



# “Your



# HOME MATTERS”

Have You Been HADD?

A Consumer Newsletter by Homeowners Against Deficient Dwellings for Homebuyers

July 2005

## In “Your Home Matters”

|   |   |
|---|---|
| Mother Jones In Houston, Texas .....          | 2 |
| Killed on the Hill.....                       | 2 |
| Arbitration Fact Sheet .....                  | 3 |
| A Homeowner Nails Bob Perry.....              | 4 |
| John Krugh Confirmation.....                  | 4 |
| A Public Relations Disaster .....             | 5 |
| Contractors From Hell...Not at the BBB! ..... | 6 |
| www.trccwatch.com .....                       | 6 |
| Texas New Home Warranties.....                | 7 |
| Frisco Texas .....                            | 8 |

**With the adoption of the TRCC’s warranty standards, an owner of a new \$8,000 foreign made KIA has more protection than an owner of a new \$800,000 American home.**



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Visit our website at <http://www.hadd.com>

## Presidents Message

*The TRCC has TRiCCed us.*

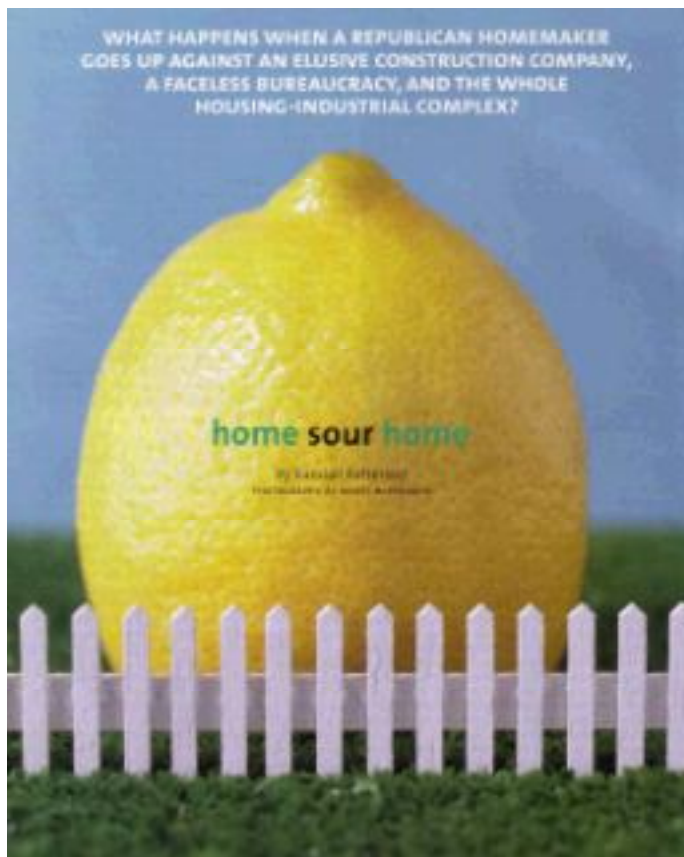
There are few things worse than being swindled, cheated, or deceived. Unfortunately this is exactly what the Texas Homebuilding Industry has done to the consumers of Texas with the release of the new home warranty standards. Despite all the claims and promises during the 2003 legislation session, homeowners actually have less protection for the biggest purchase of their life, than they did prior to the creation of the Texas Residential Construction Commission. It is clear, the consumers and all elected officials have been TRiCCed.

HADD has completed a review of the new home warranty standards, which took effect June 1. These standards allow for cracks in the walls, bricks, and exterior in the first year. Common sense defects such as paint fading, roof leaking, windows leaking, tile coming off the floor, and hardwood floors buckling are not covered after the first year. New roofs are warranted for 10 years, but new home roofs are only 1 year. These are just a few of the many limitations imposed by the warranty standards created by the Commission.

HADD’s review of the standards can be read at <http://www.hadd.com/documents/warrantyreview.pdf>. It is clear from this review the homebuilding industry has pulled a horrible trick on the consumers of this state as well as our elected officials.

## Mother Jones In Houston, Texas

### *Home Sour Home.*



*In one of the country's most business-friendly states, construction is one of the most influential businesses. The largest individual contributor to Texas politicians is Bob Perry—a builder who gained national fame during last year's presidential campaign when he funded the Swift Boat Veterans for Truth. The organization dispensing the most political money in the state, Texans for Lawsuit Reform, is also headed by a builder, and builders have been the main beneficiaries of a decade's worth of Texas tort reform laws—laws that, for homeowners, amount to little more than a maze of obstacles designed to obstruct the filing of lawsuits.*

The above is a snippet from Mother Jones investigative article, "Home Sour Home", on a homeowner and her fight in Houston against Jorge Casimiro and Tremont Homes. Mother Jones has provided us with the subscriber code that will enable you to read the article on their site at no charge. You'll find the article here

[http://www.motherjones.com/news/feature/2005/07/home\\_sour\\_home.html](http://www.motherjones.com/news/feature/2005/07/home_sour_home.html) (use the code MJQR3 to access the full article):

The code also allows you to read other articles in Mother Jones' July/August issue. If you would like a copy of the magazine, the easiest way to get it is to subscribe to Mother Jones on the Web site for \$10. As long as you subscribe before August 1, your subscription will begin with the July/August issue.

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## Killed on the Hill

First the good news: No bills during the 2005 legislation session were passed that would further erode the rights of homeowners when dealing with a construction defect.

Now the bad news: No bills were passed that would balance the needs of the consumers with the greed of the homebuilding industry.

Senator Robert Duncan and Representative Jessica Farrar filed bills SB1394 and HB3404, which proposed much needed improvements to the TRCC. Both should be commended for filing these bills.

### **HB3404**

By Representative Jessica Farrar

Not even a hearing starting at midnight and ending close to 2am in the morning stopped a large group of homeowners from testifying, some coming as far away as Dallas and Houston. And as usual the homebuilding industry was hammered. Again. J Dyer from the Texas Association of Homebuilders took the majority of the heat for not policing his own industry from Representative Bryan Cook who was obviously disturbed about the testimony from KB Home owners.

Unfortunately, there were not enough votes to pass this bill out of committee.

### **HB1237**

By Representative Paxton

HB1237 will require all new home contracts to have specific wording to alert the buyer of the mandatory

and binding arbitration clause. This bill never received a hearing. Obviously it was a very low priority.

### **SB503 SB504 and SB505**

By Senator Royce West

These bills would have limited the abuse of arbitration. Unfortunately the homebuilding industry was specifically excluded from these bills.

### **HB662**

By Representative Eissler

This bill would have required full disclosure of homebuilder convictions and received a hearing where once again the homebuilding industry was hammered, but it did not pass out of Committee.

### **SB1390**

By Senator Duncan

This bill, like HB3404, would have provided much needed improvements to the TRCC. It did not receive a hearing. More on this later.

## **Arbitration Fact Sheet**



### **Summary:**

Over the last few years the homebuilding industry has been hammered due to its continued use of mandatory binding arbitration. With four studies conducted by the State, it is clear mandatory, binding; arbitration is a consumer scam and should be stopped by requiring full disclosure and binding only when signed by the consumer and legal representation.

### **Arbitration Studies in Texas**

The Texas House Business and Industry Committee, the Civil Practice Committee, the State Senate Jurisprudence Committee, and the Texas Residential Construction Arbitration Task Force have studied arbitration in new home contracts over a three-year period. The homebuilding industry was the prime focus and was hammered at each of the hearings. These studies concluded that arbitration is abusive,

and the process is extremely expensive and grossly unfair to consumers.

Unfortunately, after two legislation sessions, no bill has been filed to address the recommendations.

### **Arbitration Task Force**

The TRCC’s Arbitration Task Force was stacked with members of the building industry and members of the American Arbitration Association. Not one single consumer representative was invited to participate even after HADD and other organizations had volunteered to participate. During a hearing in the Senate Jurisprudence Committee the TRCC’s Executive Director was highly criticized for stacking the task force. HADD recommended a number of individuals that would provide a consumer’s perspective. Four of these were added to the task force, although 4 months into the study.



### **Arbitration is not an Alternative Dispute Resolution**

Arbitration is advertised by the homebuilding industry as an alternative dispute resolution, but it is actually the ONLY dispute resolution process dictated by the industry. Because the overwhelming majority of the homebuilders in Texas has a mandatory binding arbitration clause, the only method of recourse once the TRCC’s resolution process fails, is arbitration.

### **Perry Homes and Arbitration**

Perry Homes is a poster child of what is wrong with the arbitration process. In an arbitration award made public in the Senate Jurisprudence Committee interim study on arbitration, Perry Homes lost an arbitration in the Dallas area. In Perry vs. Cull, the arbitrator awarded the homeowners \$750,000 which included \$250,000 for the repurchase of the home, \$250,000 punitive damages, \$250,000 for mental anguish. Unfortunately Perry Homes has refused to pay the arbitration award since Dec 2002. The full arbitration award can be found at <http://www.hadd.com/documents/perry.pdf>.

### **KB Home and Arbitration**

In December of 2004 KB Home notified their owners that all arbitrations would be paid for entirely by KB. They also made the process non-binding, as dictated by the Federal Trade Commission consent decree in 1979.

The fact KB now has a process that is free and non-binding shoots huge holes in the building industry's argument that arbitration is a low cost and fair process. If one of the largest, if not the largest builders in America can make the arbitration process free and non-binding, then why can't the entire building industry follow?

A letter to all KB homeowners can be found at <http://www.hadd.com/kbletter.pdf>

### **David Weekley in the Supreme Court. Again**

David Weekley Homes attempted to hold the young children of an Austin couple to an arbitration clause for a personal injury claim. This case was settled before oral arguments were to be held in 2004, but there is yet another case with the same issues pending in the Texas Supreme Court. The homebuilding industry led by David Weekley is attempting to hold everyone, even those who have not signed the agreement to the use of arbitration even for personal injury awards. This case had oral arguments in late 2004 and a ruling is expected in 2005. The homeowners are in the Dallas area.

If history is any indication of how this will be resolved, the decision is expected to be against the

consumer. Details can be found at <http://www.supreme.courts.state.tx.us/ebriefs/04/04011902.pdf>

### **The American Arbitration Association has refused to honor some Arbitration contracts**

The AAA has recently refused to honor mandatory binding arbitration agreements for medical malpractice cases. HADD has requested the AAA to do the same with the homebuilding industry, but they have refused.

It is unfortunate that the AAA who advertises arbitration is faster, cheaper, and better than the court system would allow the homebuilding industry to hide to the specifics about arbitration and make it mandatory as a prerequisite to purchasing a home.

## **A Homeowner Nails Bob Perry**

The Texas Observer wrote an excellent article detailing the abuse of arbitration in new home contracts by one of the most avid supporters of arbitration, Bob Perry Homes.

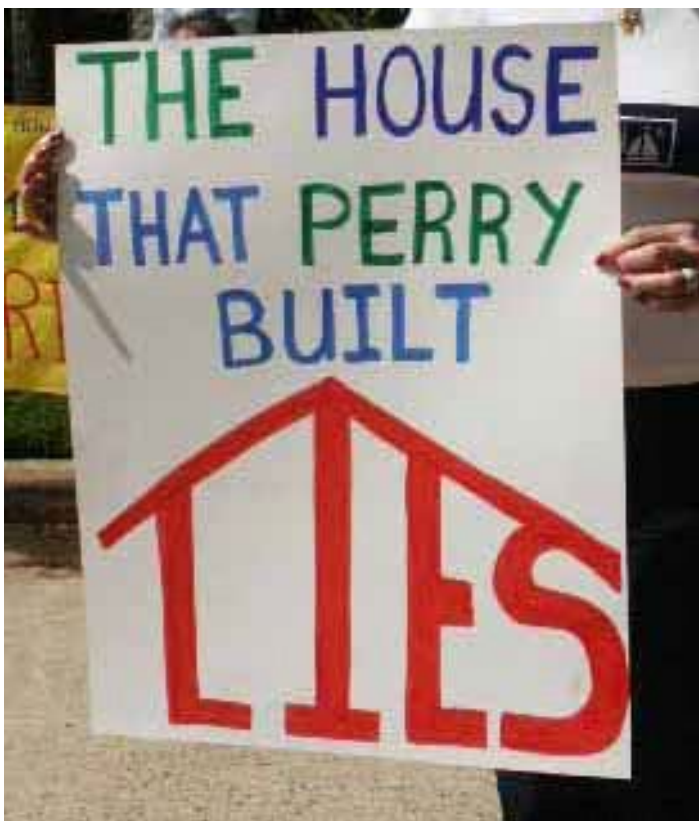
**Groups such as Public Citizen, Consumers Union, and Homeowners Against Deficient Dwellings warn that arbitration amounts to a kangaroo court that deprives consumers of legal protections that the Anglo-American court system took centuries to refine.**

The complete article can be view at <http://www.texasobserver.org/showArticle.asp?ArticleID=1953>

## **John Krugh Confirmation**

Homebuilder Bob Perry's Vice President and Corporate Counsel, John Krugh received a luke warm Senate confirmation to the Texas Residential Construction Commission. Mr. Krugh was confirmed by a 24-7 vote, 4 votes short of being denied. Senator Duncan, the original author of Senate equivalent of House Bill 730, which created the Commission, led the effort to deny his confirmation.

Krugh has been a source of controversy for the Commission that is heavily biased in favor of the homebuilding industry. Mr. Krugh was the principal drafter of House Bill 730 in 2003 and Bob Perry of Perry Homes donated nearly \$7 Million dollars between 2001-2004 to the Texas leadership. Governor Rick Perry (no relation) soon after the Commission was created appointed Mr. Krugh as a Commissioner.



Mr Krugh seems to have a disdain for the consumer even refusing to discuss issues with a Perry homeowner who traveled to Austin to speak at a Commission hearing. During his hearing in the Senate Committee, Mr. Krugh was questioned by Senator Duncan about lobbying against his bill SB1394, which would have modified the TRCC.

**The Senate had an opportunity to bring a sense of balance to the Commission by not confirming Mr Krugh. Instead Mr. Krugh will continue to be a lightning rod for controversy for the builder friendly Commission as well as being allowed to continue his anti-consumer crusade against homebuyers in Texas.**

Mr. Krugh's term ends in 2009.

## A Public Relations Disaster

The Texas Residential Construction Commission (TRCC) held a public seminar in Houston to discuss the new home warranty standards that took effect June 1, 2005.

**In short, it was a Public Relations disaster for the TRCC.**

The lone Commissioner in attendance, Mr. Porter left the meeting before the question and answer session began. He never returned. We believed it was because a local TV station set up a camera at the back of the room and was looking for comments.

A professor from Texas A&M Department of Building Construction along with a representative of the TRCC gave a very "rosy" presentation of the TRCC that, to the untrained eye, described the TRCC as a consumer protection dream. Unfortunately once the tough questions were asked by consumers the professor became short and at times rude enough for a number of people to confront her about it after the meeting. Many questions were left unanswered and many of those who attempted to ask questions were cutoff and quit in frustration.

The camera would have recorded all of this, but the A&M professor told them they could not film inside of the public hearing even though it was being held with tax dollars by a public Commission.

After the event was completed, the TRCC representative and the Texas A&M Professor refused to be interviewed on camera. And the lone Commissioner never returned, leaving only the homeowners who took their time to attend the meeting to talk with the media.

All in all, it was an embarrassing disaster for the Commission and their representatives. It was a very poor showing and was insulting to many of the homeowners.

## Contractors From Hell...Not at the BBB!



People Magazine’s May 30, 2005, edition awarded the dubious honor of being “Contractors From Hell” to certain homebuilders, including one from San Antonio and one that is a former member of the Houston Better Business Bureau. The company, Tremont Homes, raised a red flag at the BBB when numerous reports from consumers alleging deceptive and substandard building practices began being filed with the dispute resolution department. The initial response by Tremont Homes was that they were not the builder; rather a company named Stature Construction was to blame. Given that response, the files were closed.

But the dogged determination of one of the consumers, Jordan Fogle, and her ability to connect the ownership of both Tremont Homes and Statute Construction gave the BBB cause to reopen the files and investigate further. That investigation led to the discovery that these same business owners are incorporated under at least 10 different business names, each affiliated with either the building or building management industry. Under their Membership Agreement with the BBB, they were required to mediate or arbitrate any claims or disputes through the Houston office. A hearing was scheduled and notices were sent to both parties.

Upon receipt of the notice, Tremont’s attorneys weighed in and began to assert the same ownership and corporate shell game they had used as a defense before. In the eyes of the BBB, however, same ownership equals same ethical responsibility to resolve the consumer’s complaints. That, plus the fact that even though they now insisted each incorporation was separate, each entity used the BBB seal under only one annual membership dues. Again, supporting the opinion of the BBB that ethically, these companies were accountable to answer the consumer’s complaint.

Discussions ensued regarding the BBB’s acceptance of the American Arbitration Association (AAA) as an “approved” provider, per the wording of the

Membership Agreement. It was pointed out to their legal counsel that: 1) any provider other than BBB must be approved at the time the contract is signed, not many years later at their convenience; and 2) the BBB would not approve AAA as a provider in this instance due to the overly-burdensome costs being charged to the consumer in this case. Therefore, Tremont was told to decide – either arbitrate through the BBB, or risk revocation of their membership.

Tremont failed to take the ethically correct route and chose to pursue their case through the AAA. Due process was followed at the BBB and they were ultimately revoked from the Bureau. The language on their BBB report reflects the same. Ms. Fogle continues to wage war with Tremont, only to find herself being personally sued for her troubles. Tremont has also sued another of their residents in Tremont Towers for painting lemons on her windows. Last report to this office indicated that the judge at that hearing commended her on her artwork.

People magazine offered this advice to its readership – Check references and contact your local Better Business Bureau. In following that advice, those prospective homebuyers that do will find out which are the Contractors from Hell and which are those to be trusted.

### The Better Business Bureau of Metropolitan Houston, Inc.

## www.trccwatch.com

HADD has created a website to monitor the TRCC. This site is at <http://www.trccwatch.com> and will



provide up to date information on the TRCC including news, events, and any studies performed by HADD.

Watch for this site to be updated regularly.

## Texas New Home Warranties

Two years after the creation of the Texas Residential Construction Commission (TRCC), a Commission to regulate homebuilders in Texas, the Commission has released warranty standards for all new home construction in Texas. This standard, which comes into effect June 1, 2005, was created on a flawed foundation of promises of consumer protection and heavy influence by the homebuilding industry. For new homebuyers, there are only two words of encouragement available: Good Luck.

The first version of the warranty standard created by Texas A&M University was nearly identical to the numerous 10-year warranties provided by the homebuilding industry in the past, and it contained just as many flaws, exceptions, excuses, and extremely limited protection. The final set of standards isn't much better.

By law, the standards cover 1 year for workmanship, 2 years for air and electrical, and 10 years for structural damage.

**Common sense defects such, as hardwood floors buckling after 1 year is not covered. Neither is ceramic tile cracking and lifting off the floor. Leaking roofs, paint fading or cracking, siding coming apart, carpets buckling, driveway cracking and literally coming apart, bricks cracking, mortar prematurely deteriorating all are examples of what is not covered once the 1-year warranty expires**

Even within the 1-year limitation defects such as cracks in the walls wide enough to insert a credit card is within the warranty standards, as well as hundreds of cracks in the wall, cracks in the exterior bricks, and cracks in exterior stucco.

Prior to the creation of the TRCC, homeowners were protected by the "implied warranty of good workmanship" granted in 1968 which covered defects based simply on the common sense of a home

inspector, or a jury. This common sense warranty has now been waived, replaced with the explicit litmus test warranty standards now with a rock solid 1-year limitation on workmanship.

The homebuilding industry, claiming to be acting on behalf of the consumer, convinced the Texas House and Senate that the implied warranty was "vague" and created confusion between builders and owners on what defects should be covered. This resulted in the waiving of the implied warranty, a great loss to the consumer and a huge boom for the homebuilders.

The standards also expressly limit air conditioning, heating, and electrical problems to only 2 years. Defects such as an air conditioner failing on a hot summer day after 2 years is not covered. A new air conditioner installed in an existing home usually is warranted for up to 10 years, but on a new home it is now limited to 2 years.

Structural damage is warranted for 10 years, although the loopholes and exceptions in the standard will make it difficult to qualify. The homeowner is also required, by the warranty, to maintain the water content of the ground around the foundation, in short, homeowners are required to "water" their foundation in order to preserve their foundation warranty. This is unreasonable especially since the TRCC cannot determine how to achieve this water content. This is just one of many exclusions and unnecessary requirements that are throughout the standard.

With the release of this extremely limited warranty standard and waiving of the implied warranty of common sense, the TRCC, appropriately pronounced, "trick", an agency created by the homebuilding industry for the homebuilding industry, has played its final trick on the homebuyers of Texas

## Frisco Texas

Unfortunately propositions 1 and 2 were defeated in Frisco. These propositions were advanced by three individuals, the Becka Family and would have demanded full disclosure on arbitration as well as required bonding for new homebuilders in the City.

The homebuilding industry was obviously very concerned about these three citizens. They poured money into what seems to be nothing but a front group called CUFF Citizens United for Frisco's Future. This organization raised over \$100,000 and aired TV commercials complete with scenes of ambulances and fire services disappearing due to the

lost revenue from the homebuilding industry if the propositions passed.

And the City of Frisco bought it defeating both propositions easily. One thing for sure is that homeowners who have a defect in their new home in Frisco should to turn to CUFF for support. Since they were so concerned about the future of Frisco, I am sure they will provide help. Good luck.

The Becka's should be commended for taking on the greed and fear mongering of the homebuilding industry.

**DISCLAIMER:** This newsletter does not intend to give any legal advice. You should always consult an attorney regarding contracts and other legal matters. The opinions expressed in this newsletter are solely those of the authors. All submissions become the property of HADD Inc., and may be used by HADD on the Web Site and or the HADD publication "Your Home Matters". John R. Cobarruvias [john.Cobarruvias@hadd.com](mailto:john.Cobarruvias@hadd.com) 281-486-5203

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**TO:**

A Newsletter by Homeowners Against Deficeint Dwellings, Texas concerning the homebuilding industry and consumer rights.