

**The Abuse of Binding Arbitration  
In New Home Contracts**

**A Consumer's Perspective**



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Homeowners Against Deficient Dwellings

# **The Abuse of Binding Arbitration In New Home Contracts A Consumer’s Perspective**

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## About this Report

**Kangaroo Court.** [n. KANG-guh-ROO KORT] an unauthorized, irregular court, usually disregarding normal legal procedure, as an irregular court in a frontier region or a mock court set up by prison inmates.<sup>1</sup> –Webster’s Dictionary

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This report is specifically targeted for the State of Texas and was created to document and address the concerns of Texas homeowners concerning the use of arbitration as the sole alternative dispute resolution method to resolve construction defects. Although this report is specific to Texas, most of the information is applicable to the United States. The information gathered in this report is based upon two Interim Hearings in the Texas House of Representatives during the summer of 2002 and the experiences of homeowners’ real life experiences in dealing with the arbitration issue throughout the state.

This report does not attempt to discuss arbitration in business-to-business transactions. This report deals strictly with new home contracts which require a pre-dispute arbitration clause as a prerequisite to purchasing a new home.

This report is written from a consumer’s perspective based upon real life experiences and not from a legal standpoint. Any similarity to a legal opinion is by chance only and is not intentional or intended.

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## Summary

**Contrary to popular belief, arbitration is a private, profit motivated justice system forced upon new homebuyers, and is abusive, extremely costly, grossly unfair and provides no tangible benefit to the homebuyer.**

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Mandatory binding arbitration has been considered successful in business-to-business contracts as a low-cost alternative to the civil court system. Unfortunately the same cannot be said about arbitration in consumer-to-business transactions, especially in new home contracts. During the summer of 2002, two interim studies by the Texas House of Representatives heard testimony from homeowners and consumer groups concerning the use of mandatory binding arbitration as a prerequisite to purchasing a new home. The facts, based on this testimony, were very clear. Contrary to popular belief, arbitration is a private, profit-motivated justice system forced upon new homebuyers, and is abusive, extremely costly, grossly unfair, and provides no tangible benefit to the homebuyer.

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<sup>1</sup> Webster’s New World Dictionary Third College Edition

A clause in new home contracts, which binds the buyer to resolve all disputes through arbitration, is inserted in almost every new home contract in Texas. This private justice system has an unfounded reputation for being faster, cheaper, and just as fair as our time-honored court system. Homebuyers, focused on their new purchase, and not expecting to need the benefits of legal assistance to combat an uncooperative builder, unknowingly accept this clause without understanding what legal rights and protections they have lost.

Of all the obstacles a consumer must face when dealing with a new home construction defect, the use of arbitration is by far the worst. Not only does it mislead the consumer at the signing of the contract into thinking arbitration is faster, cheaper, and better, it deprives them of their American rights to a trial by jury guaranteed by the 7<sup>th</sup> Amendment to the Constitution. Only when consumers are faced with an expensive defect and an uncooperative, irresponsible builder, do they fully understand protection granted by our Constitution has been lost, simply by signing a contract with a builder.

The Texas homebuilding industry is one of the few industries allowed to rewrite the US Constitution on behalf of the consumer, but make no mistake about this: Arbitration is a savior, providing additional protection and limited liability for the building industry. It provides negligible, if any, protection for the consumers and little punishment for builders who refuse to stand behind their products and take responsibility for their actions.

Mandatory binding arbitration should be allowed to stand on its own and compete with our current civil court system which is relatively low-cost and fair to both parties. Arbitration should always be an option for both parties to agree upon if all the facts about the arbitration process, including fees and process, have been disclosed to both parties and their legal representatives. To be successful, arbitration should never be forced upon a new homebuyer.

To encourage this competition, the use of mandatory binding arbitration clauses in new home contracts should be immediately prohibited.

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## **Lack of Consumer Protection for New Homebuyers**

**The biggest investment of your life, a new home, comes with the least amount of consumer protection.<sup>2</sup> --HADD**

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The use of arbitration--or any alternative dispute resolution system--would not be an issue if there were preventive measures or alternative methods to resolve construction defects without resorting to homebuyers' use of an attorney. Unfortunately, in the State of Texas, as with many states, there is little for consumers to depend upon for this type of assistance. Many times their only recourse is to seek legal advice.

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<sup>2</sup> New Home Warranties. Deception or Protection? By Homeowners Against Deficient Dwellings 01/01/03

When consumers purchase a new home, they incorrectly assume their 30-year investment comes with adequate protection from defects. This error in judgment is never realized until a construction defect occurs and the builder decides to stand behind attorneys instead of standing behind the product. The homeowner, over a number of months or years, learns that no state, county, or city organization is available to provide assistance to resolve the dispute.

**Limited Warranties:** Because of the severe limitations of new home warranties, homeowners have little, if any, recourse in resolving a new home defect. In “New Home Warranties. Deception or Protection”, the limitations of the various warranties used throughout the United States have been addressed. (See <http://www.hadd.com/warranty.pdf> for a copy of the report.)

**Board of Licensing and Regulation:** In many states, especially Texas, the homebuilding industry is unregulated, unlicensed, and unmonitored. Unlike plumbers and electricians, which have a governing board, builders have no organization that can issue citations or assist in resolving a construction defect.

**Attorney General’s Office:** After a long interrogation process with the Attorney General’s Consumer Complaint Division, it was learned the investigator assigned to a complaint against a builder doesn’t even read complaints filed against a builder. Instead, they send a copy, which the homeowner must provide, to the builder and await their response. The response will be forwarded to the homeowner with a recommendation to “hire an attorney”. The Attorney General’s office is little more than a post office for the paper complaints. Our Texas Attorney General’s Office has shown no interest in pursuing complaints against builders.

**The Better Business Bureau:** The Better Business Bureau complaint process is not much better. Complaints filed against a builder are considered “resolved” if the builder simply responds to the complaint. Even when builders refuse to cooperate with the rules of the BBB, they can simply opt out of the membership. In one case, a builder, after being forced into arbitration and losing, sued the homeowner and the BBB for demanding arbitration. The builder has still not paid the homeowner, some three years later.

**Homebuilder Associations:** Various homebuilder associations at one time provided some amount of policing of their membership. Now the associations are more of a lobbying and industry organization for builders and contractors. Complaints about builders who have violated the code of ethics are ignored and, in the end, HBAs provide no assistance to resolve the defect for the homeowner.

**Trial Lawyers:** It is unfortunate, but with the lack of regulation and monitoring of the home building industry, plus the lack of adequate recourse, homeowners find their only option is to seek the assistance of an attorney. At this point the

homeowner learns of the arbitration clause. Finding an attorney willing to take on arbitration is becoming difficult, especially with the limitations of awards put in place by tort reform. From experience, the majority of homeowners with construction defects would rather have the defects addressed without the use of an attorney. The homeowners are looking for a low-cost, fast alternative, but binding arbitration does not provide this alternative.

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## History of Arbitration in Home Contracts

**"Seen historically therefore, the Seventh Amendment, the right to trial by jury in civil cases involving more than \$20, is a bulwark of political liberty rather than a procedural amendment. Its purpose was to provide the citizen protection against the government. The Founding Fathers included many lawyers who knew this would make the judicial system slower, more inefficient and more cumbersome. They saw this as a small price to pay for protecting freedom from corrupt or tyrannical judges or from powerful or rich persons with unfair influence."<sup>3</sup> – Newt Gingrich**

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When our country was created, one of the first amendments to the Constitution was the right to a civil trial. This right seems to have become lost in the discussion of the mandatory use of arbitration. As an example, if a builder, as a prerequisite to purchasing a home, forces the buyer to give up their 2<sup>nd</sup> Amendment rights to bear arms, it is highly unlikely this clause would ever be upheld in any United States court. It can be imagined that Charlton Heston himself, spokesman for the NRA, would likely argue the case to our elected officials. Unfortunately the loss of our 7<sup>th</sup> Amendment Constitutional rights in order to own the “American Dream” does not have this same protection or attention, and anyone rising to the defense of the American public would probably be labeled “a greedy trial lawyer”.

In 1989, the Texas Legislature passed the Residential Construction Liability Act (RCLA), which, in its final form, relieves the builders of the strong Texas Deceptive Trade Practices Act (DTPA) and places caps on an award when a jury finds in favor of the homeowner. The DTPA allowed for treble damages if the homeowner prevailed--and provided stiff punishment for an irresponsible builder. RCLA requires a notice from the homeowner and allows the builder up to three months to resolve the issue before a homeowner can continue to file a suit. In 1999, a requirement for mediation was added as yet another step to be taken before a suit could be brought against a builder.

The use of arbitration in new home contracts became popular in the mid 90’s and is widely used throughout the industry. Arbitration clauses have also been put into credit card agreements and employment contracts. Some of these clauses were added after the consumer charged for years or after the employee was employed for years. Although

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<sup>3</sup> The Seventh Amendment A 100 Years of Government Encroachment. Newt Gingrich

credit card and employment arbitrations are very important issues and should be addressed, they are not included in this report.

Only during the last few years has arbitration in consumer-to-business contracts been exposed as being anti-consumer. In March, 2001, the American Arbitration Association, in what seemed to be an attempt to squelch the complaints and become more consumer-friendly, reduced their high fee schedule and “allowed” the use of small claims court, as if they were the keepers of the Constitution. In Texas, the industry will be filing a bill to create a Builders’ Commission which, among other things, establishes an arbitration process to resolve construction defects.

In *Emerald Texas, Inc. vs. Peel*, the Texas Supreme Court weighed in on the use of mandatory arbitration clauses in new home contracts. Unfortunately, the anti-consumer Supreme Court ruled in favor of the homebuilders and allowed the arbitration clause to stand, regardless of whether details of the high fees or the process were disclosed or not.

In business-to-business arbitration, fees and procedures are of no business to the general public since they are considered a private matter, but arbitration is now a complete substitute for the current court system, and consumers should be very concerned about who decided it was an acceptable substitute. Many states are now passing legislation to address the problems of the high cost and unfair aspects of the arbitration process. As with the building industry, the private justice system of arbitration is not regulated or monitored in Texas. This, coupled with the lack of regulation of the building industry, is a disaster for the consumer with a home construction defect.

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## Interim Studies by the Texas House of Representatives

### Home buyers object to clause in sales contracts. Texas House panel hears complaints about binding arbitration requirement<sup>4</sup>

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In the summer of 2002, Speaker of the House Pete Laney issued two interim studies concerning arbitration.

**Business and Industry Committee:** Review trends in the use of binding arbitration requirements in consumer agreements, with special attention to transactions in which the consumer has little or no bargaining power.

**Civil Justice Committee:** Examine changes over the last decade to the civil justice system that affects the right of litigants (citizens or businesses) to receive appropriate review by a judicial body, including arbitration, mediation, and other types of alternative dispute resolutions. The Committee has recently released a

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<sup>4</sup> Home buyers object to clause in sales contracts. Texas House panel hears complaints about binding arbitration requirement By David Pasztor Austin American Statesman May 16 2002

report which can be downloaded at  
[http://www.house.state.tx.us/committees/reports/77interim/civil\\_practices.pdf](http://www.house.state.tx.us/committees/reports/77interim/civil_practices.pdf)

During both hearings many homeowners across the state testified about the abuse of arbitration in new home contracts. Although these hearings were designed to address arbitration in general, the homebuilding industry overwhelmingly took the brunt of the comments.

As of this report the study from the Business and Industry Committee was not published, but should be available in the near future on the House website at <http://www.house.gov>.

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## Homebuilders with Arbitration Clauses

**"Brian Binash, executive vice president of Emerald Homes in The Woodlands, Texas, tells any client who refuses to sign his company's arbitration clause to go elsewhere. He says they will continue the practice, even if (and when) the roaring economy slows down."<sup>5</sup>**

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The overwhelming majority of new homebuilders in Texas have a mandatory binding arbitration clause within their contract as well as in the warranty provided. There is no option or negotiation for the potential homebuyer. In order to purchase the American Dream, you must give up your American Rights to a civil trial guaranteed by the United States Constitution. Homebuyers cannot use this as a bargaining tool between builders since all builders use this clause, therefore there is no choice. And few if any will allow this clause to be removed.

Below is a chart of the most popular homebuilders in Texas showing their use of arbitration and a list of warranty companies with arbitration clauses. As of this writing we are not aware of any Texas builder that does not use an arbitration clause or of any warranty company.

### Texas Homebuilders

Beazer Homes	Lennar Homes
Brighton Homes	Life Form Homes
Brookshire Homes	Milburn Homes
Ryland Homes	Morrison Homes
Casa Builders	Newmark Homes
Centex Homes	Prestige Homes
Choice Homes	Pulte Homes
Clark Wilson Homes	Ray Tonjes Builder
Continental Homes	Royce Homes

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<sup>5</sup> Getting It Built Copping An Attitude: War of Words. Builder Online

David Weekley Homes	Legacy Homes
DR Horton	Toll Brothers
Drees Custom Homes	Tremont Homes
Emerald Homes	US Homes
Gordon Hartman Homes	Village Builders
KB Homes	Wilshire Homes
Kimball Hills Homes	Woodhaven Homes
Legacy Homes	

Warranty Companies:

Residential Warranty Corporation (RWC)  
HomeBuyers Warranty (HWB)  
Home of Texas  
Pulte Protection Plan  
Ryland Warranty  
Aces Builders Warranty

As another example of the lack of choice or bargaining power, below is a chart of the tract homebuilders in The Woodlands, a master planned community north of Houston, which has up to 30,000 homes. It is clear from this chart, the use of arbitration is mandatory and cannot be negotiated. In order to purchase a new home in The Woodlands a homebuyer must give up their rights to the 7<sup>th</sup> Amendment to the Constitution.

Builder	Arbitration Clause	Opt Out Option	Warranty	Arbitration Clause
David Weekley	Yes	No	Home of Texas	Yes
Village Builders	Yes	No	HBW*	Yes
Emerald Homes	Yes	No	RWC**	Yes
Coventry Homes	Yes	No	Home of Texas	Yes
Darling Homes	Yes	No	Home of Texas	Yes
Ashton Woods	Yes	No	RWC	Yes
Lennar Homes	Yes	No	HBW	Yes
Life Forms	Yes	No	No Answer	No Answer
Morrison	Yes	No	Morrison	Yes
Newmark	Yes	No	No Answer	No Answer
Pioneer	Yes	No	Home of Texas	Yes
Plantation	Yes	No	No Answer	No Answer
Ryland	Yes	No	Ryland	Yes

\*Home Buyers Warranty (2-10 Warranty)

\*\*Residential Warranty Corporation

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## Lack of an “Alternative” Dispute Resolution System

**The availability of legitimate alternative methods of civil dispute resolution is an important and valuable right in our free society. Citizens should be free to contract within the current parameters of the law as it relates to arbitration, and the Legislature should be cautious when considering measures that will encroach on this freedom to contract.<sup>6</sup> Texans for Lawsuit Reform**

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There is no “choice” when purchasing a new home with or without an arbitration clause. The only choice a consumer has is to not buy a new home. Homebuilders do not allow homebuyers the option of selecting the time-honored court system or the uncertainty of an arbitration clause. This is a take-it-or-leave-it situation dictated not only by many of the builders, but by the industry itself.

Homebuyers at the time of purchase are not considering the ramifications of legal action against their builder. In fact most, if not all, incorrectly assume the home is being built to the highest standards and has many safeguards to prevent defective homes from being built in the first place. They also incorrectly believe there is ample protection in the warranties and within the state to address complaints. Their minds are on closing, popping a bottle of champagne, and moving into their new home, not on whether they need to choose an alternative dispute resolution system prior to finding any defects.

Builders do not provide for an *alternative* dispute resolution system. They provide *only one* resolution system of their preference, binding arbitration. This is not a choice. This is not an alternative. It is the *only* resolution system available and allowable by the builder, regardless of the intent or meaning of the United States Constitution. Regardless of the wiggly words used by the proponents of arbitration, the common homebuyer is not aware of the pitfalls of arbitration when purchasing the new home. Homebuyers have no choice regarding acceptance of this system.

The proponents also fail to mention that the only way this “alternative” dispute resolution would be accepted is if it is forced upon the consumer. If the facts concerning the cost, abuse, and fairness of arbitration were disclosed, few, if any, homebuyers would volunteer to forgo their rights to a civil trial.

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## Other Available Dispute Resolution Systems

**The homeowner in Texas has one remaining alternative dispute resolution system, a 2 by 4. When you have a defect in your new home, you take a 2 by 4 and visit your salesman. – John R. Cobarruvias**

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<sup>6</sup> TLR: Arbitration as a fair and effective alternative to litigation.

When a dispute arises, it has been our experience that homeowners use every means available to resolve a construction defect without resorting to legal action via an attorney or through the laws of Texas. This includes months, sometimes years, of attempting to work in good faith with the builder by using low cost methods currently available. This includes phone calls, letters, certified letters, faxes, emails, and one-on-one conversations with the builders and service representatives.

These methods are all low-cost, private, and do not require any third party interference. Unfortunately, when an uncooperative builder refuses to work in good faith, the homeowner has no other alternative than to seek legal counsel. Usually, the homeowner at this stage is at a breaking point with the builder. Working in good faith has failed, and the builder, instead of standing behind the product, now stands behind attorneys. The homeowner is furious and helpless at this point. Many would like nothing more than to see their builder behind bars for stealing from their family. Their frustration at the builder and the lack of support from the state are at a peak. It is then that homebuyers seek legal help to even the playing field, only to learn their legal rights have been replaced by the arbitration clause in their contract.

The builders have ample time and chances to resolve the defects. Instead, many would rather draw out the conflict to a breaking point, with many homeowners giving up in frustration. Homeowners, on the other hand, are not “sue happy” as many believe. They would rather spend their time and effort in other activities like decorating, meeting their neighbors, joining the civic club or PTA, and being active in their community. The last thing they want is to have to seek legal advice to combat a builder who has cheated their family.

Builders have many free alternative dispute resolutions systems available, yet they tend to ignore them and hide behind their own, that being arbitration.

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## **The Benefits of Arbitration to the Homebuilding Industry.**

**If buyer does not seek arbitration prior to initiating any legal action, buyer agrees that seller shall be entitled to liquidated damages in the amount of \$10,000.<sup>7</sup> – DR Horton contract**

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There is no doubt binding arbitration is a boom to the homebuilding industry. The fact that arbitration must be forced upon the unsuspecting buyer should give a good indication of its intent. Arbitration awards are generally much less than what a jury will award after hearing the testimony and arriving at a unanimous decision. An arbitrator will rarely punish builders, regardless of how they have disrupted the buyer’s life or family, unlike

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<sup>7</sup> DRHorton’s new home contract concerning arbitration.

punitive damages a jury could award. Additionally, the arbitration process and award are held in secrecy, protecting the builder from further scrutiny.

As noted, homeowners are not interested in punishment of the builder in the early phases of a dispute, but once they have been disrespected and have to resort to the help of an attorney, punitive damages are just and wanted. Arbitration relieves the builder of the threat of being held accountable for disrespecting the buyer and dragging out the dispute until legal action is necessary. The builder has no incentive to work with the homeowner to resolve the dispute. Instead, the attitude is, “So sue me!”, knowing they will be protected by the arbitration process.

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## High Cost of Arbitration

**In another case, the Malkani family of Austin, Texas, had to take its dispute with a homebuilder to arbitration. The Malkanis were charged \$3,500 as an initial administrative fee, followed by \$1,375 in other miscellaneous fees. In the end, the family was awarded \$18,819; however, the builder didn’t have to pay the family’s attorney fees or administrative fees. The arbitration fees cost the family \$13,069 – not counting attorney fees.<sup>8</sup>**

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Arbitration has received unfounded praise for being a low-cost alternative to the civil court system. This is untrue in most cases. Arbitration generally is a very low-cost alternative for the builder but extremely costly for the consumer. As an example, a simple claim for a \$5000 defect would cost only \$55 in small claims court, yet in arbitration it would cost \$125.00 plus the cost of the arbitrator.

In more complex cases, the fee is much more, sometimes ranging into the thousands of dollars, and that is just for the initial arbitration fee. Additional charges must be paid for the arbitrator(s), the stenographer, and rental of the room. In contrast, our court system costs only \$125.00 to file, and the judge, jury, and stenographer have already been paid with our tax dollars.

The consumer, regardless of the use of arbitration or the court system, must pay attorney fees, but the awards of attorney fees in arbitration are up to the discretion of the arbitrator. Expert witnesses and engineering studies must also be paid whether for arbitration or court. These fees may or may not be awarded to the consumer.

The American Arbitration Association also prides itself in saying the most a homeowner would pay for a \$50,000 claim is \$375.00, but this buys only a paper review by someone in another state who will generate a mail order judgment. A \$50,000 claim is significant, regardless if this is a \$100,000 home or a \$1,000,000 home and shouldn’t be left up to a

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<sup>8</sup> Arbitration More Expensive Than Court – So Costly That Many Victims of Consumer Fraud, Employment Discrimination Give Up. Public Citizen

mail order private justice system. This amount of damages could easily wreck an owner's financial situation and should be dealt with very seriously through a judge and jury system.

The current civil court system may not be perfect, but it is a time-honored system, as fair as it could be, and has been paid for by our tax dollars. If a public justice system such as binding arbitration can be just as fair and as inexpensive, then it should be able to compete without forcing an unsuspecting homebuyer into a mandatory pre-dispute clause. It is clear from all the testimony during the interim hearings that this public justice system cannot compete and therefore must be forced onto the consumer.

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## Biased Arbitrators

**James Evans, a Houston attorney, cited a case where a client's house slid down a hill because of an improper foundation. After his client got nothing, Evans sued the association and arbitrator Stephen Paxson, claiming Paxson, a lawyer for the Greater Houston Builders Association, had lobbied to change the law his client was relying on.<sup>9</sup>**

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Many homeowners who are faced with arbitration have concerns about the selection process of the arbitrator. Unlike an elected judge, an arbitrator is usually selected from a list provided by the arbitration organization. This arbitrator, in the spirit of providing a fast and low cost process, does not have to follow the law as a judge would. These arbitrators have no governing or monitoring organization to determine fairness or process complaints against them.

As an example referenced in the Civil Practice Committee report, arbitrator Stephen Paxson from Houston ruled in favor of the builder. It was only after the award that the attorneys for the homeowner learned that Paxson served as General Counsel for the Greater Houston Homebuilders Association. They also discovered that he had helped with two *amicus* briefs to the Texas Supreme Court concerning consumer protection for new homeowners.<sup>10</sup> The laws being considered in the briefs had bearing on the arbitration.

The process for selecting arbitrators, not by the consumers, but by the arbitration industry should be reviewed for fairness. Who is allowed to be an arbitrator, and why does it seem the arbitrators have some kind of relationship to the building industry?

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<sup>9</sup> Consumer Advocates hammer arbitration. Adolfo Pesquera Express News May 16 2002

<sup>10</sup> 01-0135 PERRY HOMES, a joint venture v. AZIZ ALWATTARI and HAJER ALWATTARI; from Tarrant County; 2nd district (02-98-00106-CV, 33 SW3d 376, 11-02-00) and Brief of *Amicus Curiae* Submitted by the NAHB for the Supreme Court of Centex v. Buecher.

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## Exceptions to the Arbitration Clause

**HUD's policy on approving 10 year warranties permits binding arbitration as an acceptable available remedy for complaint resolution. However the department precludes binding arbitration as the sole remedy.<sup>11</sup>**

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Some organizations such as Housing and Urban Development, Veterans Administration, and Federal Housing Association do not require the use of mandatory binding arbitration in new home contracts or warranties. Although this is their policy, it is not known whether the homeowners who question this prevail in removing the clause. Homebuyers should question the builder on the use of the arbitration clause if they have an FHA/VA approved loan.

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## Recommendations and Conclusions

**State lawmakers should allow the private system to compete with our current justice system by fostering a competitive and alternate environment and allowing consumers to choose after a dispute arises and when all the facts concerning fees and procedures are presented to both parties.**

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The proponents of arbitration in consumer contracts are quick to note arbitration could be faster, cheaper, and better for the consumer, yet they continue to advocate forcing this on consumers through pre-dispute clauses. Arbitration is a private justice system and should be allowed to compete with our current civil justice system purchased with our tax dollars, protected under the United States Constitution. It is disturbing that the only way this private justice system can survive is to have it forced upon consumers instead of the consumers and their attorneys having the option to make choices based upon facts.

State lawmakers should allow the private system to compete with our current justice system by fostering a competitive and alternate environment and allowing consumers to choose a resolution method after a dispute arises.

For consumers, because of the limited protection provided by the state and the limited benefit of arbitration to those harmed by a builder, new homebuyers should consider protecting their investments by taking steps to prevent defects or to detect defects prior to moving into the home. To further protect their investment, the following steps are recommended:

1. Read and understand the contract before purchasing a new home.
2. Do not purchase a new home with a binding arbitration clause.

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<sup>11</sup> Vance T. Morris Director, Office of Single Family Program Development Dec 7 2001

3. Remove the arbitration clause from the contract. If the builder refuses, have it noted on the contract.
4. Remove the arbitration clause from the warranty. If the builder refuses, have it noted on the warranty.
5. If the clause cannot be removed, demand to see the arbitration fee schedule, the cost of the proceedings, and all rules that apply to the process.
6. If the home is FHA/VA approved, demand to know your rights concerning the use of arbitration in the contracts. Have the clause removed in accordance with FHA/VA rules.
7. Remove the waiver of the implied warranty. If the builder refuses, have it noted on the contract.

Have the home inspected during and after construction. This may cost a significant amount of money, but it could also save a costly repair.

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## **Frequently Asked Questions About Arbitration**

### **Is binding arbitration faster, cheaper, better?**

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#### **Is binding arbitration faster than our court system?**

*This is at least one area that can be agreed upon. Arbitration is generally faster than the court system, although that is not always the case. Many times homeowners with serious defects in their homes do not want a fly-by-night process that will rule on the biggest investment of their lives. They want a process that is fair and that will take the necessary time to fairly resolve the dispute. If builders were so concerned about the time spent in litigation, they would save time and money and resolve the conflict quickly.*

#### **Is arbitration cheaper than our court system?**

*Generally, no. It depends on what you expect from the court system and arbitration. It is hard to adequately compare each since they are two different processes. One is a private justice system, with few or no rules to follow, the other a strict, time-consuming process which must follow the law. In arbitration you must pay for the fee, the arbitrator, and the use of a building and stenographer. In our justice system, these have already been paid by our tax dollars.*

#### **Is arbitration better than our court system?**

*No. Our court system was designed when this country was founded. It was done carefully with strict rules that must be followed. The court system provides the best available resolution system for the consumer when a builder decides to stand behind attorneys. It strikes fear into builders because it makes their actions and defects public. In the private justice system, everything is secret and does not hold a builder reasonably accountable.*

#### **Do I have a choice to select arbitration over our court system?**

*No. Arbitration is mandated by the contract signed at closing. You can have your attorney or any other person review it, but it generally cannot be removed.*

**Should I buy a new home with a mandatory arbitration clause in the contract?**

No.

**Which builders in Texas have mandatory arbitration clauses?**

*Almost all builders in Texas have an arbitration clause in their contracts, and every warranty also has an arbitration clause.*

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**About Homeowners Against Deficient Dwellings****The volunteers of Homeowners Against Deficient Dwellings are the best money can't buy.**

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Homeowners Against Deficient Dwellings, (HADD) a non-profit organization, came into existence in response to an overwhelming need of support and resolution from families who felt isolated while coping with their devastating home damages and loss. Because the lone attempts to get their homes fixed proved unsuccessful, these families started to find each other and united into a cohesive group with a common cause. It was while testifying before legislative committees in the Kansas State Capital that HADD emerged as a grass roots organization.

HADD is not an arbitration group, nor does it provide legal counsel. HADD offers support and suggestions to assist consumers in making educated, informed decisions when buying a home or resolving the complicated issues involving deficient homes.

Homeowners Against Deficient Dwellings

Nancy Seats, President

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**Resources**

**[Texas House Civil Justice Committee Interim Report](#)** including Charge #2 “Examine changes over the last decade to the civil justice system that affects the right of litigants (citizens or businesses) to receive appropriate review by a judicial body, including arbitration, mediation, other types of alternative dispute resolution.”

**[Texas House Civil Justice Committee Interim Study on Arbitration Audio](#)** This is the audio of a hearing held in Austin as part of an interim study. This interim study was to review trends in the use of binding arbitration requirements in consumer agreements, with special attention to transactions in which the consumer has little or no bargaining power.

**Texas House Business and Industry Committee Interim Study on Arbitration**

**Audio.** This is the audio of a hearing held in Austin as part of an interim study. This interim study was to review trends in the use of binding arbitration requirements in consumer agreements, with special attention to transactions in which the consumer has little or no bargaining power.

**The Consumer Pitfalls of Binding Arbitration.** A Report by the Texas Watch Foundation. The report raises questions about the quality of justice delivered through binding arbitration between parties of different bargaining levels and documents the uneven playing field binding arbitration offers consumers and citizens seeking justice. (PDF)

**Arbitration costs are so high; many victims are unable to pursue complaints, according to Public Citizen reports.** Arbitration, although widely billed as a low-cost alternative to court, is actually far more expensive for consumers and employees who seek redress for discrimination, fraud and malpractice, a new Public Citizen report reveals. In fact, arbitration costs are so high that many people drop their complaints because they can't afford to pursue them, Public Citizen found.

**The Seventh Amendment A 100 Years of Government Encroachment** by Newt historically therefore, the Seventh Amendment, the right to trial by jury in civil cases involving more than \$20, is a bulwark of political liberty rather than a procedural amendment. Its purpose was to provide the citizen protection against the government. The Founding Fathers included many lawyers who knew this would make the judicial system slower, more inefficient and more cumbersome. They saw this as a small price to pay for protecting freedom from corrupt or tyrannical judges or from powerful or rich persons with unfair influence."

**New Home Warranties. Deception or Protection?** By Homeowners Against Deficient Dwellings. Homeowners Against Deficient Dwellings (HADD), a national non-profit consumer advocacy organization released a new report identifying extreme limitations and loopholes in new home warranties. The report, "New Home Warranties. Deception or Protection?" analyzes the warranties used by the majority of builders in Texas and highlights the limitations, exclusions, and unreasonable maintenance requirements common to each warranty.