or other building-related boards, will help you learn more research tips.

Research Links that may be helpful:

<http://www.google.com> GOOGLE: check out the various types of searches like advanced, groups, news, and blogs, for items on your builder, your state, or your specific type of problem. Get creative with your search terms. If you're not handy with the internet find someone who is, and get them to teach you or help you.

<http://www.blackbookonline.info/> Black Book Online: Numerous links to public information.

<http://www.coordinatedlegal.com/reference.html> Coordinated Legal, numerous links to government agencies and public information.

Much public information is free if you know where to look. If a site indicates it's not free, try using a general search engine like Google to find the original source such as a state licensing agency site, etc, and search there. Not all public records are free but the fee is usually reasonable if you go to the source instead of a middle man.

<http://www.rateyourbuilder.info> "Rate Your Builder:" This site was taken over by a new owner who is/was a building industry professional. It still is online and still has ratings, but given that it is owned by someone in the industry, consider that when you read their material. It is not a consumer group.

<http://www.homewarrantyreviews.com/reviews> Home Warranty Reviews: We're not sure if the owner of this site is more consumer or professional, but there were numerous complaints posted about some companies.

Rating and complaint sites come and go so fast that we will not attempt to list more here. Check our message boards and links from the HADD home page for more potential, current sites.

<http://www.usdoj.gov/oip/index.html> Freedom of Information Act (FOIA) Certain information is supposed to be provided to Americans upon request. Find out if anything you are looking for falls under FOIA. If your loan is government insured, (FHA or VA), that is something you may want to make a FOIA request on, (your file at that agency). Ask first what the cost is, if any, in your request. Usually requests for reasonable amounts of copies that are for personal use are free.

<http://www.rcfp.org/ogg/index.php> Reporters Committee for Freedom of the Press: States have their own version of obtaining copies of government records, usually called an Open Records request, or something similar. This link takes you to any state's rules and directions on getting records.

INSPECTOR COMPLAINT?

File complaints with any state licensing agencies, state or national trade associations for inspectors, and particularly any inspector's professional organizations the inspector belongs to or has credentials from. Examples:

<http://www.ashi.org/> ASHI

<http://www.nachi.org/> NACHI

<http://www.independentinspectors.org/> Independent Inspectors

<http://www.nahi.org/> NAHI

HIRE YOUR OWN EXPERTS

Inspectors/Engineers can write a report on your house's defects, and this may be necessary, to prove what you are claiming, or to even find out what is actually causing the problems. Beware of experts who are pals with, or hired by, the builder; they probably won't have your best interests in mind. They may downplay the problem and lull you until important deadlines run out.

<http://www.ncsea.com/member-organizations.htm> National Council of Structural Engineers

GET REAL REPAIRS, NOT COSMETIC REPAIRS

http://www.nashvillescene.com/Stories/Columns/Helter_Shelter/2005/11/10/Caulk_Is_Cheap/index.shtml Check out this article by home inspector Walter Jowers, "Caulk is Cheap." This is just one example of how cosmetic repairs can lull a homeowner into thinking a defect is repaired when it's really just patched. That patch won't last long, maybe just long enough for the warranty to run out, and real repairs can cost many thousands later on. Homeowners can also be sued by subsequent owners if such problems are not disclosed or fixed properly upon eventual sale of the house.

Be wary of written 'releases' that absolve the builder of all liability just so you can get some minor repairs!

BUILDING CODE VIOLATIONS

This is a common complaint. Many, if not all, 3rd party, 10 year structural warranty policies sold with new homes exclude coverage of code violations. Visiting the government office in your area that supposedly inspects for code compliance is a way to find codes in your area. They are not always available for free online. Once you close the sale on a new house, its code violations may become your problem.

http://www.codecheck.com/codecheck_resources_build.html Code Check

MORTGAGE PROBLEMS

Mortgage fraud has skyrocketed since the early 2000's. Risky loans, artificially inflated appraisals, forgery, junk loans sold to investors, and more, contributed to this being a lucrative way to rip off the country and damage the economy. More recently, HADD has been contacted by home buyers who can add predatory lending or mortgage fraud to their builder complaint. This seems particularly apparent when buyers use the builder's mortgage company. Two large building companies were investigated for predatory lending in 2005 and 2006. One was KB Home which was eventually fined by HUD. The other was Dominion Homes in Ohio. Beazer settled a criminal mortgage fraud case with the government in 2009. Many small companies that probably could not pay millions in fines were also engaging in fraud; some smaller builders were jailed but none of the big ones were (so far). News articles, HUD and FTC press releases, etc, on these incidents are archived on our news pages and discussed on our message board, as these articles are far too numerous to list here.

Websites and organizations covering mortgage fraud:

http://www.fbi.gov/publications/financial/fcs_report2006/financial_crime_2006.htm#Mortgage FBI 2006 mortgage fraud report says 80% of mortgage fraud is done by industry insiders. (Earlier reports warned it could damage the economy.)

http://www.fbi.gov/publications/fraud/mortgage_fraud08.htm FBI 2008 Mortgage Fraud report. Builders figure in more types of schemes than previous reports indicated.

<http://www.mortgagefraudblog.com> Mortgage Fraud Blog. Operated by attorney Rachel Dollar, new articles are posted almost daily on mortgage fraud cases.

<http://www.responsiblelending.org/> Responsible Lending

<http://www.msfraud.org/index.html> Mortgage Servicing Fraud

<http://www.preventmortgagefraud.com/> Prevent Mortgage Fraud

<http://www.stopmortgagefraud.com/> Stop Mortgage Fraud

http://www.huffingtonpost.com/2009/10/01/home-loans-brokered-by-no_n_306520.html *Home Loans Brokered By Nonprofits Helped Fuel The Housing Crisis*, Huffington Post, Oct. 1, 2009. This is one of the better articles on down payment scams because it addresses how many builders used them heavily to sell houses that were unaffordable to the buyers. It inflated prices, and resulted in many more foreclosures. The IRS called these programs a “scam:” <http://www.irs.gov/newsroom/article/0,,id=156675,00.html> HUD tried to curtail them but was fought by the down payment companies and builders. In 2008, Congress banned them. The industry was and still is lobbying Congress to bring them back. There are efforts to oppose this lobbying: <http://ml-implode.com/sfdpacampaign.html> HADD is also opposed to bringing back the programs as they are bad for the buyers and the economy.

If you had loan problems please report them, file complaints, and try to expose this huge problem that is now costing tax payers hundreds of billions of dollars with no end in sight, and most of the bailout money is going straight back to the industry that caused this mess.

FORECLOSURE

Sometimes a new home is so badly defective that it's uninhabitable or unsafe. There can be crushing debt from paying for two residences and/or legal or other expenses associated with a construction defect case. This can force a family to let a house go. This is especially true if the house was purchased with a toxic loan or if there was mortgage fraud. To our knowledge no entity or person is tracking the REASON for foreclosures but numerous news articles about foreclosures have indicated it is especially prevalent in new developments. It is no coincidence that many of the builders of these developments also had their in-house or preferred lender and were pushing no-down or other risky loans. And, they still are pushing these loans as this was written, despite the damage this did to the U.S. economy.

If you are losing your home because of construction defects and/or mortgage fraud please speak up, file complaints, and try to expose the source of this problem—the housing and finance industry that created and approved these loans, and that built defective houses.

ARBITRATION

There are many links on HADD about arbitration and the drawbacks our organization sees in it. One of the main problems we feel exists with arbitration is that it can be highly biased in favor of the builder or warranty company. Another problem is that it's private, meaning complaints that are arbitrated are hidden from public view and of no use for consumers who are researching before buying.

<http://www.fairarbitrationnow.org/content/home-court-advantage-how-building-industry-uses-forced-arbitration-evade-accountability> *Home Court Advantage: How the Building Industry Uses Forced Arbitration to Evade Accountability*. Public Citizen released this report in 2009.

<http://www.citizen.org/pressroom/release.cfm?ID=1775> *Public Citizen Calls for 12 States to Investigate Insurers' Use of Questionable Arbitration Firm*, 2004. A report on the arbitration firm CAS, Construction Arbitration Services, which has many companies under its umbrella.

<http://www.consumerreports.org/cro/home.htm> Type arbitration into the Consumer Reports search bar and read what they say about it.

<http://www.house-n-home-building.com/newsletters/house-building-arbitration.html>
Article on arbitration

AVOIDING ARBITRATION

Buyers with government insured mortgages (FHA and VA) supposedly do not have to submit to a mandatory arbitration clause common in 3rd party home warranty policies. We are unsure if the same federal laws below apply to arbitration clauses with home builders because we're unaware of anyone who successfully used these laws with a builder. We do know it can work with warranty companies.

<http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea03.shtm> Federal Trade Commission (FTC): Quote: “Most warranties require that both parties abide by the arbitrator’s decision, without appeal. If your loan is financed through the FHA or VA and you file a claim against the third-party warranty company, you can choose between arbitration or going to court. If you choose arbitration, be aware that you are bound by the decision.”

The rule they’re speaking about in the FTC article is 24 CFR 203.204(g), which is in Title 24 (Housing), in the Code of Federal Regulations:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=5c571d2a713abf1744f87b3e3a531944&rgn=div8&view=text&node=24:2.1.1.2.4.1.89.67&idno=24> Quote: "Title 24: Housing and Urban Development

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

Subpart A—Eligibility Requirements and Underwriting Procedures

Insured Ten-Year Protection Plans (Plan) ... 203.204(g) In the event of any dispute regarding a homeowner complaint or structural defect claim, Plans must, unless prohibited by applicable law, provide for binding arbitration proceedings arranged through a nationally recognized dispute settlement organization. The sharing of arbitration charges shall be as determined by the Plan. A Plan must contain pre-arbitration conciliation provisions at no cost to the homeowner, and provision for judicial resolution of disputes, but arbitration, which must be available to a homeowner during the entire term of the coverage contract, must be an assured recourse for a dissatisfied homeowner."

The words "*and provision for judicial resolution of disputes*" are the words that mean FHA and VA buyers retain their right to use the courts and warranty companies are supposed to abide by this. Don't count on them to comply voluntarily; it can be hard to enforce.

http://banking.senate.gov/01_11hrg/112901/curtis.htm 2001, Testimony to the U.S. Senate by industry lobbyists. Scroll down to "Single Family FHA" to read how the housing industry is trying to remove protection from arbitration for FHA buyers. Thankfully, at least at the time of this writing, (2009), the protection was still in place. One of the things homeowners, and HADD, do is to write letters to elected officials and submit comments regarding potential rule changes. HADD of course supports keeping this regulation intact and would prefer to see it extended to ALL homeowners.

Since this document was first written it has been updated several times, and so has the HADD website and Message Board. There are numerous court decisions, and other information, about arbitration on HADD's Arbitration page, Home Warranty page, and message board under the same topics. Several important cases have been decided that may help homeowners get out of an arbitration clause with either a builder or warranty company, because some courts have finally recognized how unfair this arrangement is for homeowners. But, it is still hard to get out of it, and it's important to avoid it in the first place if you possibly can.

WARRANTY AND INSURANCE COMPANIES

Homeowners insurance policies are notorious for not covering construction defects or the damage that results from such cases. Homebuilders may carry liability insurance that does cover construction defects, but those policies also have exclusions.

If your loan is FHA or VA please read the paragraphs above on your possible option to avoid arbitration with a warranty company.

Warranties have numerous exclusions and exceptions, such as code violations, and an arbitration clause. Not all states regulate warranty companies. You should file a complaint about a warranty company unfairly denying your claim, or that has an "illusory" policy, with your state's Dept of Insurance, just the same. If you are to have any hope of them helping you, or of exposing illusory companies, then you must file a complaint. If no one files, nothing will change. Also, you can file Home Warranty complaints with any agencies or organizations that handle general consumer complaints. The reason Insurance departments may not do anything is that warranty companies are usually "Risk Retention Groups," not really insurance, even though they are usually marketed as such. RRG's are a type of captive insurance owned and controlled by the industry they insure, which in this case is builders and warranty companies. They really do not insure the homeowner much, and do more to shield builders from liability.

<http://www.ican2000.com/state.html> Insurance Departments for all states.

http://www.naic.org/state_web_map.htm National Association of Insurance Commissioners

Other consumer oriented websites dealing with INSURANCE issues:

<http://www.insurance-reform.org/> Americans for Insurance Reform

<http://www.policyholdersofamerica.com/> Policy Holders of America, founded by Melinda Ballard. A wealth of information for anyone dealing with an insurance company or mold.

MAGNUSON MOSS WARRANTY ACT; a Federal Law

Site-built houses seem to have been excluded by industry and government claims that they are not a "product." However, manufactured homes do seem to be covered under Magnuson Moss, from what we can tell. In rare cases some aspect of a construction defect case in a site-built house may apply, if the lawyer is skilled enough to make it work. Two links on this federal law:

<http://www.mlmlaw.com/library/guides/ftc/warranties/undermag.htm>

<http://www.seniormag.com/legal/lemonlaw/magnusonmoss.htm>

MOLD

Mold is NOT "Gold." For the homeowner, it's expensive!

<http://www.mdawareness.com/> Mycotic Disease Awareness

<http://www.policyholdersofamerica.org> Melinda Ballard's mold/insurance site.

http://www.austinchronicle.com/issues/dispatch/2003-03-21/pols_feature.html *The 'Mold Queen' Fights Back.* This news article on Melinda Ballard's case is one of the better ones, debunking a lot of the misperceptions about mold cases and hers in particular.

LIENS

<http://www.traditionsoftware.com/constlienbystate.php> A lien can be filed on your house if the builder did not pay a subcontractor or supplier, even though you already paid for the house. Lien laws vary by state, sometimes posing little threat to homeowners, but sometimes favoring the contractor who filed the lien and causing the homeowner to have to pay for certain work twice, and then try to recover it from a builder who may be bankrupt and never pay them back. Selling or refinancing a house with liens on it is extremely hard unless the homeowner just pays it. Often it is a surprise found out when they do try to refinance. With the number of builders that folded after the housing bust, (approximately 2006-2009 so far), liens are becoming a common problem for new home buyers. Title insurance covers the lender. To get title insurance that covers the homeowner, purchase "owners' title insurance." These liens are not always filed, or caught, before closing. And, fraud and incompetence are not unheard of.

CONTRACTOR LICENSING

Only about half the states license contractors. From what we hear from homeowners, licensing is only as good as the enforcement. Like home builders associations, (non government private trade organizations), licensing agencies can be builder-run, and another example of the fox guarding the henhouse. If your state has a contractor licensing agency, file a builder complaint there. Some find that if they jump through all the hoops and are persistent they can eventually get some assistance. And, it's important that complaints are filed so no one can legitimately claim later on that they weren't.

<http://www.contractors-license.org/> Licensing Laws by State

IF YOU HAVE AN FHA LOAN (Federal Housing Administration, under the U.S. Department of Housing and Urban Development—HUD)

<http://www.hud.gov/> File housing related complaints with HUD if you have an FHA loan.

HUD can discipline builders, lenders, and warranty companies. One way they can do this is temporarily or permanently debar the company from having involvement with homes sold to FHA financed buyers. The temporary disbarment is called a “Limited Denial of Participation,” or LDP.

Warranty complaints for people with an FHA loan: See paragraphs above on arbitration.

With FHA/HUD, on brand new construction, it’s usually required to have a BOTH a 1 year builder’s warranty and a separate 10 yr structural warranty. Your builder is not supposed to be allowed to waive either warranty when the home is 90% or more financed, according to a HUD employee who spoke with a HADD volunteer.

VA LOAN (Veterans Administration)

http://www.homeloans.va.gov/cav_faq.htm Frequently Asked Questions about new construction and VA financing. See also: Arbitration, and Avoiding Arbitration, paragraphs above. You can file complaints with the VA about a builder or warranty company too.

USDA LOAN (U.S. Department of Agriculture)

The USDA has a little known Rural Development program that is similar to FHA and VA. Unfortunately recent news indicates it’s being exploited by builders and toxic loan purveyors. We anticipate hearing more complaints about builders or loans that involved the USDA in the future. <http://www.rurdev.usda.gov/>

DEFECTIVE SIDING

Unfortunately, there is no one currently at HADD who is experienced in defective siding information, and this information changes so frequently it has been difficult to keep up and to verify that new sites are legitimate. You can contact HADD through the Contact page, in case this changes. Also, network through our message board or others, and find out what the latest news is on this topic. Some class actions are over now, closing off any more claims, but some are ongoing. Using Google is another way to find current info. Be aware that some sites are scams, trying to get you to pay a fee, or to keep a hefty portion of your claim money should you get any. People who get a settlement often get far less than their actual cost of repair. Furthermore, improper installation of materials is often the cause of failure, rather than defective products. Determining why the product failed and who made it is important. The sites below are good places to start looking for more message boards on construction issues, too.

LEARN TO SPOT CONSTRUCTION DEFECTS; LEARN HOW TO DO IT RIGHT

<http://www.jlconline.com> Journal of Light Construction

<http://www.buildingscience.com> Building Science

<http://ths.gardenweb.com/forums/build/> Building forum that offers a lot of good resources.

<http://www.askthebuilder.com> Ask the Builder, Tim carter's website.

FILE COMPLAINTS

Owners of defective new homes who cannot get a builder to honor the warranty should be filing complaints with their state agencies, (see HADD's State Chapters pages for links), local builders associations, BBB's, and the National Association of Home Builders, (NAHB) etc. The purpose is of course to try and get results, but sometimes the best you can hope for is the knowledge you did file the complaint.

[https://rn.ftc.gov/pls/dod/wsolcq\\$.startup?Z_ORG_CODE=PU01](https://rn.ftc.gov/pls/dod/wsolcq$.startup?Z_ORG_CODE=PU01) Federal Trade Commission (FTC) complaint page.

http://www.naag.org/ag/full_ag_table.php Find your state's Attorneys General, which is where many states' consumer protection agencies reside.

Look for your state's home builders associations in the phone book or by going to Google, <http://www.google.com> and typing in (your state) home builders association. Many states have more than one. Many builders advertise which ones they are a member of. The National Association of Home Builders, <http://www.nahb.org> also lists state/local builders associations. Builders associations need to know which of their members are not doing quality work or honoring contracts. If they do nothing about valid complaints, at least you have proof they didn't hold a member accountable. Sometimes showing that you tried everything is important in itself.

<http://www.bbb.org> The Better Business Bureau (BBB) isn't really a consumer protection agency or organization. BBB's are privately run, and their funding comes from local businesses membership fees.

Sometimes consumers doing research before buying are misled if the BBB claims there are no complaints on a company, when there are actually complaints the BBB doesn't divulge. Their rating or reporting system may not be explained to callers. People often find this out when their own complaint is filed but isn't reported. Many BBB's use a rating system that doesn't kick in until a certain undetermined number of complaints add up. It IS important to file complaints at the BBB, for that reason. Not all BBB's do much for the consumer, though some are better than others, offering free, non-binding mediation, (a negotiation process not to be confused with arbitration!), or actually reporting the number of complaints or kicking out bad members.

A new BBB rating system was initiated recently which did appear to report more information, but still rated highly some companies with a horrible track record. And, some good companies could not achieve the higher scores because of factors having nothing to do with quality or customer service. Awards given by BBB's have been reported in the news to be self-appointed by the business owners, too. All in all, we consider a negative report about a company at a BBB to be helpful info, but a positive rating can be meaningless or even misleading. Filing your complaint there is just more to show you did everything you could and escalated your efforts in a reasonable way, not just suing first which is looked down upon in our society even if sometimes it's necessary to preserve your Statute of Limitations, (the date beyond which you can't sue).

The following is applicable to complaints filed with all/most types of agencies and organizations.

Attach copies of only the most important documentation, with a SHORT complaint letter, as large amounts of paper overwhelm the recipient. State that you will supply copies of additional documentation, (if you have it), upon request. Getting someone to read your letter is important; short and factual is best. It should be typed. Try to summarize your points in the first paragraph.

Follow up on complaints. Be polite. Keep direct contact info to anyone who's been helpful and thank them for their help. Often, the result you get from a government agency will depend on the competency and ethics of the person who handles your complaint. Complaints to BBB's etc, often depend on how that particular one is operated. Complaints to volunteer consumer groups are responded to as one-consumer-to-another. Volunteers may or may not have a lot of experience that would help you, but the websites usually contain a wealth of information that you should make use of.

No one can fix your case for you. It is a lot of work for the homeowner, and each complaint filed, each source you glean information from, is a piece of the solution that we hope you obtain in the end.

We also hope that you'll be motivated by your own case, to try and change things for the future. Only a large number of formal complaints are likely to make anything happen. At one time the FTC and HUD did investigate and fine KB Home, (just one example), but it took a lot of complaining from their customers to get them to do it! Had everyone said, "What's the use?" nothing would have been done. Constant vigilance has been necessary to ensure the FTC's Consent Decree is being enforced, too, and again would not be getting any attention if no one thought it was worth doing.

SECRECY OF COMPLAINT RECORDS

Before assuming you are getting the full picture, ask--or better yet get it in writing--whether your BBB or state agencies share complaints publicly. Some people may be

surprised to learn complaints are kept confidential or only partially accessible, maybe by making formal written open records request to a government agency. Many home buyers who DID research their builder before buying are wrongly accused after the fact of not having "done their homework." This erodes the homeowner's credibility. Being able to show that the dirt on a builder was not so readily accessible can bolster your credibility and show that you were not irresponsible. We find the attitude that it's the home buyers' fault reprehensible; the one responsible for fraud and defects should be the one who did it, the builder. Not their customer. How good the buyer was at detective work should have no bearing on what the real issue is; construction defects, breach of warranty, mortgage fraud, etc.

CONSUMER WEBSITES: Make sure it's compatible with your way of wanting to handle things before submitting a complaint to a "gripe site." If it's important to you that the complaint be removed at some time, make sure the site's policy is to remove them on your request. Not all do, and that is the site host's choice! Because it's not your site, once you file a complaint, you may have no way of taking it down. These gripe sites are important to the public, for research purposes. You probably wish you had the benefit of seeing complaints before you bought your lemon house, right? Keep complaints brief and factual and stick to irrefutable statements that are less legally risky. Keep a print copy for your records. If the site operates like a blog, avoid making angry statements to those who may rebut your complaint by posting insulting comments. Simply let the facts speak for themselves and try to keep emotion out of your posts. You'll be glad, later, that you did.

EXAMPLES OF GRIP SITES

<http://www.ripoffreport.com> Rip Off Report, a.k.a "bad business bureau."

<http://www.consumeraffairs.com> Consumer Affairs (may publish complaint, may not, but a good general consumer site)

<http://www.complaints.com> Complaints.com

<http://www.epinions.com> E-Pinions

<http://webgripesites.com/> Web Gripe Sites

<http://www.badstucco.com/> Bad Stucco

INFORMATION ON FREE SPEECH

<http://www.nolo.com/legal-encyclopedia/article-29718.html> Can I Say That?

<http://www.thefirstamendment.org/> First Amendment Project

<http://www.citizen.org/litigation/briefs/IntFreeSpch/> Public Citizen on Internet Free Speech

http://www.consumeraffairs.com/news04/free_speech.html Appeals Court protects Right to Gripe Online

<http://www.rcfp.org/> Reporters Committee for Freedom of the Press

BEING SUED FOR COMPLAINING—SLAPP LAWSUITS vs. DEFAMATION

<http://www.casp.net/mengen.html> A "SLAPP" suit means "Strategic Lawsuits Against Public Participation." It's essentially a frivolous suit filed by one party to intimidate and silence another's legally allowable speech. SLAPP's usually lose, if they even go to court, which they usually don't. But that doesn't mean it's not stressful or expensive to be SLAPPed. SLAPPs serve their intended purpose if they cause a person to shut up; court is not necessary if that result is obtained. Some people relish the challenge and will take a builder to court if he SLAPPs them; others find it turns their lives upside down. Know the risk and never assume you have rights you don't.

If you step outside the legally allowable bounds of criticism and complaints, then you could be exposing yourself to a legitimate defamation lawsuit with expensive damages. Free speech has never meant you could say anything you wanted.

Speak, but carefully!

MESSAGE BOARDS

Find others with the same problem and exchange information. Look for local boards, too, for your city, etc. Most message boards have "trolls" who live to offend, and "spammers" who live to sell stuff...ignore them! Take message board advice with a grain of salt but be aware that many times this kind of networking produces extremely useful information. Be careful opening up too much to strangers. Some could be misrepresenting themselves to you. A good sign that someone has a case like yours is that you can see a court record online to prove it, a gripe site, pictures posted on their own complaint or something that would be extremely unlikely to exist if they were not 'for real.'

Also, experts who may offer help through networking should not solicit business from you online. They should have a legitimate business operation, and clean track record. Naturally, experts don't offer much for free, but a few who have personal motivation to engage in these issues, do offer some really excellent info, links, etc, on message boards.

Getting to know the regulars on boards before telling them too much is a good idea. Most online readers “lurk,” (read only), for awhile before posting, to get a feel for the rules and the regular people there, and who’s worth listening to.

<http://ths.gardenweb.com/forums/build/> Garden Web Home Building Forum

<http://clarkhoward.com/> Clark Howard's Message Boards, Real Estate forum.

<http://groups.google.com> Google Groups: these are not message boards, but "newsgroups." They work similarly for most practical purposes. You can search Groups for posts on your builder, construction defects, etc, going back to the 1980's. The "advanced search" feature lets you narrow the results to more recent posts, etc.

Message boards come and go. The most up to date info on them will be more likely found as links from other forums and sites, including HADD’s links and message boards.

SMALL CLAIMS COURT

http://www.consumeraffairs.com/consumerism/small_claim_01.htm *Small Claims, Big Stakes*, Consumer Affairs article. Small Claims court can be a good place to try and recover damages for things like an uninstalled fence, liens you had to pay off, sloppy painting, or replacement of just one component that is not symptomatic of a bigger problem. Sometimes a person can represent themselves in small claims court. The rules and limit on damages vary by state. It is hard to find a lawyer in cases where the damages are “only” a few thousand dollars. BUT...before you sign away your future rights in a small claims settlement, be sure your damages really are that small. Many serious defects first show up as little cracks, but turn into something much worse. Get your own expert opinions before deciding what your damages will be.

ATTORNEYS AND CIVIL LAWSUITS

Never threaten to sue until you have consulted with a GOOD attorney, and know that you can sue, have exhausted other options, and are ready to do it! Suing is a last resort, (and not even an option if you can't get out of an arbitration clause, or can't afford to sue). Going to court is expensive, and the "right" side does not always win. Nor does the winner always collect! Not even the best lawyer can guarantee you will win and collect. That said, if you are tempted to deliver an ultimatum, it's best it comes from your lawyer, after you've decided that's your only recourse. Otherwise, your builder will probably laugh.

Choose attorneys carefully; home owners have been further damaged by a bad one! Check attorney's license status with your state's bar association. Be aware that all most bar associations will tell you is if the lawyer in question has a valid license; they may not tell you about any complaints, or the lawyer's qualifications. Research lawyers as carefully as you now would research a builder. Often, the state court site has record of

disbarred lawyers, but disciplinary measures may be confidential. The lawyer you hire must be competent, ethical, and motivated to help you, as well as motivated to see the case through, not drop you when it gets tough. Sadly, many good lawyers won't take construction defect cases unless they are class actions, because individual cases aren't usually profitable enough. "Right to Repair" laws are something your lawyer absolutely must know about to be sure you don't have your case thrown out for failure to comply.

<http://www.abanet.org/legalservices/findlegalhelp/home.cfm> American Bar Association (ABA); "find legal help."

<http://www.abanet.org/public.html> ABA Public Resources page.

The news is a good way to research attorneys, (and builders, etc), too. Sometimes lawyers are arrested or in some kind of trouble, indicating they probably wouldn't be very reliable. Many good search engines cache articles. If you find a story that's interesting but it's no longer online, Google's regular search has a "cached" feature that usually lets you see it. Another site that allows you to view pages no longer online is <http://www.archive.org> "Archive.Org," a.k.a. "The Way Back Machine." <http://www.yahoo.com> Yahoo is another search engine some people prefer.

STATUTE OF LIMITATIONS—SOL

"Statute of Limitations" refers to how long you have, (to sue). This varies by state, and can be a year or two, to 8 or more years. A statute of limitations on construction defects MAY last longer than your contractual warranty. Missing the cut-off deadline means you cannot take legal action. You will need to find out from lawyers you consult with what your statute of limitations is. A lawyer who misses this deadline can also ruin your case. If you're consulting with lawyers in order to choose one, ask him or her to SHOW you the statute on the SOL. They should know this!

MYTH OF "FRIVOLOUS SUITS"

We've all gotten those forwarded emails about hot coffee lawsuits, or the man or woman (depending on the version) who put an RV on cruise control and got up to make a sandwich and crashed and sued Winnebago. These cases are exaggerated and in some instances totally made up. The real facts are proven by the actual record, and not mentioned in propaganda. Such disinformation plays on the public's lack of education about the legal system. Courts already have rules in place to dismiss frivolous suits, in their Rules of Civil Procedure. Award "caps" exist already, due to limits on what kinds of damages are recoverable. In some states you cannot even recover legal fees. Even if juries award a lot of money, courts can and often do reduce those awards for a variety of reasons including existing caps on damages.

Frivolous lawsuits make up less than 1% of all cases. Hardly a reason to hamstring the rest of the public with valid cases! Tort reform was invented for one purpose—to

immunize irresponsible business interests from liability. Arbitration accomplishes this purpose, too.

Another factor is that if you sue and win, (or win in arbitration), you might never collect. You need to locate the builder's assets so that you can potentially attach them with liens, if you win a judgment against him. A lawyer or private investigator may be necessary. State laws vary as to what steps you can take to force a bad builder to pay a judgment. Sometimes you cannot collect, and sometimes it will cost you more to collect it than it's worth. This is one reason we advise people never to threaten to sue a builder until they've actually got all their ducks in a row. Bad builders will just laugh at people who assume they can easily sue and collect. Some builders are old hands at folding Limited Liability Corporations (LLC) to escape debts and judgments, and complaint histories. They go on building under a new LLC that often can't be touched even by judgment creditors. Asleep-at-the-wheel licensing agencies even may give them a new license again and again.

More on the myth of frivolous lawsuits:

<http://www.newswise.com/articles/view/507271/>

SO YOU PLAN TO LOOK INTO SUING:

WEBSITE TO READ BEFORE CHOOSING AN ATTORNEY

<http://www.halt.org> HALT

<http://www.clr.org> Citizens for Legal Responsibility

<http://www.lawerratingz.com/index.jsp> Lawyer Rating site

FEES

Hiring an attorney hourly rather than "on contingency" is a possibility for you to consider. There are pro's and con's to both hourly and contingency. Some people feel that a lawyer on contingency will work harder because his/her fee comes out of what you get. Others feel that hiring the lawyer hourly is safer. Either way, the caliber of the lawyer matters the most, and you will almost certainly have to pay a retainer fee up front, of several thousand dollars. Be sure you fully discuss the fee arrangement before signing a fee agreement with an attorney.

REPRESENTATION

Once a lawyer "represents" you, all communication between the parties is supposed to go through your lawyer, and your lawyer is supposed to keep you informed of what's going on with your case. But, you will probably have to keep on top of things. Do not just

dump your documents on the lawyer's desk and forget about it. Also, we recommend you keep copies or originals of all your documents for yourself. One particular document where the original matters a great deal can be the actual home warranty policy. Do not allow it to be lost.

The lawyer who represents you can and probably will put an "attorney's lien" on your case to ensure they will get paid from any settlement.

FIRING AN ATTORNEY

If you have a complaint about your lawyer take it up with him/her first. If that doesn't work, complain to the state bar association. Do not let too much time slide by before you speak up, or even find a new lawyer if necessary. Missing deadlines, and other legal mistakes, can ruin your case. If you don't file a complaint on a really bad lawyer, there is NO chance anything will be done.

Getting a lawyer off your case as "counsel of record," and getting rid of any "attorney's lien," can be very hard. You may have to find out how, in your court, to file a motion to remove the lawyer as counsel of record, and to remove his/her attorney's lien.

OTHER

RESCISSION; (builder buying back a defective house)

Most buy-backs seem to be only for the purchase price. If you are demanding the builder buy back your defective house, try to include cost of relocation, legal costs, experts fees, closing costs, improvements to the home like landscaping which you can't take with you, and any tax repercussions, etc. Otherwise, what seems like a good settlement could leave you on the short end of the stick.

GOING TO THE MEDIA

Keep complaints rational, truthful, within legal and homeowner association guidelines. Saying anything false or exaggerated puts you at risk for defamation and blows your credibility. Concentrate on serious defects so they can't turn your story into a distorted "fluff piece." When you see news articles regarding construction defects, write to the editor and voice your opinion. Let the reporters who do cover this issue know that these aren't "isolated incidents."

http://www.constructiondefects.com/pr_housewrecked.asp *Housewrecked*: Consumer Reports magazine reported in January, 2004 that 15% of new homes had at least two serious unresolved defects. The article is no longer online for free on Consumer Reports magazine's site, however it's reproduced a number of places including the above law firm's site. The percent of homes CR talk about represents at least 150,000 families a year in America facing serious, expensive, construction defect cases! Not counting the ones with less serious but nevertheless expensive and stressful cases.

Other documents we've seen indicate a much higher percentage of new houses have serious problems, and from what we see we think it is on the higher side. For example, whole developments can have a lack of window flashing, virtually ensuring the houses will leak and rot from the inside out, causing very expensive damage and potentially toxic mold growth that won't be visible until major damage is done.

HOME OWNERS ASSOCIATION (HOA) ISSUES

<http://www.geocities.com/trouble85206/CHORE.html> Coalition of Home Owners for Rights and Education, (CHORE)

<http://www.ahrc.com/new/index.php/src/home> American Homeowners Resource Center

It's typical for a builder/developer to run the HOA until the development is pretty much sold out. They make the rules, and a common rule is no signs, which trips up some homeowners who wish to put a sign in their window or yard to show their displeasure with defects. Check your HOA rules—some states require new buyers see them before purchase, some don't, but you need to see them whether it's required or not.

HOW YOU CAN HELP STOP NEW HOME NIGHTMARES FROM OCCURRING

<http://www.thepetitionsite.com/takeaction/322833272> Please sign the HADD Petition Online, and share the link with others.

Write to your elected officials. Keep letters brief and factual and include "The Big Picture," as well as your case, as you are most likely one of many in your state with this problem. Even if only ONE politician helps you, it's worth it. A few homeowners speaking against bad legislation can sometimes stop or alter it. Go to your state capitol if you can, to speak up for/against legislation that affects home buyers/homeowners. Research the bills in your state legislature or nationally if you have time. Be careful to read bills and analyze them and talk to consumer org's about them; some builder-friendly bills are cleverly promoted as consumer protection when they definitely are not.

<http://www.usa.gov/Contact/Elected.shtml> Contact your Elected Officials (State and Federal)

<http://www.ncsl.org/public/leglinks.cfm> State Legislature Sites

If there is one word to describe what it takes to accomplish resolution of your case, and/or change to the system, it's PERSISTENCE.

Network with others in the same boat. Limit the amount of time you spend working on "The Case." Try to have a life, (much easier said than done). The moral support of

someone who “gets it” can often help us keep up the fight. We know homeowners who resolved their cases as a result of being persistent. There is no guarantee, but at least if you give it your all, you don’t have to regret that you didn’t try. We hope you’ll be one of the victories.

<http://www.hadd.com> Homeowners Against Deficient Dwellings, (HADD, Inc.) is a non-profit organization, national in scope, registered in Kansas and Arizona, and run by volunteers who own, or have owned, defectively built homes, in over half the states.

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Thank you,

HADD Personnel