

**New Home Warranties  
Deception or Protection?**

**A Consumer's Perspective**

**By  
Homeowners Against Deficient Dwellings  
December, 2002**

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<p><b>Deception</b> (De*cep*tion) <b>That which deceives or is intended to deceive; false representation; artifice; cheat; fraud. "There was, of course, room for vast deception."</b></p>
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## Summary

**The biggest investment of a lifetime, a new home, comes with the least amount of consumer protection.**

To say new home warranties are deceptive is a strong and incorrect statement. This would imply home builders and warranty companies are actively engaging in the practice of selling protection for a new home purchase, while knowing the warranty is chock full of limitations, exclusions, and loopholes the majority of claims would never survive. Since all the limitations, exclusions, and loopholes are explicitly written into the warranty, there is no clear case of deception, but there is a question of whether the warranties truly provide adequate protection for the biggest investment of a lifetime.

The warranties reviewed for this report are extremely limited in coverage. Some of the limitations would shock many new homebuyers and have shocked current homeowners who are now depending upon the protection of the warranty for an expensive defect. Unfortunately, it is usually at this time, when the repairs and protection are needed, that homeowners realize the extent of the limitations and the limited coverage they have for their home.

Many homebuyers incorrectly assume the “10-year” warranties provide adequate coverage for a full 10 years. This assumption is probably based upon the titles of the warranties and homebuyers believing a product, which requires 30 years to purchase, must have some of the most comprehensive protection in the industry. This is not the case in any warranty that was reviewed for this report. Instead, most provide very limited coverage for a 1-2-10 year period. Generally the entire home is covered for one year, mechanical systems for two, and structural defects (not specifically foundation defects) for 10. It is the details of the limitations in the coverage that can come as a shock for homeowners and that are addressed in this report.

The bottom-line on new home warranties, or at least for those reviewed for this report, and provided by many homebuilders, is simply **Home Buyer Beware**. Because of the severe limitations of these warranties, homebuyers should protect their investment prior to purchasing the home. They should ask for a copy of the warranty to read and understand both the coverage provided and the limitations. They should buy the house, knowing the exact risk they are taking and what little protection they have for the biggest investment of their life, their new home.

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## About This Report

This report was created after reading each warranty available and attempting to understand the coverage provided. The warranties reviewed are mainly from Texas, but many are used throughout the country. One in particular is the Home of Texas Warranty used by David Weekley Homes, a Texas homebuilder. Home of Texas is almost word for word, picture for picture, identical to the Residential Warranty Corporation (RWC), which seems to be the most popular in the United States. The Home of Texas also has an interesting page dedicated to foundation maintenance requirements. Because of this extra set of maintenance requirements and the similarity to the RWC, the Home of Texas will be used as an example throughout this report.

Homebuyers should only use this report as a guide to the quality of protection provided by the various warranties. It is not a comparison of each warranty reviewed, and it should not be used as an evaluation of any single warranty. The facts of the warranty are provided as best as possible for the reader and potential homebuyer to review and decide. Homebuyers are encouraged to read the recommendation section below and to read their specific warranty before buying any new home.

The warranties that were reviewed for this report include:

**Residential Warranty Corporation (RWC).** The RWC is by far the most popular of warranties. It has the 1-2-10 year structure with only structural damages covered after year two.

**Home of Texas.** Used by many builders in Texas. It seems to be the Residential Warranty Corporation warranty packaged in a blue cover personalized for the builder.

**Home Buyers Warranty (HBW or 2-10 Warranty).** The HBW is very similar to the RWC.

**Pulte Warranty.** This warranty is provided by Pulte Homes. It is very similar in coverage to the RWC, although different in length of coverage for many items.

**Ryland Homes Warranty.** This warranty is provided by Ryland Homes. It is very similar in coverage to the RWC.

**Home Owners Warranty Corporation (HOW).** The HOW warranty was put into receivership in about 1994, leaving thousands of homeowners with little, if any, coverage of the limited warranty. Homeowners who have this warranty can apply only if there is money available and all other avenues of compensation have been exhausted. It is also very similar to the RWC.

**National Association of Home Builders' Performance Standards.** This is not a warranty program, but a set of "performance standards" which are recommended to the builder. The performance standards in this guide are very similar to the various warranties reviewed.

**ACES Builders' Warranty.** This is a warranty used by custom builders in Texas. It is very different from the warranties above and will be discussed later.

### **Common Elements of Home Warranties**

Most of the warranties have many common elements of coverage and limitations. Although each is different in some aspect, generally the following can be found in each warranty document:

**Definitions.** This section defines the terms used throughout the warranty document.

**Limited Risk.** The warranty limits the cumulative risk to original purchase price of the house. As an example, if the foundation severely failed, which can require extensive and costly repairs, and this repair must be performed multiple times, the total amount for all claims can never exceed the purchase price of the house. Once it does, the warranty will not cover the difference.

**Exclusions.** There are several pages dedicated to what is covered and, more specifically, what is not covered. (This will be covered in detail later.)

**Performance Standards.** There is a section dedicated to performance standards or warranty standards. These standards define the tolerances of the building standards, such as how wide a crack in the wall must be before it is considered a covered item. (This will be covered in detail later.)

**Consequential Damages.** Consequential damages are damages to property or other parts of the house due to a covered defect. These damages are not covered under this warranty. For example, if the roof blew off the house and was considered to be a covered item, any damage to the interior would not be covered under this warranty. The consequential damage would be the owner's responsibility.

**The Use of Arbitration.** If a dispute arises concerning coverage, and the Warranty Company or builder denies any repairs, then the owner must request binding arbitration to resolve the dispute. Arbitration is incorrectly considered faster, cheaper, and just as fair as our time-honored court system guaranteed by our Constitution. (This will be covered in detail later.)

**HUD Addenda.** A page is dedicated to addenda concerning HUD homes, as well as addenda for specific states. The addenda either extend the warranty period for certain items or exclude some limitations of the warranties.

**Waiver of Implied Warranty.** The warranties specifically waive any implied warranties provided by individual states. Some states will not allow this waiver. (This will be covered in detail later.)

### **Common Misconceptions about Home Warranties**

Before delving into the details of the coverage provided by the 10-year warranties, there are some important misconceptions that should be addressed about the coverage. Too many homebuyers believe they have a full 10-year, bumper-to-bumper warranty that should, at the very least, be as comprehensive as a new car warranty in comparison and worthy of a product, which requires monthly payments for 30 years. Unfortunately, this is a misconception that is usually realized only after the homeowner needs the coverage, leaving the homeowner with a very expensive repair and little, if any, available recourse.

These are just a few of the misconceptions:

**Foundation coverage.** A cracked foundation is NOT specifically covered in the full 10-year time span of the warranty. For instance, a cracked foundation which causes multiple cracks in the walls is not covered. The cracks, if exceeding the width set in the performance standard, may be covered and repaired, but the foundation which caused the cracks is not covered. The resulting damage to the home from the foundation defect must render the home unsafe or uninhabitable before it will be considered a covered repair. (This will be covered in detail later.)

**10-year coverage.** After the first year, little, if anything, is covered, including paint, flooring, cabinets, walls, roof, and other items. In the 2<sup>nd</sup> year, only Air and Electrical items are covered. During years 3-10 only Major Structural Damage (MSD) is covered. This MSD is very specific and quite hard to qualify for. (This will be covered in detail later.)

**Other limitations.** Many items which would require expensive repairs are generally not covered after the first year and, in some cases, not at all. Items such as carpets, tile, paint, and the roof are not covered after the first year. Damage to the tile must be noticed PRIOR to occupancy, or else it is not covered. Unlike a car, which requires a 5-year warranty on the paint, the paint on the home is not specifically addressed in the warranty. It is assumed it is for the first year only. Homeowners are urged to read their specific warranty to understand the limitations.

### Common Limitations of Home Warranties

The limitations and exclusions begin on the cover page of the warranty with the title, “The Limited Warranty”. This should be the first of many yellow caution signs for the potential homebuyer, and the question they should ask is: “What are the limitations?” Some of these limitations identified in the first few pages include the following:

1. The homebuyer is forced to waive any liability for consequential or incidental damages.
2. Any implied warranties provided by the State, such as the implied warranty of good workmanship and habitability, are waived.
3. The aggregate cost of repairs during the entire lifespan of the warranty shall not exceed the final sale price of the home.

The warranty also details 37 specific exclusions to the policy. The following are examples of the exclusions:

1. Loss or damage caused by soil movement

2. Loss or damage resulting from, or made worse by, the presences of or consequence of unacceptable levels of radon, formaldehyde, carcinogenic substances, or other pollutants
3. Loss or damage resulting from your failure to perform routine maintenance (discussed later)
4. Loss or damage resulting from your failure to minimize or prevent such loss or damage in a timely manner
5. Loss or damage resulting from quality and potability of water
6. Failure of your builder to complete construction of the home or any part of the home (An incomplete item is not considered a defect.)
7. Any consequential damages
8. Personal property damage or bodily injury
9. Violation of applicable building codes

These are just a few of the 37 specific exclusions defined in the warranty. Homebuyers should review the exclusions of their specific warranty to understand the coverage BEFORE purchasing the home.

### **Lack of Mold Coverage**

**"We've found that 28 percent of the builders reported that they had mold in at least one house under construction in the past year."**

--Tom Kenney with the National Association of Home Builders' Research Center

Toxic mold in homes has been the subject of a number of hearings across the United States and the focus of media attention. From the testimony at the Texas Department of Insurance hearings, it is clear that mold contamination is a significant threat to new homeowners as well as to the building industry. According to reports from the Atlanta Homebuilder Convention held in the summer of 2001: "We've found that 28 percent of the builders reported that they had mold in at least one house under construction in the past year," said Tom Kenney with the National Association of Home Builders' Research Center. "Eighteen have reported at least one occupied house with a mold problem."<sup>1</sup>

Many homebuilders have been remediating homes with mold contamination due to a construction defect. Other homeowners have not been so lucky. For instance, many homeowners with synthetic stucco, which has been alleged to trap moisture and cause rot and mold contamination, are left with little, if any, protection through the warranties, the builders, or their insurance company. Unfortunately, as threatening as mold contamination seems to be to the building and insurance industries, there is nothing specific about mold or mold coverage in the warranties. Mold contamination could be considered as consequential damage, and therefore it would be excluded.

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<sup>1</sup> Mold on their minds: Homebuilders grapple with moisture matters. Monday, February 11, 2002, Inman News Features.

The mold issue will continue to be a topic to be discussed at many hearings throughout the United States. A complete report on the mold hearings in Texas will be available shortly and will discuss mold in detail. Potential homebuyers are encouraged to read their warranties and ask their builder what protection they have against this defect.

### Performance Standards

The performance standards define when a defect becomes a covered item under the warranty and defines an action for repair, although specific action is not always detailed. As an example, a crack in the exterior of bricks must be at least 1/4 inch wide to be considered a covered item, and the action required by the builder is simply to “correct” the cracks. Anything less than 1/4 inch is routine maintenance. Below are some examples of common defects in new homes, identified in the performance standards. It is important for the homebuyer to read these performance standards and visualize the defect.



**Cracks in the walls.** Cracks in the wall must exceed 1/8 inch to be considered a covered item. This is in the first year ONLY, and some warranties allow this repair only once during the first year. After the first year, cracks are not considered a covered item. Anything less than 1/8 inch is considered homeowner maintenance. It is important to understand just how wide 1/8 inch is. Above is a line less than 1/8 inch wide. Imagine a crack this size on the wall of a new home. Under this warranty, it would not be covered and is considered homeowners’ maintenance responsibility.

**Cracks in the exterior bricks.** Cracks in the exterior bricks must exceed 1/4 inch to be considered a warranty item. This is during the first year ONLY. Notice how large 1/4 inch is and imagine this on the exterior of a new home.



**Cracks in attached garage slab.** Must exceed 1/4 inch. Surface patching and epoxy injections are acceptable repairs.

**Cracks in stucco, cement and plaster surfaces.** Must exceed 1/8 inch. These are covered for the first year only.

**Clouding in between panes of glass.** Will correct only if damage is documented PRIOR to occupancy.

**Cracks in ceramic grout joints.** Must exceed 1/8 inch. Will correct only once during the first year.

**Ceramic tile cracks or becomes loose.** Will correct only if damage is documented PRIOR to occupancy.

**Cuts and gouges in any floor covering.** Will correct only if damage is documented PRIOR to occupancy.

**Condensation lines clog under normal use.** No action required.

**Cabinet separates from wall or ceiling.** Must exceed 1/4 inch. Caulking is an acceptable method of repair.

**Chimney separates from the home.** Must exceed 1/2 inch within 10 ft.

Absent from the performance standards are any specifications for foundations, except for cracks in the foundation of the attached garage and non-living areas. The foundation is assumed to be covered in the section titled “Major Structural Damage”.

### **Major Structural Defects**

As “major” as “Major Structural Defect” is perceived, little explanation is devoted to MSD. MSD is defined in the definitions as:

All of the following conditions must be met to constitute a Major Structural Defect:

1. Actual physical damage to one or more of the following specified load-bearing segments of the home
2. Cause the failure of the specific major structural components
3. Which affects its load-bearing function to the degree that **it materially affects the physical safety of the occupants of the home**

According to this definition, a crack in the foundation does not constitute MSD. Neither would 100 cracks in the walls of the house, whether they exceed the 1/8 inch standard or not. Unless the damage affects a load-bearing wall and renders the home unsafe to the occupants, the damage would not be considered MSD, and therefore it is not covered.

It is under this section that many homeowners believe foundation damage would be covered for the full 10-year period. Unfortunately the typical damage in a home, which leads homeowners to believe there is a foundation problem, would not meet the high standard for MSD. For instance, cracks in the wall can be repaired. Sticking doors can be rehung. Sticking windows can be reinstalled. Cracks in tile or the walls may not be repaired if they do not exceed the standard and if not found within the first year.

Although sticking windows and doors that will not open or close could cause a fire hazard and therefore render the home unsafe, these could be fixed without ever identifying the

source of the damage. Also, since doors and windows are not load-bearing items, the damage and/or the source of the damage would not necessarily be covered.

Examples of non-load-bearing elements, which would not qualify for MSD, include:

1. Non-loading bearing walls
2. Wall tile
3. Drywall
4. Flooring
5. Brick
6. Siding
7. Heating and cooling, plumbing, or electrical

Under these requirements, Major Structural Defect is a very high standard to meet. Coupled with the unreasonable foundation maintenance discussed below, it is difficult to understand how any damage could be considered for MSD coverage.

### **Unreasonable Maintenance Requirements**

Section V of the Home of Texas is different from the other warranties. This section, titled “Active Soils Guidelines”, lists foundation maintenance requirements for homes built on active soil. In five different paragraphs, it reminds the homeowner that improper maintenance could void the limited warranty. The requirements listed in this section seem to be unreasonable for the average homeowner. For instance:

1. In order to properly maintain the foundation, the soil around the foundation must have constant moisture content, not too wet, not too dry, and even. It does not detail how deep this moisture must be or how far away from the foundation.
2. It suggests that when on an extended absence from the home, the homeowner should have someone else maintain the foundation during dry periods. Maybe the neighbors could feed the cat, water the plants, **and** maintain the moisture content around the foundation.
3. It suggests proper landscaping and recommends contacting a county Agriculture Extension Office for the correct choice of trees and shrubs.
4. It also instructs on how to adjust sprinklers so an even distribution of water is obtained.

These requirements provide ample opportunity to declare any foundation damage which causes a Major Structural Defect as simply lack of owner maintenance.

### **The Use of Arbitration**

The warranties reviewed for the report have a mandatory binding arbitration clause. This requires all disputes that are not resolved with the warranty company to be decided by arbitration and not by a court of law. Arbitration has the unfounded reputation of being faster, cheaper, and just as fair as our time-honored civil court system which, until recently, was guaranteed by the 7<sup>th</sup> Amendment to the United States Constitution. During multiple public hearings at the Texas State Capital in the summer of 2002, it was clear from the testimony by homeowners that arbitration was excessively expensive and grossly unfair to the consumer.

New homebuyers are urged to read about the abuse of arbitration in new home contracts and new home warranties. They should have this clause removed from the warranty and contract before purchasing the new home. Arbitration should always be an option if it is not forced upon consumers prior to the defect arising, if it is fair, and if it is just as inexpensive as the court system guaranteed by the Constitution.

Homebuyers might consider reading the following as background:

**“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 forces upon consumers and citizens seeking justice.

**“Arbitration costs are so high, many victims are unable to pursue complaints”**, new Public Citizen report reveals. 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, states a new Public Citizen report. In fact, Public Citizen found that arbitration costs are so high that many people drop their complaints because they cannot afford to pursue them.

### Waiver of the Implied Warranties

**“These warranties are not illusory; they offer significant tangible benefits to home buyers.”**

--Brief of *Amicus Curiae*, Submitted by the NAHB for the Texas Supreme Court, Centex vs. Buecher, No. 00-0479

Many states, such as Texas, have provided new homebuyers an implied warranty of good workmanship and habitability. These warranties generally could not be waived, although the builders' contracts and warranties do. Many times a defect in a home would not qualify as a defect under the expressed warranty provided by the builder, but would be covered under the implied warranty. As an example, 100 cracks running the length of a room, all under 1/8 inch wide, would not specifically be covered under the Home of Texas according to the performance standards, but would be under the implied warranty of good workmanship.

Although the builders considered this implied warranty as vague, it is really based on common-sense building standards. Recently the Texas Supreme Court ruled on whether a builder could waive this implied warranty guaranteed by the State of Texas. (*Buecher vs. Centex*).<sup>2</sup> In a split and confusing decision, the implied warranty of habitability could not be waived, but the implied warranty of good workmanship could be if certain restrictions were met. This ruling is too complicated to be discussed in this report. The reader is urged to review the assessment of the ruling for further details.

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<sup>2</sup> Centex vs. Buecher, Texas Supreme Court Case No. 00-0479

Many of the defects the average person would consider to be a lack of common sense would not be covered under good workmanship clauses of expressed warranties. Because of the severe limitations on the expressed warranties, potential homebuyers should consider protecting their investment by striking this waiver from the warranty.

### **Other Warranties Reviewed**

Another warranty which was reviewed but not included in this report, was the American Construction & Education Services, Inc., Builder Limited Warranty. (ACES) It was very difficult to obtain a copy of the warranty since the company and homebuilders refused to provide one.

This is one of the more complicated warranties and is mainly used by custom homebuilders in Texas. It has coverage similar to the Home of Texas but is more detailed. It contains a section concerning problem resolution, yet it also has arbitration as the final resolution procedure.

Because of the complexity of this warranty, it is left to the homebuyer to review and compare the coverage provided by the other warranties.

### **Recommendations and Conclusions**

**"When it comes to the greatest investment of our lives, it's caveat emptor -- let the buyer beware."**

How to Buy a Home Without Being Hammered  
By David Weekley

Because of the extremely limited protection provided by the new home warranties, new homebuyers should consider protecting their investments by taking steps to prevent defects or to detect defects prior to moving into the home. The following steps are recommended:

1. Read and understand the warranty before purchasing a new home.
2. Remove the arbitration clause from the warranty. If the builder refuses, have it noted on the contract.
3. Remove the waiver of the implied warranty. If the builder refuses, have it noted on the contract.
4. Have the home inspected during and after construction. This may cost a significant amount of money, but it could also save a costly repair.
5. During the last walk-through, compare the performance standards detailed in the warranty to actual construction (windows, doors, plumbing, heating, A/C, etc., should operate as expected). Check for cracks in the walls and flooring. Make a list of the violations of the performance standards.
6. If the home is an FHA/HUD purchase, demand to know what parts of the warranty HUD does not allow, such as the arbitration clause and any maintenance that is considered to be unreasonable.

## **About Homeowners Against Deficient Dwellings**

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 with deficient homes.

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