

# SUNSET ADVISORY COMMISSION

## HEARING MATERIAL

### Texas Residential Construction Commission

September 2008



# Sunset Advisory Commission



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*In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.*

# TEXAS RESIDENTIAL CONSTRUCTION COMMISSION



**SUNSET HEARING MATERIAL**  
**SEPTEMBER 2008**

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# SUMMARY




# Summary

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The Texas Residential Construction Commission was never meant to be a true regulatory agency with a clear mission of protecting the public. It has elements of a regulatory agency in its registration of homebuilders, but this program is not designed to ensure that only qualified persons can enter the field – the way true regulatory agencies work – and so does not work to prevent problems from occurring. The Commission also has tools for taking enforcement action, but the ease of satisfying the registration requirements and significant gaps in who must be registered make it easy for even problem builders to stay in business.

The Commission also administers the State Inspection Process, designed to resolve disputes between homeowners and builders before either party may pursue legal action. This lengthy and sometimes difficult process has been a source of frustration for homeowners trying to address defects with their homes. Despite changes last Session ostensibly to strengthen the process by making builders subject to new penalties if they refuse to offer repair of a confirmed defect, the Commission still has no real power to require builders to make needed repairs. Because homeowners must submit to this process before they may seek remedies in court, those who fail to satisfy its requirements either out of confusion or frustration lose their access to court. No other regulatory agency has a program with such a potentially devastating effect on consumers' ability to seek their own remedies.

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*Current regulation of the residential construction industry is fundamentally flawed and does more harm than good.*

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The cumulative impact of these programs is a greater lack of trust than is seen with other regulatory agencies. People do not trust the regulatory processes to protect them from unqualified builders who should not be in business. Homeowners do not trust the State Inspection Process to help fix defects in their houses. When confronted with the daunting issues involved in controlling such a large, important, and complex field as residential construction, Sunset staff did not trust that the commitment exists to establish the true regulation needed for the protection of the public.

In its review of the Texas Residential Construction Commission, Sunset staff concluded that anything short of a true regulatory program does more harm than good, and should be abolished. Despite recent improvements in the State Inspection Process regarding satisfactory offers of repair, the process is still ineffective and likewise needs to be abolished. The Commission cannot require needed repairs, and the Process potentially threatens the Commission's ability to objectively enforce regulations. Although agency staff work diligently to implement regulations and help consumers navigate the various processes for redressing complaints, good intentions are not a substitute for having adequate statutory tools.

Ultimately, the Legislature will need to decide the approach for overseeing this industry. This report presents an opportunity to have a more comprehensive discussion of dispute resolution and legal processes available to homeowners and the regulation of the residential construction industry as a whole.

A summary follows of the Sunset staff recommendation on the Texas Residential Construction Commission.

## Issue and Recommendation

### Issue 1

***The Texas Residential Construction Commission Fails to Provide Meaningful Oversight and Public Protection Because of Fundamental Structural Flaws in the Current Regulatory Approach.***

#### Key Recommendation

- ◆ Abolish the Texas Residential Construction Commission and repeal the Texas Residential Construction Commission Act.

### Fiscal Implication Summary

The recommendation to abolish the Texas Residential Construction Commission and repeal the Texas Residential Construction Commission Act would have a negative fiscal impact to the State and an overall reduction of 80 employees. Abolishing the Commission would result in a loss of any excess revenue collected by the agency that is currently deposited in the General Revenue Fund. Based on budgeted fiscal year 2009 information, the agency’s annual contribution of about \$300,000 in excess revenue to General Revenue would not occur in the future if the agency is abolished.

Also, once the Act is repealed on September 1, 2009, builders would no longer be required to pay registration fees, leaving the agency without a funding stream while it is still in the wind-down process. To fund the agency through this timeframe, the Legislature would need to appropriate funding from General Revenue to minimally staff the agency and continue its wind-down efforts through the first five months of fiscal year 2010. The table shows the overall impact of this recommendation

<b><i>Fiscal Year</i></b>	<b><i>Cost to the General Revenue Fund</i></b>	<b><i>Loss to the General Revenue Fund</i></b>	<b><i>Change in Number of FTEs From FY 2009</i></b>
2010	(\$400,000)	(\$300,000)	-67
2011	0	(\$300,000)	-80
2012	0	(\$300,000)	-80
2013	0	(\$300,000)	-80
2014	0	(\$300,000)	-80

# ISSUE



# Issue 1

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## *The Texas Residential Construction Commission Fails to Provide Meaningful Oversight and Public Protection Because of Fundamental Structural Flaws in the Current Regulatory Approach.*

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### Summary

#### Key Recommendation

- ◆ Abolish the Texas Residential Construction Commission and repeal the Texas Residential Construction Commission Act.

#### Key Findings

- ◆ The Legislature created the Texas Residential Construction Commission to be a different type of regulatory agency – providing both industry oversight and an inspection service.
- ◆ Registration does not provide an effective mechanism for adequately protecting the public and regulating the residential construction industry.
- ◆ The State Inspection Process requires a heavy investment of resources and is ineffective in requiring meaningful results.
- ◆ Other agency functions do not add value, distract from the Commission's main duties, and confuse many homeowners.
- ◆ The overall regulatory scheme for residential construction has broad impacts beyond the agency's purview, leading to considerable consumer distrust.
- ◆ While most other states regulate builders, the majority do so with more rigorous licensing programs.
- ◆ Fundamental flaws with current industry regulations and the expansion of regulation needed to fix them make it difficult to justify either continuing down the current path or overhauling the State's approach.

#### Conclusion

From its inception, the Texas Residential Construction Commission has received criticism of its ability to effectively oversee builders and protect Texans from poor quality construction. Although the Legislature recently listened to these concerns and made significant changes to the Commission and its enforcement abilities, these efforts only mask fundamental flaws in the State's current approach to industry regulation. To fix these structural flaws would require an expansion of industry regulation that Sunset staff concluded cannot be accomplished in the near future. Without true regulation designed to ensure public protection, Texans are better served without the Texas Residential Construction Commission.

## Support

**The Legislature created the Texas Residential Construction Commission to be a different type of regulatory agency – providing both industry oversight and an inspection service.**

- ◆ Historically, Texas’ residential construction industry has gone unregulated by the State. However, in 2003, the Legislature created the Texas Residential Construction Commission to oversee certain aspects of the home building industry. The agency’s original charge included registering individual builders, remodelers, and residential construction companies, as well as new home construction and remodel projects. The textbox, *Current*

**Current Commission Registration Activity**

Builders .....	27,986
Homes .....	587,909
Third-party warranty companies.....	9
Arbitrators .....	5

*Commission Registration Activity*, details the current number of active builders and homes registered. The agency’s original statute gave the Commission minimal authority to enforce against builders who violate the Texas Residential Construction Commission Act or Commission rules. In addition to overseeing builders, the Commission is responsible for certifying third-


party warranty companies and residential construction arbitrators. The accompanying textbox also details the current number of registrants for each of these categories.

- ◆ Separate from standard oversight functions, the Legislature also charged the Commission with administering the State-sponsored Inspection and Dispute Resolution Process. The State Inspection Process attempts to offer a neutral, third-party review of alleged post-construction defects, which homeowners and builders are required to go through before pursuing legal action. The purpose of this process is to help resolve defect disputes outside the formal legal system of mediation, arbitration, or court. The State Inspection Process includes an inspection of alleged defects, the issuance of a report that either confirms or denies the defect and, if a defect is confirmed, a suggested course of action to reach compliance.

Before this administrative process was statutorily mandated, homeowners and builders settled disputes through various avenues of the legal system under parameters outlined in the Residential Construction Liability Act (RCLA). See Appendix A for a brief description of the differences between the Texas Residential Construction Commission Act and RCLA.

As part of the State Inspection Process, the Commission adopted and maintains the State’s Limited Statutory Warranties and Building and Performance Standards, which are used as minimum standards to guide inspections. In fiscal year 2007, the agency received 874 State Inspection requests and closed 580 cases. The Commission also oversees 87 third-party inspectors appointed by the Commission to perform inspections.

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*The State Inspection Process attempts to resolve defect disputes as a prerequisite to legal action.*

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- ◆ Last Session, the Legislature overhauled the Commission's statute to include standard enforcement and public membership provisions common to regulatory agencies and other provisions seeking to strengthen the State Inspection Process. Changes to the Act included granting additional enforcement tools, widening the eligibility range for the State Inspection Process, and requiring all local municipalities to check a builder's registration before issuing building permits. The bill also included standard language to ensure objectivity of public members on the Commission.
- ◆ A part-time, nine-member Commission oversees the agency and its nearly 80 employees. Statute requires that four Commission members are builders or remodelers registered with the Commission, three members represent the public, one must be a licensed professional engineer, and one must either be a licensed architect or a registered building inspector. In fiscal year 2007, the Commission operated on a budget of about \$3.2 million, supported completely by registration and State Inspection fees paid by the residential construction industry and homeowners. The Commission has a fiscal year 2008 budget of about \$10.6 million, including an additional \$7.4 million in appropriations to focus on the agency's enforcement efforts. For additional information on the Commission's functions, see the Agency Information section of this report.

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*The Commission  
operates on a  
budget comprising  
registration  
fees paid by  
the industry  
and inspection  
fees paid by  
homeowners  
and builders.*

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**Registration does not provide an effective mechanism for adequately protecting the public and regulating the residential construction industry.**

- ◆ The hallmark of any government-sponsored regulatory program is the mitigation of public harm that can result from the regulated activity. Regulatory programs can also help mitigate economic harm to an industry or its practitioners that can result from unqualified or unauthorized practice. However, protecting practitioners is not the rationale for involving the power of the State, nor is it the benchmark for evaluating the need for regulation. Rather, unless otherwise specified, the need for regulation centers on protecting the public. For additional information, see the accompanying textbox, *Evaluating the Need for State Regulation*.

***Evaluating the Need for State Regulation***

The assessment of possible harm to the public depends on factors such as the nature of the perceived threat, public expectation for protection, common practice elsewhere, and resources available to regulate. In addition, the benefits of the regulation should outweigh the harmful effects of the regulation. While this standard is generally expressed in terms of the impact on the availability of practitioners, it can also mean the impact on the public's ability to seek redress of its complaints, including access to the courts. Finally, the activities of the practitioner – beyond matters of consumer choice – should be of a complexity that consumers cannot adequately evaluate the appropriateness of the service or the qualification of the practitioner.

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*Builders  
are subject  
to the least  
restrictive form  
of regulation—  
registration.*

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Beyond the assessment of need for regulation, these factors also help determine the appropriate level of regulation. Licensing is the most restrictive form of regulation, generally requiring some level of skill or education and the passage of an examination to demonstrate proficiency. Licensees must be renewed periodically, usually with a demonstration of continued competence through continuing education. Registration is the least restrictive form of regulation, generally requiring only the identification and listing of practitioners by the regulating entity. Regulatory programs will typically combine elements of different levels of regulation, such that a registration program may include elements of a licensing program – like periodic renewal and continuing education. Such is the case for the regulation of builders by the Commission.

- ◆ The current method of regulating builders fails to adequately protect consumers from potential harm. Statute requires that all people acting as builders in the state must register with the Commission, first meeting general eligibility requirements shown in the accompanying textbox, *Builder Registration Requirements*.

***Builder Registration Requirements***

To receive a certificate of registration from the Commission, builders, as well as their primary designated agents, must meet the following requirements:

- ◆ be at least 18 years of age;
- ◆ be legally able to work in the U.S.;
- ◆ be trustworthy;
- ◆ undergo a criminal background check;
- ◆ be physically located in Texas;
- ◆ disclose any bankruptcies;
- ◆ disclose any other business affiliations; and
- ◆ prove ownership or provide an eligible designated agent.

As a registration program, the regulation of builders does not require them to satisfy basic capability – as is typical for other trades in the residential construction industry, such as electricians and plumbers – or criteria for financial soundness. By not ensuring the competence and financial responsibility of builders in Texas, the regulations do not prevent unqualified persons from entering the field and thus are not designed to prevent problems from occurring. Instead, the regulations depend on taking action after problems have occurred through enforcement. However, because of the ease of satisfying the registration requirements, the regulations cannot effectively prevent even those individuals who have had their registrations revoked from reentering the field.

The agency performs a basic background check, using names and Social Security numbers, to search for prior criminal convictions and outstanding judgments or fees unpaid to the Internal Revenue Service. Applicants

who have a relevant criminal background or owe money to various entities, including the IRS, may be denied registration. In addition, the agency may administratively deny an initial application or registration renewal for failure to provide complete information or related fees. In total, the agency has administratively denied 385 builders.

- ◆ Statute only requires individual builders or business' designated agents to be registered with the Commission – excluding a number of influential players in the larger system and, as mentioned above, even individuals with prior offenses who may remain active in the home building industry. For example, if a designated agent loses eligibility status for any reason and is in danger of registration revocation, all the builder has to do is change the name of the designated agent listed. The agency may even penalize builders who lose eligibility status based on a criminal conviction if they fail to replace themselves with a qualified designated agent. Even when an ineligible builder assigns a new designated agent, this change does not ensure that a problem builder is no longer operating in the state. In addition, without a requirement for financial responsibility, the effect of this change does not ensure that the building company is able to assume liability for all warranty items.

The agency does not have enough resources to develop an effective, comprehensive method for checking unregistered building activity. The Commission does not have an ongoing, systematic effort to check with municipalities to ensure that only registered persons obtain building permits and properly register the homes they build or remodel.<sup>1</sup> According to the agency, of the nearly 28,000 builders registered with the Commission, about half have yet to register a home. To the extent that active registered builders are not registering homes, this situation contributes to a pervasive concern about other statutory requirements that go unmet and may ultimately erode respect for the agency's overall enforcement effort.

- ◆ The Commission's voluntary Star Builder program is designed to provide the public with a layer of protection by identifying builders with a demonstrated work history and experience. However, despite efforts to publicize the program, it has failed to gain a status where the designation is regularly sought by builders or demanded by consumers either because the requirements are feared to be onerous or because the program competes with other specialty certification programs that exist nationally and statewide. Rather than trying to find a way to bring more builders into the program to expand its benefit to the public, the Commission recently voted to ask the Legislature to remove this program from statute.
- ◆ Although the Legislature significantly increased the Commission's enforcement authority, no grounds for enforcement relate directly to ensuring quality construction. Grounds typically relate to business practices or compliance with the agency's statute or rules. Thus, instead

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*The current registration system does not prohibit bad builders from continuing to work in Texas' building industry.*

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*The Star Builder Program has failed to gain status among consumers, yet it is the closest thing to providing public protection.*

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*Enforcement is  
mainly action  
against builders  
for late renewals.*

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of addressing critical construction issues, the majority of actions taken against builders were for failure to timely renew a license. While 25 percent of the actions taken against builders were for fraud and deceit, these cases do not necessarily relate to financial misdeeds, and when they do, these actions were mostly taken as the result of a final court judgment, as required by statute, which can take years to produce. The table, *Commission Enforcement Activity*, shows the grounds for all enforcement actions taken in fiscal year 2008. Also, despite the fact that builders have been subject to registration requirements since 2004, the agency has yet to issue a cease-and-desist order for failure to register and instead works with builders to achieve compliance.

**Commission Enforcement Activity – FY 2008**

Type of Allegation	Total Actions Taken
Late Builder Registration	66
Fraud and Deceit/False Affidavit	45
Failure to Provide Notice of Address Change, Name or Material Change	18
Failure to Register a Home	16
Insufficient Funds	13
Unpaid Home Registration	10
Multiple Violations	9
Late or Incomplete Renewal Application	5
Unpaid State Inspection Fees	3
Failure to Register as a Builder	3
Other Violations	3
Invalid Corporate Status	2
Commission Rule Violation	2
Designated Agent Violation	2
Denial of Registration*	1
<b>Total</b>	<b>198</b>

\* This number only includes those denials that were appealed and does not include administrative denials.

**The State Inspection Process requires a heavy investment of resources and is ineffective in requiring meaningful results.**

- ◆ The State Inspection Process is a lengthy, sometimes difficult process for homeowners seeking to remedy a problem with their home. The Process involves many different steps, including appropriate notification of a defect, adequate time for an inspector’s review, and different opportunities to object to inspection assignments and findings. Statutory guidelines

give the agency 110 days to process a case involving workmanship and material defects and 140 days to process a case involving structural issues. Currently, the average time to process State Inspection requests, including the appeal process is 147 days, although, outstanding cases have been open for as long as 20 months.

These timeframes mean that even under the best circumstances, homeowners must wait nearly four months to complete the State Inspection Process to address problems with their homes. In addition, while the case is pending, any items that are repaired are no longer considered post-construction defects and are administratively closed. The agency does not have a system for processing urgent cases involving habitability issues, such as structural problems, major leaks, or heating and air conditioning failures.

- ◆ Once the State Inspection Process is complete and a defect is confirmed, the Commission lacks authority to ensure that confirmed defects are repaired. In cases involving a confirmed defect the agency requires builders to send a follow-up report every 45 days, updating the status of a repair offer. Failure to comply with this requirement can result in an administrative penalty or other enforcement action. However, a 45-day report does not have to include a repair offer; only the report must be submitted. The Commission can take administrative action against a builder for repeated failure to offer repair, but the Commission has yet to use this authority because no builders have met the statutory criteria for enforcement action of failing to offer repair in multiple State Inspection cases.

Based on reports submitted to the agency, only 12 percent of all closed State Inspection cases have resulted in a satisfactory offer of repair or compensation over the life of the program. The remaining 88 percent of reported cases are pursued by one party or the other using the legal system – the very outcome the Process was enacted to prevent.<sup>2</sup> While the percentage of State Inspections resulting in satisfactory offers has climbed to 36 percent in fiscal year 2008, this improvement still has a cost of delayed access to the courts for others.

Consumers consistently express frustration with the State Inspection Process and the Commission's inability to require the builder to make a repair offer. In a recent survey conducted by the Texas Legislative Council on behalf of the Commission, about 69 percent of homeowners felt that the Commission's Process did not help them resolve issues with their builder.<sup>3</sup>

- ◆ Eligibility for the State Inspection Process is very narrow and, as a result, a significant amount of the complaints the Commission receives are outside its jurisdiction. Eligibility for the Process is strictly defined and major problems that homeowners encounter during the construction process,

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*Cases involving major defects do not receive priority processing and some have been pending as long as 20 months.*

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*In total, only 12 percent of State Inspections performed were resolved as a result of the Process.*

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such as job abandonment, are not State Inspection-eligible. The textbox, *State-Sponsored Inspection and Dispute Resolution Process Eligibility*, outlines the criteria that homes and individual defect items must meet to be considered. In total, about 26 percent of the 1,993 inspection requests filed were deemed statutorily ineligible for the State Inspection Process.

#### ***State-Sponsored Inspection and Dispute Resolution Process Eligibility***

Individual defects must be within the following warranty periods.

- ◆ One year for workmanship and materials.
- ◆ Two years for plumbing, electrical, heating and air-conditioning delivery systems.
- ◆ Ten years for major structural components of the home.

In addition to meeting the statutory warranty timeframes to be eligible for State Inspection, homeowners must meet the following criteria.

#### **New Construction**

All State Inspection requests must be filed:

- ◆ on or before the 10th anniversary of the initial transfer of title from the builder to the owner, or
- ◆ on or before the second anniversary of the date the claimed construction defect was discovered, if discovered after September 1, 2003, but no later than the 90th day after the warranty expires.

#### **Remodel Projects**

All State Inspection requests must involve a remodeling project that:

- ◆ involves interior renovations exceeding \$10,000, and
- ◆ covers residential material improvements (a modification to the home that either increases or decreases the home's total square footage of living space and that also alters a perimeter wall, foundation or roof; e.g. room additions).

- ◆ As a service to homeowners and home builders, the State Inspection Process is potentially at odds with the agency's regulatory functions. Regulatory oversight depends on impartial judgment in enforcement proceedings by persons with no stake in the final outcome. In providing a service through the State Inspection Process, however, the agency becomes an actor in matters that may well come before it as enforcement cases. As a result, the agency would have a stake in the outcome, compromising its role as an impartial judge.

#### **Other agency functions do not add value, distract from the Commission's main duties, and confuse many homeowners.**

- ◆ Certifying residential construction arbitrators provides no significant public benefit to either consumers or the building industry, and requiring the Commission to oversee this process contributes to the confusion about the agency's mission and core functions. The Commission's certification serves to inform consumers and builders seeking arbitration services about arbitrators who have demonstrated experience in the field of residential construction arbitration. Statute does not, however, require certification for persons to be a residential construction arbitrator. Perhaps because of

the limited benefit of this certification, only five residential construction arbitrators hold Commission certification.

Also, because the agency is charged with certifying arbitrators, many consumers incorrectly assume that the Commission has a role in the arbitration process. Because the subject of arbitration is controversial, the agency's small role in this area only adds to public confusion about the agency's intended mission.

- ◆ Commission approval of third-party warranty companies may provide an added layer of consumer protection, however the Commission is not positioned to review contracts or ensure financial solvency needed to pay claims. To gain Commission approval, third-party warranty companies must have operated in Texas for five years; be insured by a company authorized to engage in insurance in the State; or be an insurance company that insures the warranty obligations of a builder under the Limited Statutory Warranties and Building and Performance Standards.

Commission staff also reviews contracts to ensure the warranty company intends to act as the builder and assume responsibility for repairing post-construction defects as they arise. However, the agency does not review a company's financial capability or history of paying claims. To date the agency has never pursued a third-party warranty company in efforts to repair post-construction defects confirmed through the State Inspection Process. Instead, in those cases where a warranty company assumed builder risk, the agency continued to pursue the builder for a repair offer.

- ◆ Collecting arbitration filings is ineffective and leads to additional confusion about the Commission's core functions. The Commission is unable to ensure that all residential construction arbitration awards are filed with the agency because arbitrations occur outside the government regulatory process. Statute directs parties who have received an arbitration award from a court judgment to file a summary report with the Commission no later than 30 days after the filing in court. Many arbitration agreements have confidentiality clauses and, thus, parties to the arbitration do not disclose the filing to the agency. In addition, the Commission's reporting requirement does not include arbitration claims settled before a judgment is entered. The result of these limitations is that, to date, just 10 arbitration awards have been filed with the Commission. This incomplete data is of little value to those trying to study the results of arbitration in this area of law.

Also, much like the certification of arbitrators, many consumers are confused by the fact that the agency is charged with collecting arbitration filings because it gives the impression that the agency is somehow responsible for arbitration. While the responsibility of collecting arbitration awards may have been intended to give some insight into arbitration, it has instead caused confusion about how the agency focuses its efforts.

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*The agency has yet to pursue a third-party warranty company in an effort to resolve a post-construction defect dispute.*


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*Collection of arbitration filings does not provide any additional insight into the arbitration process.*

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*The County  
Inspection  
Program has  
the potential  
to provide false  
security to those  
purchasing homes  
in rural areas.*

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- ◆ The Commission's newly created County Inspections Program, which will provide an inspection mechanism for homes built in unincorporated areas not otherwise subject to a permitting or inspection process, will begin in September 2008. While the program is not currently active and could not be fully evaluated, the agency has worked to begin the initial program implementation, revealing conceptual problems with the program's statutory framework and the agency's implementation.

These problems relate to concerns about the Commission's ability to effectively provide a layer of oversight in Texas' vast unincorporated areas. For example, the agency does not have the resources to actively audit construction projects in unincorporated areas to ensure these projects are inspected. Also, the program will require builders to hire inspectors directly, without agency oversight of this process or assurance that builders and inspectors do not have a relationship that poses a threat to the quality of inspections performed. This program, although also well-intentioned, has the potential to provide false security to those purchasing homes or completing remodeling projects in rural areas lacking building code oversight.

**The overall regulatory scheme for residential construction has broad impacts beyond the agency's purview, leading to considerable consumer distrust.**

- ◆ A major role of the Commission was to adopt building and performance standards that define the quality of home construction and provide the framework for the State Inspection Process. Having a builder-oriented Commission responsible for adopting these standards takes advantage of the members' considerable expertise. Despite concerns about the compatibility of performing the service of state inspections in a regulatory structure (as described earlier), the Commission's role in defining the process is not inappropriate insofar as the standards-setting and the inspection process are both under the Commission's jurisdiction.

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*Like building  
codes, the  
Commission's  
Building and  
Performance  
Standards have a  
significant impact  
on housing costs.*

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By law, however, the Building and Performance Standards adopted by the Commission are also intended to define the quality of home construction in legal proceedings that follow the State Inspection Process, and are outside the agency's jurisdiction. Giving such authority to an administrative body controlled by builders to dictate the deliberation of legal matters outside the normal agency subjects of licensing and enforcement is unique and potentially problematic.

Beyond the control that the Commission's Building and Performance Standards exert over legal questions on the quality of home construction, these standards also have a significant impact on the very nature of housing in Texas. By defining the minimum quality of home construction, the Commission's building standards have a significant impact on housing costs. This would interject the Commission into the debate between

quality construction and affordability, with ramifications far beyond the purview of an administrative regulatory entity. The wide-ranging impact of such power by the builder-oriented Commission with a vested interest in the outcome is rare and far more troubling.

- ◆ The overall regulatory approach to the residential construction industry contributes to significant consumer concern about the Commission. Consumers see a State Inspection Process that is ineffective in fixing identified construction defects. They see a builder registration program that is not based on qualifications and cannot help prevent problems before they occur. They see an enforcement process that cannot effectively sanction problem builders because of the shell game of naming a new designated agent. Finally, if they opt out of an administrative process they feel has failed them, they see diminished access to the courts.

**While most other states regulate builders, the majority do so with more rigorous licensing programs.**

- ◆ Thirty-two other states regulate the residential construction industry, however, unlike Texas, 28 states require builders to be licensed. Typical requirements for licensure include passing a competency exam or showing proof of financial soundness. Exams generally cover construction techniques, aspects of running a business, and areas of the law under which licensees practice their trade. Many states have additional requirements for licensure, such as posting a surety bond or holding liability insurance. Some states require applicants to demonstrate prior experience in the field and provide information to prove to financial solvency. In those states that do regulate builders, the agency structures vary considerably.

The map shown on the following page, *Residential Construction Industry Regulation*, shows states that license builders as compared to those that have a lower-level regulatory structure, like registration, or do not regulate the residential construction industry at all. See Appendix B or additional details on each state's general licensure requirements and agency structure.

- ◆ In addition to regulating aspects of the residential construction industry, including builders, 12 states have dispute resolution mechanisms in which the agency may require resolution after a defect is confirmed, unlike Texas. Some of these agencies, including California's Contractors State Licensing Board, maintain arbitration and mediation offices within the agency and process complaints much like private arbitration or mediation firms. The accompanying map also highlights those states that provide a dispute resolution mechanism with a regulatory program.

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*Consumers who opt out of the State Inspection Process see diminished access to the courts.*

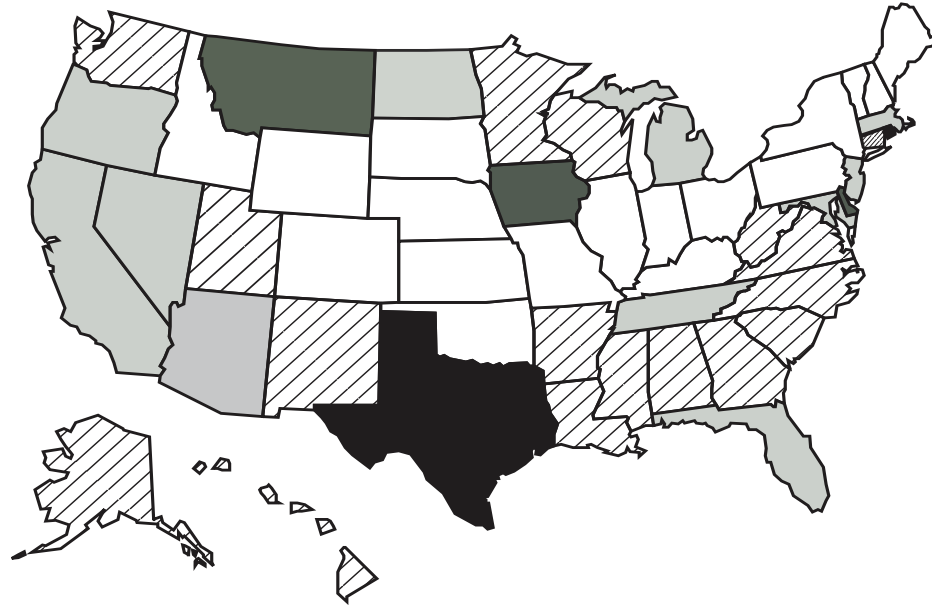
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*Most other states that have a dispute resolution process can force builders to make repairs or offer compensation.*

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### Residential Construction Industry Regulation



- Requires a license and has a state resolution mechanism (11)  
 AZ, CA, FL, MA, MI, MD, ND, NJ, NV, OR, TN
- Requires a license, but does not have a state resolution mechanism (17)  
 AL, AK, AR, CT, GA, HI, LA, MS, MN, NM, NC, SC, UT, VA, WA, WI, WV
- Requires registration only and has a state resolution mechanism (2)  
 RI, TX
- Requires registration only (3)  
 DE, IA, MT
- No regulation (17)  
 CO, ID, IL, IN, KS, KY, ME, MO, NE, NH, NY, OH, OK, PA, SD, VT, WY

**Fundamental flaws with current industry regulations and the expansion of regulation needed to fix them make it difficult to justify either continuing down the current path or overhauling the State’s approach.**

- ◆ Because of the numerous, significant deficiencies and concerns discussed in this Issue, the regulation of the residential construction industry and the Commission should not be continued in their current state. That conclusion is not to say that meaningful regulation would not benefit

consumers and builders – it would. However, in this case, having a poor regulatory program is worse than having no regulatory program at all.

The State licenses many occupations and activities, with varying approaches, degrees of commitment, and ultimate success in achieving the goals of regulation. Ideally, regulations give consumers some expectation of competence by practitioners, either through credentialing or through enforcement, removing those found unqualified to practice. Builders would benefit from having quality standards apply equally to everyone and excluding unqualified and unscrupulous builders who discredit the field.

To achieve meaningful regulation of builders would require a complete overhaul of current regulations and the Commission itself that cannot be justified at this time. Such an overhaul would involve difficult questions about the scope and extent of the regulations, especially with regard to the type of practitioners who would be subject to regulation. It would require a thorough analysis of the qualifications and skills that each person would need to demonstrate. It would require an understanding of the potential impacts on the builder community and on the cost of housing. These complex criteria and impacts could not be evaluated in this review.

- ◆ The significant legislative changes put in place last Session moved the regulations and the Commission in the direction of providing public protection, but the changes did not go far enough to reach that goal. The problem with the regulations, however, as discussed previously, is that fundamental flaws in the current approach make the program unworkable. To be sure, Commission staff work diligently to implement the regulations and to help consumers navigate the various processes for redressing complaints. Good intentions and desire to protect consumers are no substitute for having adequate statutory tools for regulation and enforcement.
- ◆ The Legislature provided a six-year Sunset date when it created the Commission, instead of the standard 12-year date, because it intended to have a full assessment of the regulation and the agency's performance at this time. It could have changed the date last Session to give the Commission additional time to implement the changes made and to assess the need for further revisions, but it did not do so.

Additional time for these programs to show their effectiveness, or to gather more data on program successes, would not produce results significant to overcome the agency's structural flaws. The Legislature has the power to address the regulatory concerns that have been expressed since the inception of this agency. That it has not done so is understandable in light of the complex issues and potential impacts that must be considered. Staff concluded that it could not recommend significant enough changes to salvage the regulatory structure. In its current form, however, the regulation does more harm than good. Repealing the regulation of builders would be better than the regulations currently in place.

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*Achieving meaningful regulation of builders requires an overhaul of current regulation that cannot be justified at this time.*

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*Additional time to gather more data would not result in information significant enough to overcome the agency's structural flaws.*

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## Recommendations

### Change in Statute

#### 1.1 Abolish the Texas Residential Construction Commission and repeal the Texas Residential Construction Commission Act.

This recommendation would abolish the Texas Residential Construction Commission as an independent agency and repeal the Texas Residential Construction Commission Act (TRCCA). This recommendation would eliminate the requirement for builders to register with the State, however builders would continue to be subject to the permitting and inspection process when building new construction or completing remodeling projects in municipalities or counties with building code enforcement offices. This recommendation would also eliminate the Commission's other main function, the State-sponsored Inspection and Dispute Resolution Process, allowing parties involved in post-construction defect disputes to take alleged construction defect disputes directly to the legal system. In these circumstances, both parties would comply with the applicable requirements of the Residential Construction Liability Act and individual contract terms when pursuing legal action.

Under this recommendation, the agency would be continued for an additional five months past its Sunset date, giving the agency until February 1, 2010 to complete the wind-down process, including filing and storing essential paperwork and processing State Inspection requests. During this time period, the agency would not be responsible for registering or enforcing against builders, third-party warranty companies, or arbitrators. The agency would continue to maintain work with existing third-party inspectors, but would not require inspectors to continue their registration after September 1, 2009.

As part of this recommendation, parties involved in post-construction defect disputes would not be required to go through the State Inspection Process before seeking other legal action after September 1, 2009, and those open State Inspection cases filed before this date would have the option of forgoing the final steps in the process and seeking other legal remedies. However, in this circumstance, the agency would not be responsible for refunding any fees paid to the agency for the State Inspection Process. Finally, any State Inspection case not closed by February 1, 2010, would be able to be continued through an alternative legal proceeding without being penalized for lapsing timeframes detailed in the Residential Construction Liability Act.

By repealing TRCCA, many additional provisions contained in the Act, not necessarily directly related to the Commission's functions but subject to expiration with the rest of the title, would also be repealed under the terms of TRCCA's Sunset Provision. Each provision could be incorporated into other pieces of existing law. No separate judgment is made on whether to continue these provisions outside of TRCCA; they would be repealed with TRCCA. These provisions are listed in the following table, *Other Repealed Provisions*.

Eliminating the Texas Residential Construction Commission would do away with a process unlike any other in state government, allowing citizens to have direct access to the legal system. In doing away with the Commission, builders would also, once again, become an unregulated industry.

### **Other Repealed Provisions**

<b>Provision</b>	<b>Explanation</b>
Sec. 420.003. Binding Arbitration Contract Provision	Requires contracts for the construction of a new home or improvement of an existing home, subject to registration requirements under the Act, that contain a binding arbitration provision to disclose that provision in a 10-point bold font. Invalidates a contract if any arbitration provisions are not conspicuously disclosed.
Sec. 428.005. Threat to Health or Safety	Requires a builder who receives a State Inspection request for an alleged defect that threatens the health or safety of the home's occupants to take reasonable steps to fix the defect.  Provides for the homeowner to fix the defect if the builder fails to make such an offer and allows the homeowner to seek reimbursement for the cost of repairs and any related attorney's fees.
Sec. 430.001. Limited Statutory Warranties and Building and Performance Standards	Establishes the following limited warranties: <ul style="list-style-type: none"> <li>◆ one year for workmanship and materials;</li> <li>◆ two years for plumbing electrical, heating, and air conditioning delivery systems; and</li> <li>◆ 10 years for major structural components of the home.</li> </ul> Requires the Commission to adopt Building and Performance Standards which serve as minimum guidelines for how different elements of a house should perform. The Building and Performance Standards are also the framework for State Inspections.
Sec. 430.002. Warranty of Habitability	Establishes a warranty of habitability for all new construction homes and improvements made to existing homes.  Defines a breach of the warranty as a defect that affects the habitable area of a home and has not been discovered by a reasonable inspection or examination of the home or home improvement within the statutory warranty periods.
Sec. 430.003. Mold Reduction and Remediation; Task Force	Requires the Commission to include measures in the Building and Performance Standards that are designed to reduce the general population's exposure to mold.  Requires the Commission to appoint a task force to develop these standards. The Commission appointed a task force, which completed its work in March 2005.
Sec. 430.004. Certain Design Recommendations; Advisory Committee	Requires the Commission to appoint a task force to develop design recommendations for residential construction that encourage rain harvesting and water recycling. The Commission appointed a task force, which completed its work in February 2005.
Sec. 430.005. Alternative Standards for Certain Construction	Clarifies that the only statutory warranty and building and performance standards that apply to economically distressed areas of the state are the colonia housing standards administered by the Texas Department of Housing and Community Affairs.  Clarifies that homes built in these areas are not exempt from the registration requirements and that any alleged post-construction defects are State Inspection eligible.

**Other Repealed Provisions (cont.)**

<b>Provision</b>	<b>Explanation</b>
Sec. 430.006. Statutory Warranties Exclusive	Establishes that the statutory warranties described in the Act supersede all implied warranties unless a warranty is established elsewhere in statute or a warranty is offered by a builder that goes beyond the minimum warranties.
Sec. 430.007. Waiver by Contract Prohibited	Prohibits a builder or homeowner from waiving the limited statutory warranties and building and performance standards or warranty of habitability established in the Act.  Clarifies that builders may offer more generous warranty terms or building and performance standards.
Sec. 430.008. Approval of Third-Party Warranty Company ◆ Sec. 430.009. Third-Party Warranty Company ◆ Sec. 430.010. Minimum Standards for Determination of Defect	Defines eligibility requirements for Commission approval of third-party warranty companies and establishes the terms under which a builder may elect to transfer liability.
Sec. 430.011. Effect of Subtitle on Other Rights and Obligations	Establishes that a written contract between a homeowner and a builder cannot limit the obligations of a builder as expressed under the Act.  Provides that a homeowner may bring a cause of action against a builder or third-party warranty company for breaching the limited statutory warranties.  Provides that a breach in the warranties does not by itself constitute a violation of the Texas Deceptive Trade Practices-Consumer Protection Act.
Sec. 431.001 Energy-Efficient Building Accreditation Program	Allows the Commission, in consultation with Texas A&M University, the Texas Commission on Environmental Quality, and an advisory committee appointed by the Commission, to establish an energy-efficient building accreditation program.
Sec. 436.003. Venue	Requires arbitrations involving a construction defect dispute to be conducted in the county in which the home with the alleged defect is located.
Sec. 436.004. Residential Construction Arbitration Task Force	Requires the Commission to appoint a task force to study and provide advice regarding residential construction arbitrators and arbitration. The Commission appointed a task force, which completed its work in January 2005.

## Management Action

### 1.2 In response to the Commission's abolishment, agency staff should begin the wind-down process before the effective date of the legislation.

If the Legislature abolishes the Texas Residential Construction Commission, agency staff should enter the wind-down process before the effective date of the bill to ensure adequate time for processing State Inspection cases. As part of this recommendation, the agency should develop a transition plan as soon as legislation abolishing the Commission is enacted. The plan should include:

- ◆ a timetable with specific steps and deadlines needed to carry out the abolishment in compliance with the effective date of the bill and transitional language included in the bill;
- ◆ a method for ending all programs and storing all critical program and personnel records, including case files related to the State Inspection Process;
- ◆ closure of Commission central offices; and
- ◆ any other steps needed to complete the termination of agency functions.

This recommendation would help ensure that the Commission's abolishment is done in accordance with state law and has a minimal impact on those in the residential construction industry and consumers seeking assistance through the State Inspection Process.

## Fiscal Implication

This recommendation would result in an estimated negative fiscal impact to the State of \$700,000 in fiscal year 2010 and a total reduction of 80 full-time equivalents (FTEs). Abolishing the Texas Residential Construction Commission would result in a loss of any excess fees collected by the agency that are currently deposited in the General Revenue Fund. Also, on September 1, 2009, the Commission would no longer exist and builders would no longer be required to pay a registration fee, leaving the agency without a steady funding stream. To fund the agency through its wind-down period, the Legislature would need to appropriate funding from General Revenue to ensure the Commission could continue its efforts to process State Inspection requests filed before September 1, 2009.

Although the agency would operate for five months during fiscal year 2010, the agency would not need to be staffed at its current level. Instead, the agency would only receive appropriations for administrative staff and staff in the State Inspection department, as enforcement and registration staff would no longer be needed. The agency would also need a small amount of appropriations to cover fees paid to third-party inspectors for their work in the State Inspection Process. Using existing staffing levels from these departments, the agency would need to maintain 13 positions to continue processing State Inspections, maintain technology efforts, answer phone calls on the agency's customer service hotline, and oversee storage of necessary documents. To continue these efforts during the first five months of fiscal year 2010, the agency would need an appropriation of about \$400,000 and a staff of 13, based on fiscal year 2007 appropriations and staffing levels.

Also, in past budgetary cycles, the Commission collected significantly more than was appropriated for the agency's operations. During the 80th Legislative Session, however, the agency received a significant increase in appropriations – from about \$3.4 million to about \$10.2 million, without an increase in registration and State Inspection fees. Although the Commission has made efforts to expand its programs, the agency does not expect to use its entire fiscal year 2008 appropriation of about \$10.6

million due to hiring difficulties. The agency does expect to collect a total of about \$10.5 million in fees, leaving about \$2 million in the General Revenue Fund.

In fiscal year 2009, however, the agency expects to be fully staffed – using its entire appropriation – and collect roughly the same amount of fees collected this fiscal year. Using these budgeted figures, the agency should leave about \$318,000 in the General Revenue Fund in fiscal year 2009. Recent increases in the amount of fees paid to third-party inspectors and rising travel costs paid to these inspectors may lead to additional loss in excess fees deposited into General Revenue. In future fiscal years, assuming staffing levels and appropriations remain the same, the agency would likely deposit excess revenue of about \$300,000 into the General Revenue Fund each fiscal year, which would not occur if the agency is abolished.

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Loss to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2009</b>
2010	(\$400,000)	(\$300,000)	-67
2011	0	(\$300,000)	-80
2012	0	(\$300,000)	-80
2013	0	(\$300,000)	-80
2014	0	(\$300,000)	-80

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<sup>1</sup> The agency has performed reviews on a limited basis in response to complaints, however, the agency does not have a process for checking compliance on a statewide, ongoing basis.

<sup>2</sup> The percentage of cases resolved through the State Inspection Process versus those pursued in other legal forums is based on a total of 740 reports submitted to the agency and not the universe of all State Inspection cases. Not all parties involved in a State Inspection case submit this information, as requested by the Commission. This breakdown is the most accurate number available and the number used by the Commission in its quarterly publication, *On The Level*.

<sup>3</sup> Texas Residential Construction Commission, Customer Satisfaction Survey, December 2007 to March 2008. While some of the homeowners surveyed went through the Process before the agency received additional enforcement authority, some did not.

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# *Responses to Issue 1*

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## **Recommendation 1.1**

### **Abolish the Texas Residential Construction Commission and repeal the Texas Residential Construction Commission Act.**

#### **Agency Response to 1.1**

The Texas Residential Construction Commission adamantly disagrees with the Sunset Commission staff recommendation to abolish the agency. Just because the Commission does not fit staff's standard and restricted view of what a regulatory agency should look like does not mean that the regulatory structure is fundamentally flawed.

The Commission believes the agency was created to help consumers and builders and to reconcile differences between the two groups. Regulation is necessary to the extent that it supports that process. To have regulation without a place for consumers to get information and assistance results in a narrow regulatory structure that offers no real help to consumers who need it.

If there are flaws with the oversight mechanism, certainly none are irreparable, nor should anything but a reasonable effort be necessary to formulate solutions. The Commission's Management Response contains several recommendations that address the major concerns raised in the Sunset Commission Staff Report.

The Commission takes issue with the description of the State Inspection Process contained in the Staff Report. The Commission acknowledges that currently it takes longer to achieve resolution than is ideal. The Commission has already implemented a "bonus payment" program for Inspections that are completed timely and that do not contain errors or omissions. On the other hand, the Commission does not believe that any of the typical legal mechanisms available to achieve resolution would be any quicker.

That the State Inspection Process has devastating effects upon a consumer's ability to access their own remedies in any way is a spurious claim, dubiously presented. A consumer who disagrees with the outcome of an Inspection still has all the legal rights he or she would have otherwise. A consumer with an issue that is not eligible for the Inspection Process also retains access to the legal system. In the absence of the Inspection Process however, a consumer's only recourse would be to negotiate with a builder directly — a tactic the Commission knows has limited success as many consumers try this method before pursuing Commission assistance — or to pursue their issue through a more complicated and costly legal process.

Despite the claims of some critics, the legal process very well may not be the best or the most easily accessible forum for many consumers to resolve construction-related issues. Again, the legal process is expensive, considering the costs associated with attorneys and expert witnesses, and is time-consuming. In many cases, consumers have signed construction contracts that contain a binding arbitration clause, so those consumers are unable to access the courts directly.

The State Inspection Process provides consumers and builders a place of *first resort* that is low cost and increasingly proves to be effective. Absent the low-cost, State-sponsored Inspection Process, the Commission believes that a great number of Texans would find no remedy at all when faced with construction problems due to an inability to afford or locate representation in other forums.

The Staff Report acknowledges that the Legislature made changes last Session, “*ostensibly* to strengthen,” the State Inspection Process. There is no “*ostensibly*” to it. The clear and definitive purpose of the changes was to provide the Commission tools to secure offers from builders in defect disputes. The increased administrative penalty and enforcement authority provide a powerful incentive to builders and remodelers to make repair offers to homeowners. As a result of House Bill 1038, passed by the 80th Legislature, the Commission has the authority to penalize builders and remodelers up to \$10,000 per violation per day for:

- ◆ Repeatedly failing to participate in the State’s formal Inspection Process;
- ◆ Failing to reasonably perform on an accepted repair offer;
- ◆ Repeatedly failing to make an offer at the end of the Inspection Process; or
- ◆ Repeatedly failing to respond to Commission requests for information.

Accepting Sunset’s staff recommendation would free nearly 28,000 builders from any state regulatory oversight. More than 600,000 homes have been registered since the Commission’s inception. The Commission has stripped or denied the right to operate from nearly 500 builders/remodelers in this State. Repealing this legislation would turn back the clock and allow these builders and remodelers to return and compete again in Texas.

In the last seven fiscal quarters, the Commission has resolved more than 550 complaints and disputes between homeowners and builders and remodelers. Pursuant to the authority granted by the 80th Legislature, staffing was added during the 3rd fiscal year quarter of this year, and since then the number of resolutions that the Commission has been able to secure has jumped dramatically. Abolishment will mean that Texas families like these will be left to fend for themselves if an issue arises with their homes.

More than 1,300 homeowners have been provided a report by the Commission that certifies that their home has a construction defect. Each of these reports forms a legal presumption of whether a defect exists and what constitutes a reasonable method of repair. These reports are valuable tools for all the paths a consumer may elect to take including negotiating resolution, mediation, binding arbitration or civil litigation.

Ultimately, the Texas Residential Construction Commission agrees with at least one important consideration in the Sunset Commission Staff Report: meaningful oversight of the residential construction industry is a benefit to consumers and builders.

Texans truly would be failed if the Sunset Commission ultimately recognizes that regulation of the industry is useful, identifies areas of concern, but then neglects to make recommendations for improvement. Asking hard questions and determining the proper course is something the Commission looks forward to doing hand in hand with the Sunset Commission as we work together to make the agency a better resource for Texans. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)

**For 1.1**

Representative Dora Olivo, Member – Texas House of Representatives

Tom Archer, President – Homeowners of Texas, Inc., Austin

Janet Ahmad, National President – HomeOwners for Better Building, San Antonio

Carolyn Becka, Vice President – Take Back your Rights PAC, Frisco

Pamela J. Bolton, J.D., Director of Policy and Research – Texas Watch, Austin

Douglas A. Garrett – Building Performance and Comfort, Inc., Leander

A.J. Hohman, Jr. – Hohman, Georges, and Gehring, L.L.P., San Antonio

Lou McCreary – Law Offices of Lou McCreary, Austin

T. June Melton, P.E. – Amstar Engineering, Inc., Austin

William D. Pearson – W.D. Pearson and Associates, Fredericksburg

Rosa Rosales, National President – League of United Latin American Citizens, San Antonio

Deepak Ahuja, Plano

Madhu Ahuja, Plano

Mishal Al-Johar, Austin

Robert Allison, New Braunfels

Robert and LaNell Anderson, Kingwood

Tim Anderson, Houston

Laurie Andrews, Dripping Springs

Karen Archer, Wimberley

Bo Avakian, Bedford

Mary Ann Baltzer, Celina

Danielle Arvanitis, Dallas

Jessica Baldonado, Austin

Katherine Barnhill, Hutto

Bruce Beckman, Haslet

C. Paul Bernard, Jr., Harlingen

Tiziano Bianchi, Dallas

Ken Biasco, Richardson

**For 1.1** (continued)

J. Bowman-Kreitmeyer, Carrollton

Kenneth Boyles, Crandell

Jason Breakey, San Antonio

Paul Brock, McQueeney

Frank Brooks, Amarillo

Lynn Brusky, Lago Vista

William T. Burdett, Whitehouse

Joe Burkleo, Dallas

Chris Calvin, Ph.D., Richmond

Linda Camin, Dallas

L. Carswell, Katy

Tom Caughran, Plano

Dale Chaney, Keller

Kenneth Christy, Edinburg

Benny Cespedes, Austin

Barry Clar, Bryan

Helen Clark, Houston

Martha Clark, Denton

Robert Cockrell, Abilene

Elizabeth Coleman, Jacksboro

Karen Collins, McKinney

Jesse Colunga, Austin

Danny Cordova, Spring

Dorina Corrente, Sugar Land

Vaughn Cox, Donna

Carolyn Croom, Austin

Pamela Crouse, Rowlett

Mike Crump, Hutto

**For 1.1** (continued)

Natalie Crump, Hutto

K. Danowski, Dallas

Jeff Darby, Nederland

Neesha Davé, Austin

J. Lance Davis, Fort Worth

Juanita Dawson, Duncanville

George Douglass, Austin

Tim Duda, San Antonio

Stephen J. Dunston, Irving

Sabrina Eckles, Lubbock

April Emmert, Plano

Susan and Greg English, Humble

Betty Ferrero Round Rock

Marta Fiorello, Austin

Bill Fletcher, Houston

Sherry Freeland, Midlothian

Ronald Friedman, M.D., Plano

Jordan Fogal, Houston

Oscar Garcia, Fort Worth

L. Garrett, Dallas

Susan Gelber, Austin

James Glass, Houston

Ray Glass, Bellaire

Delwin Goss, Austin

John Graeve, Bedford

John and Marlene Graham, San Antonio

Randy Griffin, Henrietta

Harve Hagerty, San Antonio

**For 1.1** (continued)

Artemus Hancock, Katy

Amy Hass, Hutto

Walter Hass, Hutto

Carol Hemphill, Austin

Mary Henderson, Austin

Nancy Hentschel, Sugar Land

Harvey Hild, Marion

Paula Hobson, Richland Hills

Paul Hopwood, Midlothian

Kerrie Horn, Irving

Mary Hornbuckle, San Antonio

James Horsley, Tyler

Janet Horsley, Tyler

Robert Howard, League City

John Hunt, Spring

William G. Hutz, AIA, Houston

Lawrence Jackson, Crosby

SJ Jacobson, Hutto

Elizabeth Joblin, Austin

James David Johnson, Austin

Jacquelyn Johnson, Grand Prairie

Mary Johnson, San Antonio

Lori Jondron, Manchaca

Greg Jones, Taylor County

Thomas Jones, Cameron

Iris Kardynalski, Waller

Harold Kennamer, Winnie

Diane Kennedy, Dallas

**For 1.1** (continued)

Scott Kimball, Jefferson, GA

Ken King, Austin

Susan Labidee, Jonestown

Richard Lackey, Austin

David Lawhorn, Dallas

H. G. Lehman, III, P.E., San Antonio

B. Liles, Salado

Angela Loggins, Richardson

Ray Long, Big Spring

Joan Low, Pflugerville

Ron and Marilyn Luckie, Fort Worth

Constance Maher, Arlington

George Mallios, Austin

Jeannie Marsh, Fort Worth

Ben F. Marshall, Schertz

Fred Marvin, Austin

Chris Mayo, San Antonio

Elizabeth McCarthy, Denison

Donna McDonald, Red Oak

David McMillan, Wichita Falls

Rowena Montgomery, Arlington

Gene Moody, Flint

Jeff Muchnik, Hutto

Brenda Nance, Dallas

Nancy Norris-Wall, Austin

Leif Oines, Blanco

Patricia Oliva, Houston

Amy Orbison, Hutto

**For 1.1** (continued)

Nelida Ortiz, Corpus Christi

Nichole Patteson, Austin

Tom Perkins, Smiley

Margie Raborn, Alleyton

Rita Reid, Wimberley

Larry Restine, Spring Branch

James Rice, Houston

Diana Rivera, McAllen

Stacey Roberts, Houston

Yolanda Roberts, Beaumont

Lynn Robinson, Austin

Ynette Rodriguez, Hutto

Sylvia Rosemergy, Paris

Diana Ross-Bell, Hutto

Ronald Roszkowski, Buda

Bill Sherman, Groves

Gary Sibley, Dallas

Garry Sisco, Carrollton

Patrick Sandoval, San Antonio

Paul Schmidt, Dallas

Kimberly Schuenke, Houston

Tami Seal, Austin

Greg Seiter, Austin

Greg Sells, Austin

Daniel Shoman, Keller

J. Silas

Sally Simpson, Garland

Greg Smith, Cedar Creek

**For 1.1** (continued)

Phillis Smith, Fort Sam Houston

Gerlad Smolinsky, Austin

Angella Soileau, Beaumont

Guadalupe Sosa, Cypress

Jesse Spears, Austin

Adrena Stephney, Arlington

Sam Stigall, Arlington

Rafael Subialdea, Fort Worth

Margot Sullivan, Dallas

Anna Swafford, Burleson

Henry Tarango, Lubbock

Tony Taylor, Seguin

Kyle Thomas, Hutto

Keith Thornton, Fort Worth

Donald E. Van Meter, J.D., Wichita Falls

Jane Leatherman Van Praag, Bartlett

William Wadkins, Jr., Dallas

Leo Wadley, Fort Worth

Marion Wallace, Hutto

Lynn Walters, Irving

Peggy Walton, Conroe

Carol Warren, Dallas

Frank D. Waters, Richardson

Maxie Watts, Buchanan Dam

Barbara Welch, San Antonio

Jana Whitmire, League City

Howard Williams, Katy

Jerre Williams, Houston

**For 1.1** (continued)

L. Williams, Desoto

S. E. Williams, Stafford

Terry Williams, Houston

Thomas Windberg, Spicewood

Lori Wiss, Campbell

George Worthington, Houston

Alfonso Velasco, Hutto

Al Zeiner, Plano

**Against 1.1**

M. Scott Norman, Jr., Interim Executive Director and General Counsel – Texas Association of Builders, Austin

Barry S. Thombs, Vice-president and Co-owner – The RockAway Company, Inc., Haltom City

Eric Knapp

**Recommendation 1.2**

***In response to the Commission's abolishment, agency staff should begin the wind-down process before the effective date of the legislation.***

**Agency Response to 1.2**

None received.

**For 1.2**

None received.

**Against 1.2**

None received.

# AGENCY INFORMATION



# Agency Information

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## Agency at a Glance

In 2003, the Legislature created the Texas Residential Construction Commission to regulate the residential construction industry and to provide clear, limited warranties for all new construction and remodel projects. The Commission's main functions include:

- ◆ registering builders, remodelers, new homes, and remodeling projects;
- ◆ enforcing the Texas Residential Construction Commission Act and Commission rules, and taking disciplinary action when necessary;
- ◆ administering the State-sponsored Inspection and Dispute Resolution Process which provides a neutral, third-party review of alleged post-construction defects; and
- ◆ maintaining the State's Limited Statutory Warranties and Building and Performance Standards.

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*The Commission was created to be a different type of regulatory agency – overseeing the industry and offering an inspection service.*

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## Key Facts

- ◆ **Funding.** The Commission has a budget of about \$10.6 million in fiscal year 2008, more than three times the agency's fiscal year 2007 operating budget. Revenues come from fees paid by builders, and fees homeowners pay as part of the State Inspection Process. The increased appropriation was intended to fund additional enforcement efforts, and other functions given to the agency last Session.
- ◆ **Staffing.** In fiscal year 2007, the Commission employed 32 staff, however the agency expects to have 80 staff positions by the end of fiscal year 2008.
- ◆ **Registration.** The Commission regulates approximately 28,000 builders, who have registered a total of about 588,000 homes. The Commission also oversees 87 third-party inspectors, five arbitrators, and nine third-party warranty companies.
- ◆ **Enforcement.** In fiscal year 2007, the Commission took enforcement action against 212 builders.
- ◆ **State Inspection.** In 2007, the agency opened 580 State Inspection cases, which included more than 20,000 individual alleged defects. The Commission's third-party inspectors confirmed that 50 percent of the alleged defects were, in fact, post-construction defects in need of repair.

## Major Events in Agency History

- 2003 The Legislature creates the Texas Residential Construction Commission during the 78th Legislative Session.
- 2004 Builders and remodelers begin registering with the Commission.
- 2005 The Commission adopts the State’s Building and Performance Standards.
- 2007 The Legislature passes House Bill 1038, which gives the Commission increased enforcement authority, along with additional appropriations and employees, and creates the Statewide County Inspection Program.

## Organization

### Policy Body

The Commission consists of nine members appointed by the Governor, and confirmed by the Senate, to serve staggered six-year terms. Of the nine Commission members, four are registered builders or remodelers, three are members representing the public, one is a licensed professional engineer, and one may be either a licensed architect or a registered building inspector. The chart, *Texas Residential Construction Commission*, identifies current Commission members. The Governor appoints a member of the Commission to serve as chairman and, on an annual basis, the Commission selects a vice-chairman and secretary.

***Texas Residential Construction Commission***

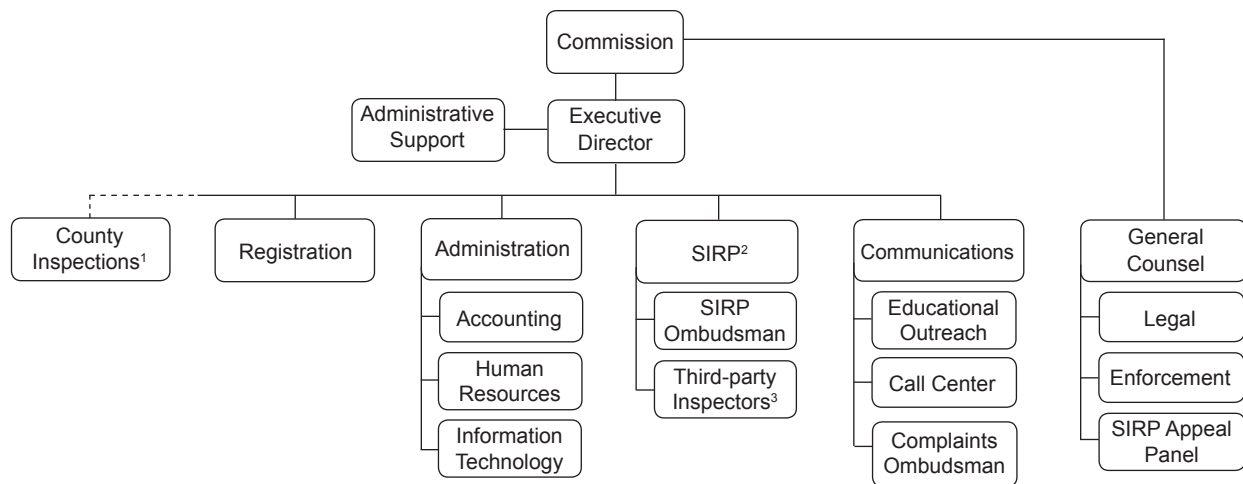
<b>Member</b>	<b>City</b>	<b>Qualification</b>	<b>Term Expires</b>
Paulo Flores, Chair	Dallas	Public Member	2011
Glenda Mariott, Vice Chair	College Station	Builder	2013
Lewis Brown, Secretary	Trinity	Inspector	2011
Art Cuevas	Lubbock	Builder	2011
Kenneth Davis, P.E.	Weatherford	Professional Engineer	2009
Gerardo “Jerry” Garcia	Corpus Christi	Builder	2013
John Krugh	Houston	Builder	2009
Steven Leipsner	Lakeway	Public Member	2009
Mickey Redwine	Ben Wheeler	Public Member	2013

In addition to adopting general rules to enforce residential construction law and govern the State-sponsored Inspection and Dispute Resolution Process, the Commission maintains the State’s Building and Performance Standards. The Commission also approves third-party warranty companies and oversees third-party inspectors. In 2007, the Commission met seven times.

## Staff

In fiscal year 2008, the Commission has 80 authorized full-time equivalent positions, up from 32 in fiscal year 2007. As of July 2008, the agency has filled 70 of these positions. The *Texas Residential Construction Commission Organizational Chart* shows the agency's structure. All agency staff are located in Austin, however the agency contracts with third-party inspectors, located across the state, to perform inspections as part of the State Inspection Process.

**Texas Residential Construction Commission  
Organizational Chart**



<sup>1</sup> Begins September 1, 2008.

<sup>2</sup> State-sponsored Inspection and Dispute Resolution Process (SIRP).

<sup>3</sup> The Commission appoints third-party inspectors to perform State Inspections.

The Executive Director, under the direction of the Commission, manages the agency's day-to-day operations. Generally, staff process registrations, certifications, renewals, and fees; compile enforcement cases; manage State Inspection cases; and handle the agency's outreach efforts, including processing complaints filed against builders.

Appendix C compares the agency's workforce composition to the minority civilian labor force. The agency has exceeded percentages for Hispanics and females in most categories in most years, however has fallen short for African-Americans in all categories except Administrative Support.

## Funding

### Revenues

In fiscal year 2007, the Commission generated revenue of approximately \$11.7 million through various fees. The Commission covers its administrative costs through registration and renewal fees. A rider in the General Appropriations

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*Because of the increase in agency expenditures, excess revenue that has gone to General Revenue should be significantly reduced.*

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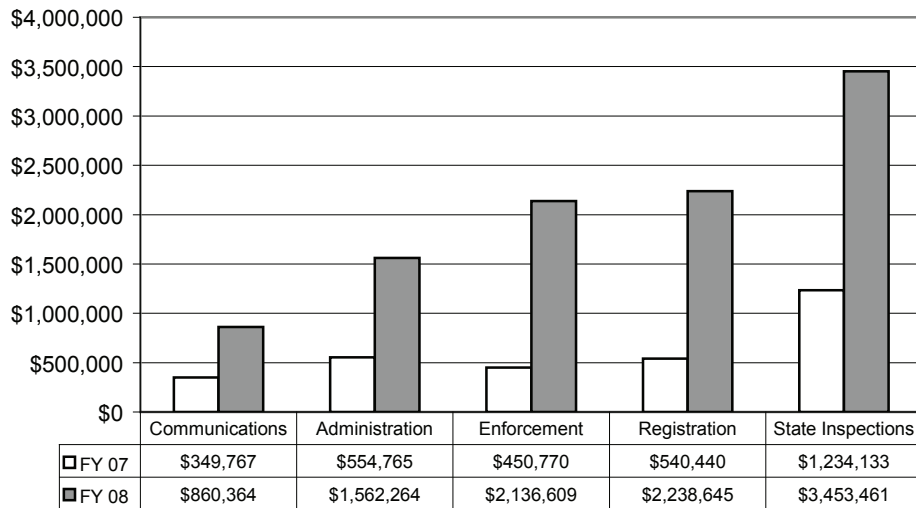
Act requires the Commission to set builders' initial registration and renewal fees at the statutory maximum level. Appendix D provides a full listing of all fees charged by the Commission. The Commission also assesses administrative penalties against registrants for violations of the Texas Residential Construction Commission Act and Commission rules. In fiscal year 2007, fines totaling \$123,482 were deposited in General Revenue. In addition, the Commission collected \$344,380 in pass-through fees from registrants for the Texas Online system.

**Expenditures**

In fiscal year 2007, the Commission spent \$3,129,875 in five main areas of communications, administration, enforcement, registration, and state inspection. In addition, the Commission, like other regulatory agencies funded by fees, must cover indirect costs, including employee benefits, and support services provided by other state agencies. In 2007, these indirect costs totaled approximately \$450,000. In fiscal year 2007, total revenues brought in by the Commission exceeded agency expenditures and indirect costs by about \$8.3 million.

Because of the recent increase in appropriations, budgeted fiscal year 2008 information is needed to show what the Commission currently uses to operate its programs. The Commission expects to spend most of its \$10.6 million appropriation expanding each of its main programs during fiscal year 2008. A comparison of the Commission's 2007 spending with its expected 2008 spending is shown in the graph, *Expenditures by Program*. Because the increase in agency funding occurred without increasing fees, the excess revenue that has gone to General Revenue in recent years should be significantly reduced.

**Expenditures by Program  
Fiscal Years 2007 and 2008 (Budgeted)**



Appendix E describes the Commission's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. During the past four years, the agency generally exceeded the state's

HUB purchasing goals when the agency made significant purchases for professional services, commodities, and other services.

## Agency Operations

The Commission has two main functions: to oversee the residential construction industry by registering builders and other individuals involved in the industry, and to administer the State-sponsored Inspection and Dispute Resolution Process.

### Registration and Commission Approval

The Commission registers two main groups within the residential construction industry – builders and remodelers – as well as newly completed construction and qualified remodel projects. The Commission also registers third-party inspectors as a part of the State Inspection Process. In addition, the Commission approves third-party warranty companies and certifies residential construction arbitrators.

#### ***Builders and Remodelers***

The Texas Residential Construction Commission Act (TRCCA) requires individual builders and building companies to register with the Commission, as well as designate a primary agent for each company. The Act prohibits a person or entity from acting as a builder without registering with the Commission. Also, the Local Government Code requires a municipality to verify that a builder, as defined by the TRCCA, is registered with the Commission before issuing a building permit to that builder. The textbox, *Who Is a 'Builder?'*, describes the types of actions to characterize building in this context.

#### ***Who Is a 'Builder?'***

The Texas Residential Construction Commission Act defines a builder as: any person who, for a fixed price, commission, fee, wage, or other compensation, sells, constructs, or supervises or manages the construction of, or contracts for the construction of or the supervision or management of the construction of:

- ◆ a new home;
- ◆ a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or
- ◆ an improvement to the interior of an existing home when the cost of the work exceeds \$10,000.

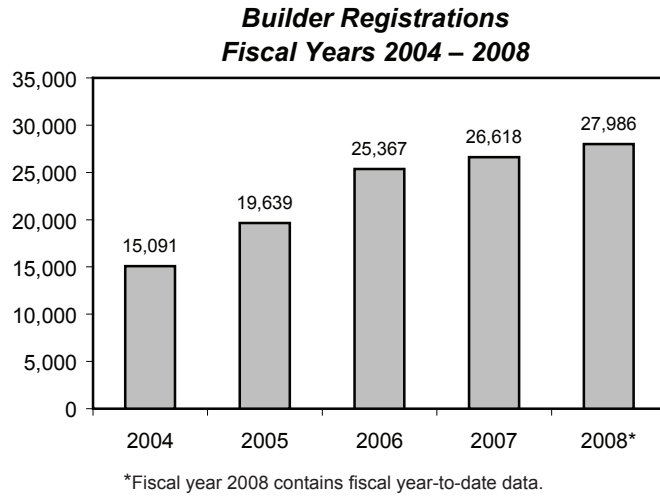
Registrants may be classified as sole proprietorships, or business entities. All companies must designate a main agent who adheres to the same registration qualifications and requirements as an individual, and be responsible for maintaining the company's certificate of registration with the Commission. To qualify as a designated agent, an individual must serve as an officer, manager, or high-level member of the registered company.

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*Before issuing a building permit, municipalities are required to check a builder's registration status.*

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The Commission currently oversees almost 28,000 active builders. The graph, *Builder Registrations*, shows trend data on the number of registrants from fiscal year 2004, the first year builders were required to register, to fiscal year 2008.



Staff use an eligibility matrix to assist in determining whether a person building or remodeling a home is acting as a builder. Not all people working in the residential construction industry are required to register with the Commission. For example, individuals exempt from registering as builders include interior decorators, real estate sales agents, and individuals who build homes or make material improvements to homes for immediate sale upon project completion, also called ‘flippers.’ See the chart, *Factors Considered in Determining Registration Eligibility*, for additional examples used by agency staff in determining whether someone is acting as a builder.

**Factors Considered in Determining Registration Eligibility**

Situation	Required to Register?
Building residential rental property	No
Replacing more than one component or using subcontractors for installation – such as a kitchen remodel	Yes
Replacing one component part and using no subcontractors – such as replacement of carpet	No
Improving interior components of a home, less than \$10,000 with no increase in square footage – such as paint	No
Building new homes and making material improvements on existing homes	Yes
Building a primary residence and residing in that home for at least one year	No

The textbox, *Builder Registration Requirements*, shows general eligibility requirements and areas reviewed by the Commission during the registration process. Agency staff also evaluate several other factors, including professional relationships with subcontractors and the level of participation in project preparation.

Builders renew their registration on a biennial basis. Registration staff send renewal notices at various intervals to registered builders as a reminder of the impending renewal date. At the time of renewal, registrants must show proof of having obtained five hours of approved continuing education credits. The textbox, *Continuing Education for Builders*, shows the types of continuing education allowed and examples of the classes. Before renewing registration, agency staff perform a name-based background check on each designated agent to ensure that no conviction or civil judgment affecting registration has occurred since the last registration approval. Registration staff can block a builder from renewing online for reasons such as suspected criminal activity, failure to register homes, or failure to comply with State Inspection requirements. In fiscal year 2007, the agency renewed 10,703 builder registrations, each of whom paid a renewal fee of \$300.

### ***Builder Registration Requirements***

To receive a certificate of registration from the Commission, builders, as well as their primary designated agents, must meet the following requirements:

- ◆ be at least 18 years of age;
- ◆ be legally able to work in the U.S.;
- ◆ be trustworthy;
- ◆ undergo a criminal background check;
- ◆ be physically located in Texas;
- ◆ disclose any bankruptcies;
- ◆ disclose any other business affiliations; and
- ◆ prove ownership or provide an eligible designated agent.

### ***Continuing Education for Builders***

**Builders must earn at least five hours of continuing education credits every five years, which must include the following:**

- ◆ at least one hour of ethics, and
- ◆ at least two hours of education that addresses Limited Statutory Warranties, Building and Performance Standards, and requirements of the International Residential Code.

**The remaining credits can include not more than two hours of any of the following examples of continuing education:**

- ◆ participating in the activities of a residential construction or builder association, including serving on a committee of the organization,
- ◆ attending a presentation made at a meeting of a residential construction or builder association,
- ◆ making a presentation or writing a paper presented at a meeting of a residential construction or builder association, or
- ◆ self-directed study fulfilled by reading substantive residential construction articles in recognized home builder publications, viewing instruction videos produced for the residential construction industry, or other ways, as approved by the Commission.

**Home Registration.** The Act also requires builders to register their qualifying residential construction projects with the Commission upon project completion or occupancy of the new home. See the textbox, *What Is a Qualifying Residential Construction Project?*, for an explanation of what qualifies for home registration purposes. The chart, *Volume of Registered Homes*, highlights the number of active builders by the volume of homes built and registered in fiscal year 2007. Also, more than half of registered builders have not registered any projects. The total number of new homes registered in fiscal year 2007 was 156,027. Builders pay a \$25 fee to register homes online.

**What is a Qualifying Residential Construction Project?**

Builders must register residential construction projects that are either new construction, or are material improvements or interior renovations of more than \$10,000 for one or two-family homes.

**Volume of Registered Homes  
Fiscal Year 2007**

Volume of Registered Homes Built	Number of Active Builders
1 – 25 Homes	7,767
26 – 100 Homes	272
101 – 250 Homes	75
251 – 500 Homes	33
501 – 1000 Homes	17
1000 + Homes	24
Total Active Builders with Homes Registered	8,188

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*Only 48 of the nearly 28,000 builders registered have the Star Builder designation.*

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**Star Builders.** The Commission administers the Star Builder Program, a voluntary program for builders who have demonstrated experience, a proven track record of exemplary business practices and a dedication to customer service. The Star Builder Program is designed to provide assurance to consumers that designated builders provide a higher level of quality construction and service. To qualify, a builder must meet certain criteria and provide documentation indicating experience, educational levels, training, financial stability, insurance, and building practices. Builders must also offer at least three premium services to customers, such as a green building program. Appendix F, *Star Builder Program Requirements*, details the requirements necessary for builders to become Star Builders.

Requirements for the Star Builder Program vary based on the volume of home projects the builder registers with the Commission each year. Builders must reapply for certification annually and must complete additional continuing education to retain Star Builder status. The Commission reviews and recommends approval of continuing education courses that satisfy agency requirements for membership and the Commission’s website contains a list of approved courses. Currently, 48 registrants have the Star Builder designation.

## ***Third-Party Inspectors***

The Commission registers third-party inspectors to participate in the State-sponsored Inspection and Dispute Resolution Process by appointment, who provide a neutral review of alleged post-construction defects. Third-party inspectors conduct inspections of alleged defects in workmanship and materials, structural components of a home, or both. The textbox, *Third-Party Inspector Registration Requirements*, details the general registration requirements for third-party inspectors. An individual seeking to serve as both a workmanship and materials inspector and a structural inspector, called a joint inspector, must meet the qualifications of each position. The Commission maintains 87 active third-party inspectors that currently perform inspections across the State.

### ***Third-Party Inspector Registration Requirements***

#### **All third-party inspectors must:**

- ◆ undergo a criminal background check;
- ◆ periodically complete Commission-developed continuing education; and
- ◆ receive less than 10 percent income from expert witness fees.

#### **Workmanship and Materials inspectors must:**

- ◆ have three years minimum experience in residential construction; and
- ◆ hold International Code Council Combination certification.

#### **Structural inspectors must:**

- ◆ have five years minimum experience in residential construction; and
- ◆ hold a state-issued professional engineering or architecture license.

Agency staff review third-party inspector applications to ensure that applicants meet the qualifications required for registration. Registered third-party inspectors must also complete Commission-developed training on the Commission's Act and rules, and the Commission-adopted Warranties and Building and Performance standards, before participation in the State Inspection Process.

Third-party inspectors renew on an annual basis and must also complete continuing education in the inspector's area of practice, which could include coursework or continuing education needed to retain a professional license issued by another state agency. Third-party inspectors pay an annual renewal fee of \$50 and, in fiscal year 2007, the Commission renewed 49 registrations.

### ***Third-Party Warranty Companies***

Statute specifies that a builder may elect to provide a warranty through a third-party company approved by the Commission. These type of warranty policies cover liability for any defects that occur during the statutory warranty time period, but not for general liability, such as damage to personal property or injuries. During the approval process, agency staff review contracts to ensure that each third-party warranty company fully assumes a builder's warranty obligations and will make a full payment for repair if a construction defect is

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*Third-party  
inspectors must  
register with  
the Commission  
and pay a fee  
to provide State  
Inspections.*

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covered by the statutory warranties. The Commission also publishes notice of the company's application in the Texas Register and considers any comments received when reviewing the application for final approval. Policies offered by companies without Commission approval are considered to be invalid. The textbox, *Third-Party Warranty Company Approval Requirements*, shows general requirements for approval.

***Third-Party Warranty Company Approval Requirements***

**An applicant seeking approval to provide a third-party warranty to a builder must meet the following requirements:**

- ◆ be an entity that has operated warranty programs in Texas for at least five years; or
- ◆ be a company whose performance is insured by an insurance company authorized to engage in the business of insurance in Texas; or
- ◆ be an insurer as defined by the Texas Insurance Code.

**To effectively transfer a builder's liability to an approved third-party warranty company, the third-party warranty company must agree to the following:**

- ◆ fully assume a builder's warranty obligations created by the TRCCA; and
- ◆ make full payment for or repair any construction defect determined through the State Inspection Process.

**An applicant seeking approval to provide a third-party warranty to a builder must submit the following to the Commission:**

- ◆ a sample copy of the warranty contract;
- ◆ a copy of the applicant's residential inspection procedures for post-construction inspections; and
- ◆ the name of a designated agent who undergoes a criminal background check.

Third-party warranty companies must renew annually, paying a fee of \$300. In fiscal year 2007, the agency renewed nine third-party warranty companies' registrations and the agency did not receive any new applications for registration.

***Residential Construction Arbitrators***

The Commission certifies individuals as residential construction arbitrators, though certification is not required to be an arbitrator in this field. Instead, the Commission maintains a list of certified arbitrators – available to the public – who have proven experience in this practice area. To become a Commission-certified arbitrator, statute requires individuals to have at least five years experience in conducting arbitrations between homeowners and builders involving post-construction defects. Arbitrators must also be familiar with the Limited Warranty and Building and Performance Standards and the Texas Residential Construction Liability Act. The Commission publishes notice of an arbitrator's application in the Texas Register and considers any comments received when reviewing the application for final approval. The application fee for becoming a certified arbitrators is \$50. Five arbitrators hold the Commission certification, all but one of whom are attorneys licensed

by the State Bar of Texas. The textbox, *Arbitrator Certification Requirements*, highlights general requirements for arbitrator certification.

### **Arbitrator Certification Requirements**

An individual seeking to become certified as a residential construction arbitrator with the Commission must meet the following requirements.

- ◆ Have a minimum of five years experience conducting arbitrations between homeowners and builders involving construction defects.
- ◆ Be familiar with the Warranties and Building and Performance Standards established by the Texas Residential Construction Commission Act and have knowledge of the Residential Construction Liability Act.
- ◆ Hold a professional license or certification free of suspension or revocation taken by any jurisdiction.
- ◆ Disclose any membership with a professional association of arbitrators or license as a member of a bar association.
- ◆ Submit a list of business relationships (including registered builders or third-party inspectors) that could reasonably be considered to create a conflict of interest while serving as an arbitrator.

Once certified by the Commission, arbitrators renew certification on a biennial basis and pay a \$50 renewal fee. To renew certification, arbitrators must also take five hours of continuing education. In fiscal year 2007, the agency renewed five arbitrator certifications.

### **Enforcement**

The Commission enforces the Texas Residential Construction Commission Act and Commission rules by investigating complaints against registered builders, third-party inspectors, third-party warranty companies, and arbitrators, sanctioning them with disciplinary action, and monitoring violators for compliance. Although the Commission can take action against each category it oversees, the Commission focuses its efforts on builders. The Commission also revoked four third-party inspector registrations in fiscal year 2007 and has not revoked any third-party inspector registrations thus far in fiscal year 2008. The Commission has never taken enforcement actions against a third-party warranty company or arbitrator.

As a result of House Bill 1038 enacted in 2007, the Commission received additional enforcement authority, including the authority to revoke or suspend a registration or certification for repeated violations that have resulted in disciplinary action, to impose administrative penalties, and to stop unregistered persons from practice under the Act. The Commission also received additional grounds for disciplinary action. The textbox, *Common Grounds for Disciplinary Action Against Builders*, highlights some of the violations for which the Commission can sanction a builder. See Appendix G for a comparison of the Commission's enforcement authority before and after the passage of House Bill 1038.

### **Common Grounds for Disciplinary Action Against Builders**

Some of the most common grounds the Commission invokes to penalize builders include the following:

- ◆ failure to register as a builder;
- ◆ failure to register a home;
- ◆ fraud or deceit in obtaining a registration;
- ◆ insufficient funds;
- ◆ repeated failure to participate in the State Inspection Process; and
- ◆ repeated failure to respond to a Commission request for information.

Consumers file most of the complaints investigated by the Commission, which typically involve allegations of post-construction defects, job abandonment, financial disputes, or unregistered building. Agency staff work to resolve these and other complaints, such as a builder's failure to register homes with the Commission, failure to respond to a Commission request for information, or failure to communicate an offer of repair to a homeowner. Complaints can be closed and referred for State Inspection, if eligible, or closed administratively, if they are non-jurisdictional to the Commission, not eligible for State Inspection, or not resolved despite staff efforts to do so in the absence of statutory power. For example, agency staff will try to resolve complaints involving contractual disputes and allegations of job abandonment even though it does not have enforcement authority in these areas. When staff determines that no resolution is achievable in such

**Complaint Activity – Fiscal Year 2007**

Complaint Disposition	Number of Complaints
Closed to State Inspection	480
Closed Administratively – No achievable solution found	388
Resolved	134
Closed to Investigations – Involves violations of the Commission Act or rules	29
Partially Resolved – One complaint with multiple items, some items were resolved and some items are still outstanding	3
Total	1,034

cases, it will close them administratively. See the chart, *Complaint Activity – Fiscal Year 2007*, for further details on complaint dispositions. Staff can also open complaints against builders, which are not reflected in the table, but are included in the enforcement totals if they rise to a level that requires enforcement action.

Staff investigators and members of the agency's legal team typically determine the next course of action for prosecuting alleged violations of the Commission's Act or rules, which results in a recommendation of disciplinary action to the Executive Director. In all instances, staff give registrants an opportunity to remedy the situation or respond to the allegations before the Commission initiates formal administrative

proceedings. For instance, if an individual is found to be acting as a builder without properly registering with the Commission, staff first seeks voluntary compliance by notifying the individual of the registration requirements and providing the necessary application information. If the individual fails to respond or the response does not resolve the matter, the Commission pursues administrative action.

Staff send a formal notice of violation and if the individual fails to take corrective action specified in the notice of violation, the Commission sends a notice of hearing and a proposed agreed order outlining the violations and the Commission's proposed disciplinary action. An individual who receives an agreed order has two options: pay the associated fine and sign the agreed order, or attend a hearing at the State Office of Administrative Hearings (SOAH). The Commission referred 70 cases to SOAH in fiscal year 2007 and 75 cases thus far in fiscal year 2008.

The Commission may revoke, suspend and probate, reprimand, assess an administrative penalty, or issue a cease-and-desist order to sanction registrants who fail to comply with the Commission's Act or rules. The chart, *Enforcement Action Against Registered Builders*, shows the type of allegation and the action taken for fiscal year 2007 and the first nine months of fiscal year 2008. The Commission revoked 16 registrations and approved nine probated suspensions in fiscal year 2007. The Commission also assessed 175 administrative penalties in fiscal year 2007 totaling more than \$404,000.

***Enforcement Actions Against Registered Builders  
Fiscal Year 2007 and Fiscal Year 2008<sup>1</sup>***

Type of Allegation	Revocations <sup>2</sup>		Probated Suspensions		Administrative Penalties <sup>3</sup>		Total Enforcement Actions	
	FY 07	FY 08	FY 07	FY 08	FY 07	FY 08	FY 07	FY 08
Late Builder Registration	0	0	0	3	55	63	55	66
Insufficient Funds	1	1	1	0	20	12	22	13
Failure to Register Home	0	0	1	1	18	15	19	16
Fraud and Deceit/False Affidavit	2	14	5	6	10	25	17	45
Failure to Provide Notice of Address, Name or Material Change	0	0	0	0	17	18	17	18
Late or Incomplete Renewal Application	0	1	0	0	14	4	14	5
Unpaid Home Registration	0	0	0	0	10	10	10	10
Failure to Provide Post-Inspection Correspondence	0	0	0	0	9	0	9	0
Multiple Violations <sup>4</sup>	5	8	1	1	0	0	6	9
Unpaid State Inspection Fees	1	0	0	0	5	3	6	3
Invalid Corporate Status	2	0	1	0	2	2	5	2
Commission Rule Violation	0	1	0	0	3	1	3	2
Failure to Provide State Inspection Information	3	0	0	0	0	0	3	0
Misappropriation of Trust Funds	1	0	0	0	2	0	3	0
Unpaid Judgments	0	0	0	0	3	0	3	0
Denial of Registration	0	0	0	0	2	1	2	1
Failure to Register as a Builder	0	0	0	1	1	2	1	3
Designated Agent Violation	0	0	0	0	1	2	1	2
Other Violations	1	0	0	0	3	3	4	3
<b>Total Allegations</b>	<b>16</b>	<b>25</b>	<b>9</b>	<b>12</b>	<b>175</b>	<b>161</b>	<b>200</b>	<b>198</b>

<sup>1</sup> Fiscal Year 2008 enforcement data is current as of June 2008.

<sup>2</sup> Includes four voluntary revocations in fiscal year 2007 and nine in fiscal year 2008.

<sup>3</sup> The Commission assessed a total of \$404,405 in administrative penalties in fiscal year 2007 and \$298,520 in fiscal year 2008.

<sup>4</sup> Multiple violations include failure to maintain a fixed address in Texas, false advertising, registration not in good standing, and failure to disclose a criminal conviction.

Since receiving additional grounds for disciplinary action, such as for failure to register as a builder and repeated failure to participate in the State Inspection, the Commission has already exceeded the number of revocations and probated suspensions in the first part of fiscal year 2008 from the entire previous year. The Commission has also taken more enforcement action on cases involving fraud and deceit in the first part of 2008 from the previous year.

### Warranties and Building and Performance Standards

In creating the Texas Residential Construction Commission the Legislature also defined minimum statutory warranties, and charged the Commission with outlining the building and performance standards, which govern the way all aspects of a new house or remodel project should perform in a given time period – everything from paint, to major systems and structural components of a house. The textbox, *Minimum Statutory Warranties*, details the statutory warranty timeframes. To assist with the development of the Commission-adopted Building and Performance Standards, the Commission created the Warranties and Performance Standards Advisory Committee, comprising consumers, builders, and technical experts. The Committee also reviews requested changes to the warranties and performance standards and makes recommendations to the full Commission. The

**Minimum Statutory Warranties**

Individual defects must be within the following warranty periods.

- ◆ One year for workmanship and materials.
- ◆ Two years for plumbing, electrical, heating, and air-conditioning delivery systems.
- ◆ Ten years for major structural components of the home.

Commission approved the Building and Performance Standards in 2005 and the Committee has met six times since that time to consider changes to these standards. The chart, *Warranties and Performance Standards Advisory Committee*, lists the current Committee’s members .

#### Warranties and Performance Standards Advisory Committee

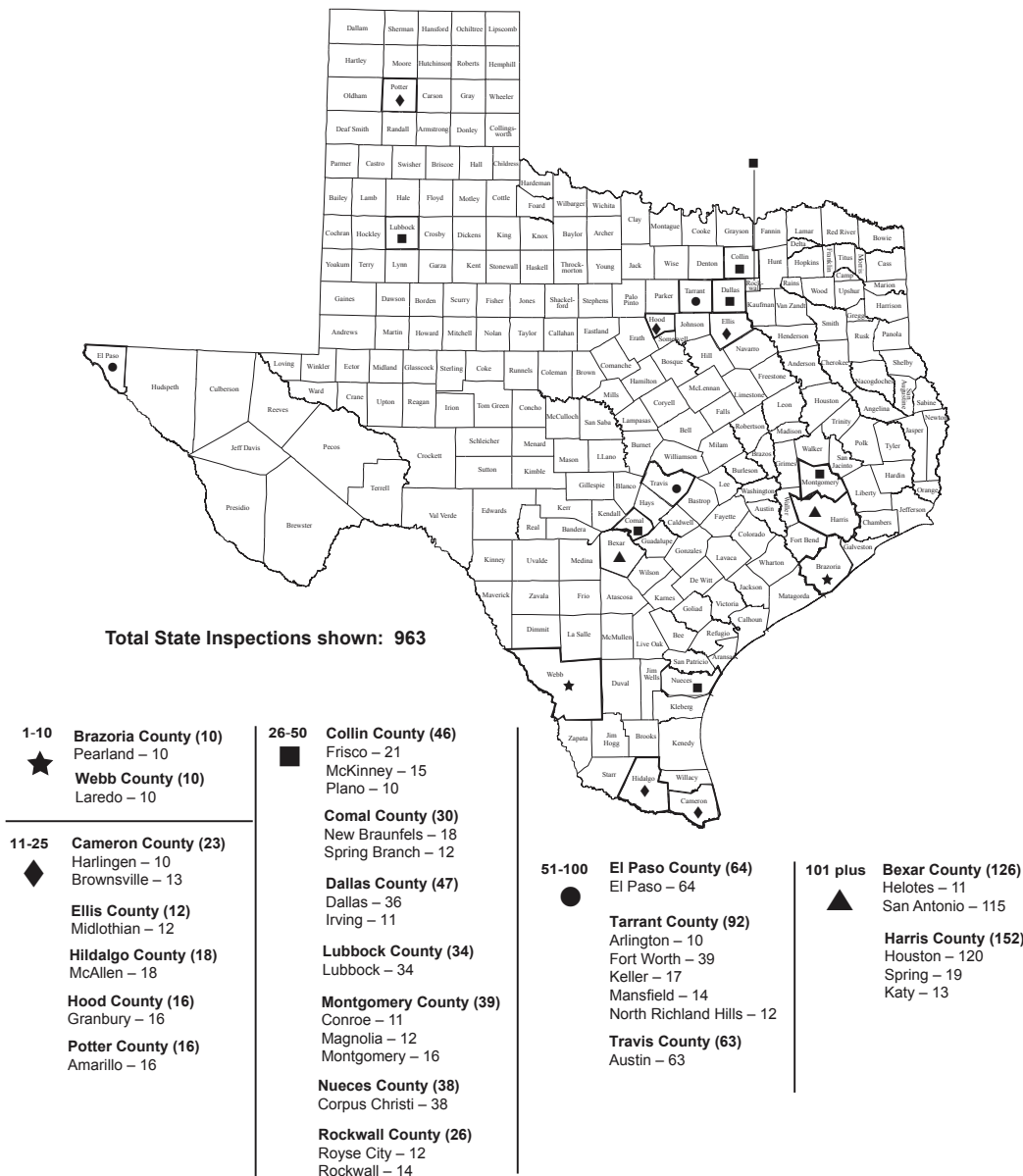
Name	Qualification
Joe Horlen, Chair	Associate Department Head, Texas A&M University, Construction Sciences Department
Duane Waddill, Secretary	Executive Director, Texas Residential Construction Commission
Jerald Kunkel	Commission-Certified Engineer
Carrie A. Hurt	Consumer/Homeowner Representative
Mark Eberwine	Consumer/Homeowner Representative
Larry Gregorie	Homeowner
Sue Bell	Homeowner
Dustin Burrows	Homeowner Attorney
W.T. Little	Builder/Remodeler (Small)
Richard McGuire	Builder/Remodeler (Medium)
Ross Benline	Builder/Remodeler (Large)
Scott Norman	Trade Association
Donald Shelton	Industry Attorney

## The State Inspection Process

The State-sponsored Inspection and Dispute Resolution Process provides a neutral, third-party review of post-construction defects using the Commission-maintained Building and Performance Standards as the framework for inspections. Consumers and builders have the opportunity to use the State Inspection Process, however both parties must go through this process before entering the legal system to seek monetary awards or final judgments. Homeowners are not required to go through the State Inspection Process if, at the time the homeowner and builder enter into a contract, the builder is not registered with the Commission or if the builder's registration has been revoked by the Commission. The map, *Most Common Locations of State Inspections*, illustrates the major areas where third-party inspectors have performed State Inspections since the Commission's inception.

Parties must go through the State Inspection Process before seeking legal remedy.

**Most Common Locations of State Inspections**



To qualify for the State Inspection Process, consumers and builders must meet the basic eligibility requirements described in the textbox, *State-Sponsored Inspection and Dispute Resolution Process Eligibility*. Included in these eligibility requirements, alleged defects must be within the statutory warranty timeframes.

**State-Sponsored Inspection and Dispute Resolution Process Eligibility**

In addition to meeting the statutory warranty timeframes to be eligible for State Inspection, homeowners must meet the following criteria.

New Construction

All State Inspection requests must be filed:

- ◆ on or before the 10th anniversary of the initial transfer of title from the builder to the owner, or
- ◆ on or before the second anniversary of the date the claimed construction defect was discovered, if discovered after September 1, 2003, but no later than the 90th day after the warranty expires.

Remodel Projects

All State Inspection requests must:

- ◆ involve interior renovations exceeding \$10,000, or
- ◆ cover residential material improvements (a modification to the home that either increases or decreases the home’s total square footage of living space and that also alters a perimeter wall, foundation or roof; e.g. room additions).

To file a State Inspection request, consumers must pay \$250, which is refunded if one of the alleged items is confirmed as a defect and the full cost is charged to the builder. If no defect is found during the State Inspection, the Commission pays the remaining portion of the fee to the assigned inspector. If the State Inspection is builder-initiated, the builder must pay the full cost of the inspection, which is not refundable. Fees paid to third-party inspectors to perform State Inspections, including bonus fees paid to inspectors who file timely and accurate reports, are summarized in the accompanying table. In addition to these fees, the Commission also reimburses third-party inspectors for travel costs.

**Third-Party Inspector Fees**

Workmanship and Materials Inspection	\$450 (\$150 bonus)
Structural Inspection	\$650 (\$200 bonus)
Structural with Unrelated Workmanship and Materials Inspection (Joint Inspections)	\$800 (\$250 bonus)
Additional Inspection Fee for any Inspections Containing More than 50 Items	\$450

Agency staff determine eligibility and assign a registered third-party inspector, who directly handles setting an inspection date. After the inspection is performed, the third-party inspector submits a final inspection report to the Commission for staff review. If the report confirms an alleged defect, the builder is statutorily required to communicate a repair offer to the homeowner. However, the Commission cannot force the builder to fix a confirmed defect.

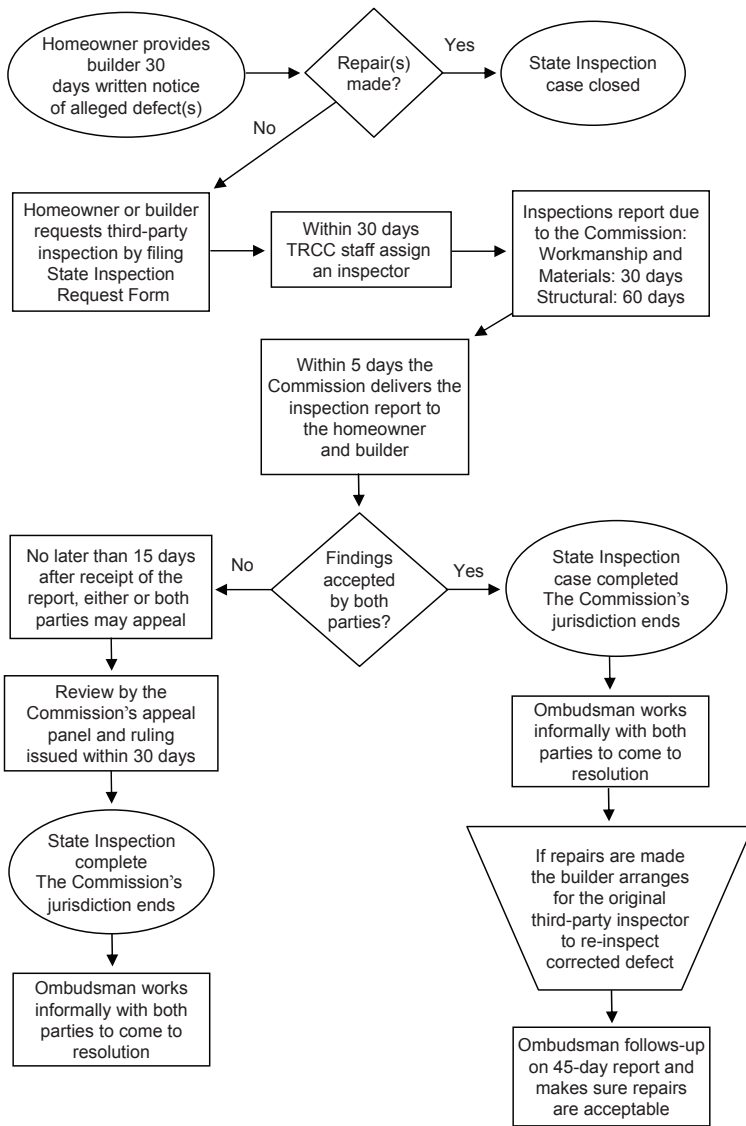
If either party feels that the inspector's final report is not satisfactory, they have the right to appeal to an agency Appeals Panel. This panel comprises three International Code Certified inspectors, with at least one engineer or architect who is used as an expert reviewer in cases involving structural defects. The Appeals Panel reviews appeals and issues final, non-appealable reports on cases. After the agency closes a State Inspection case, both parties to the case also have the option of pursuing further legal action which may entail court, arbitration, or mediation. The flowchart, *The State-Sponsored Inspection and Dispute Resolution Process*, illustrates the different steps in the inspection process.

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*The Commission  
cannot force a  
builder to fix a  
confirmed defect.*

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**The State-Sponsored Inspection and Dispute Resolution Process**



In fiscal year 2007, the Commission processed 580 State Inspection cases. More than 45 percent of the final inspection reports issued were appealed, about 68 percent of which were affirmed by the Appeals Panel.

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*Commission  
staff continue to  
work with both  
parties after the  
State Inspection  
Process ends.*

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The Commission requires builders to submit a 45-day report indicating the status of the case, including settlements, repair efforts, and disputes that go to arbitration or litigation. Failure of the builder to submit this report to the Commission prompts agency staff to send the builder a notice of violation, which could result in the denial of a builder's renewal application. As of May 2008, agency staff sent a total of 126 notices of violations to builders for failure to submit the 45-day report.

**Ombudsman.** Before January 2008, the Commission's involvement with all State Inspection cases ended once the inspectors report or appeal panel's decision was issued. However, the agency now uses an Ombudsman to help homeowners and builders come to a resolution once the inspection process is complete. Through informal mediation, the Ombudsman acts as a buffer to repair broken communications between the homeowner and homebuilder, and facilitate home repairs by gaining the cooperation of both parties, securing informal repair agreements, and setting repair appointments that may result in the completed repair of a defective home. As of August 2008, the agency has processed and closed a total of 1,193 State Inspection cases since the Commission's inception, about 900 of which are currently being handled by the Ombudsman. In total, Ombudsman staff have resolved 52 cases that resulted in the repair of home defects as noted in the final inspection report. The agency currently employs three ombudsmen, each handling 30 to 50 cases per month.

## **Other Agency Functions**


### ***Communications and Outreach***

The Communications division provides information to homeowners and the regulated industry by responding to written inquiries and answering calls to the Commission's toll-free help line. Communications staff also create Commission publications, advertise Commission services through the news media, and provide educational outreach to interested parties by taking part in public speaking events throughout the state. Agency staff completed 20 public speaking events in fiscal year 2007. The Commission issues three publications, including *Puzzled About Your New or Newly Remodeled Home?*, a homeowner information booklet, a Texas Residential Construction Commission Warranties and Performance Standards booklet, and a Star Builder brochure. The Commission also issues *House Calls*, a weekly column featured in newspaper and radio outlets throughout the state.

### ***Collection of Arbitration Filings***

Statute requires that a summary of all arbitration awards related to residential construction must be filed with the Commission. This type of program is the only program in the state for arbitration filings, of any sort. To date, the Commission has received a total of 10 filings.

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*The Commission  
holds information  
events that can  
count toward  
a builder's  
continuing  
education  
requirements.*

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## **County Inspections**

House Bill 1038 passed in the 80th Legislative Session requires the Commission to implement a County Inspections Program by September 1, 2008. The intent of the Program is to gain greater compliance with accepted residential building standards by requiring new homes and remodel projects completed in unincorporated areas to be inspected by eligible inspectors. Statute requires the County Inspections Program to include three phases of inspections on each qualifying project or home under construction: an inspection of the foundation before the placement of concrete, an inspection of framing and mechanical systems before sheetrock is installed, and a full inspection upon project completion.

The Commission will register fee inspectors to conduct these inspections and builders will be responsible for hiring an eligible inspector at each stage of the construction process. Architects licensed by the Texas Board of Architectural Examiners, engineers licensed by the Texas Board of Professional Engineers, inspectors licensed by the Texas Real Estate Commission, and the Commission's third-party inspectors are all eligible to serve as fee inspectors. Each regulatory agency oversees its own licensees performing county inspections, and retains the authority to revoke, suspend, or otherwise discipline a licensee, if necessary.

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*Licensed  
architects,  
engineers, real  
estate inspectors,  
and third-party  
inspectors are  
all eligible to  
perform county  
inspections.*

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# APPENDICES



# Appendix A

## **Major Differences Between the Residential Construction Liability Act (RCLA) and the Texas Residential Construction Commission Act (TRCCA)**

The Legislature adopted the Residential Construction Liability Act in 1989, giving homeowners and builders a framework specific to resolving construction-related disputes. Before RCLA's existence, parties to an alleged dispute typically brought a lawsuit using the Texas Deceptive Trade Practices - Consumer Protection Act. Then in 2003, the Legislature passed the Texas Residential Construction Commission Act, creating an administrative process for resolving alleged post-construction defect disputes and instituting a defined list of how all elements of a house should perform. In those instances where TRCCA applies, its provisions must be satisfied before homeowners can initiate an appeal under RCLA.

Both Acts require homeowners to provide notice of an alleged defect and allow the builder an opportunity to offer repair. Also, both Acts speak to an overall warranty of habitability. However, both Acts have many differences, including, most notably, applicability of the law. The following table provides an overview of some of those major differences.

RCLA	TRCCA
<b>Applicability of the Act</b>	
Applies to single-family homes, duplexes, triplexes, quadraplexes, condominiums, and townhomes.	Applies only to single-family homes and duplexes.
Applies to post-construction defects, after the applicable provisions in TRCCA are satisfied. May also apply to construction work exclusively for repair or replacement of component parts or small remodeling projects. For example, repair or replacement of a roof or if construction work is exclusively for interior work if the contract is for less than \$10,000. Applies to disputes where the homeowner discovered the alleged construction defect before September 1, 2003.	Applies only to post-construction defects that meet certain eligibility criteria. If TRCCA applies, RCLA's provisions apply as well, but the claim will not be eligible under RCLA until TRCCA provisions are met.
Does not require qualifying homes to be registered.	Requires builders to register with the Commission and register new construction homes and qualifying remodel projects. If a builder fails to register, a homeowner can bypass the inspection requirements provided in TRCCA and file a claim under RCLA.
Does not specifically provide a statute of limitations period.	Requires all defects to be discovered within two years of the warranty expiration.

## Appendix A

RCLA	TRCCA
<b>Definitions</b>	
<p>Defines “contractor,” including builders as defined by TRCCA, but also includes those individuals involved in residential construction not required to register under TRCCA. For instance, under RCLA the definition of a contractor includes individuals who repair existing homes, regardless of the dollar amount or type of work, or those who build condominiums.</p> <p>Exempts subcontractors, architects and engineers from liability because these individuals, while they might participate in the “design, construction, or repair” of residences, do not typically contract directly with an owner.</p> <p>Defines a risk retention group as a “contractor” if the group is properly registered with the Texas Department of Insurance.</p>	<p>Defines “builder” as “any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of: a new home; a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or an improvement to the interior of an existing home when the cost of the work exceeds \$10,000.</p> <p>Exempts several categories of individuals – including people who build or remodel their own residence and interior decorators and designers – from having to register with the Commission. However, in the case of those who build their own home, liability for warranty still applies and the home is subject to inspection.</p> <p>Repeats the definition of a risk retention group and further defines that a third-party warranty company that assumes liability for warranty items operates as a builder.</p>
<b>Process Requirements</b>	
<p>Requires homeowners to initiate a claim and give notice, by sending a RCLA demand letter, to start the legal process.</p> <p>Allows the contractor an opportunity to perform an inspection within 35 days of receiving the complaint and make a settlement proposal within 45 days of receiving the complaint.</p> <p>Allows the homeowner to give notice of a lawsuit (or request for arbitration) on or about the 60th day after initial notice is given.</p>	<p>Requires homeowners to give notice of an alleged defect and allows 30 days for the builder to make a repair offer.</p> <p>Requires homeowners (or builders) to initiate a State Inspection request before pursuing legal action against the other party. The State Inspection Process includes an inspection by a state-appointed inspector; a recommendation issued by the state-appointed inspector; the right to appeal the recommendation (by either homeowner or builder); and a final decision issued by a three-member panel of agency staff. Once this Process is completed, both parties have the option of taking the agency’s final decision, which is considered a rebuttable presumption, and pursuing further legal action.</p>
<p>Allows a court to issue a final judgment including an order for repair, reasonable settlement offer, and damages.</p> <p>If the homeowner accepts a repair offer, repairs must be completed within 45 days of receiving the homeowner’s notice of acceptance.</p>	<p>In cases involving conformed defects, requires builders to communicate a repair offer to the homeowner, however builders are not obligated to actually make the repair and can appeal the agency’s final decision.</p> <p>While the homeowner and builder go through the State Inspection Process, all timelines under RCLA are tolled until 45 days after the agency issues a final, non-appealable recommendation regarding the case.</p>

## Appendix A

RCLA	TRCCA
<b>Limited Liability</b>	
<p>Gives an implied warranty of workmanship and habitability. The question of whether a condition resulted from “unworkmanlike” construction or was not “habitable” is left to a jury or arbitrator.</p>	<p>Defines Limited Statutory Warranties, including: one year for workmanship and materials, two years for major systems, and 10 years for structural components.</p> <p>Establishes Building and Performance standards which are used during the State Inspection Process to determine how a house should perform post-construction.</p> <p>Provides a warranty of habitability and states that a home is habitable if it is in compliance with the Building and Performance Standards and is “safe, sanitary, and fit for humans to inhabit.”</p>
<p>Defines ‘construction defect’ and provides that a builder is not liable for defects or damages which arise from the negligence of other non-builder related persons, the failure of non-builder related persons to mitigate damages or maintain the home, or normal wear and tear, or normal shrinkage.</p>	<p>Excludes defects or damages that arise from the negligence of other non-builder related persons, the failure of non-builder related persons to mitigate damages or maintain the home, or normal wear and tear, or normal shrinkage.</p> <p>Also excludes homeowner’s claims that are solely for a personal injury, survival, wrongful death or damage to goods. Homeowner claims must seek to recover damages against the builder for something other than personal injury or damage to goods</p>



# Appendix B

## Overview of Other States' Regulation of the Residential Construction Industry

Thirty-three states regulate the residential construction industry – including builders and, in some cases, general contractors – but the level of regulation varies. Also, of the states that oversee this industry, 17 provide some mechanism to resolve disputes at an administrative level. However, most of these states' dispute resolution programs differ from the Commission's State Inspection Process in that the dispute resolution process is kept separate from the regulation of the industry. The following chart details each state's regulatory structure, level of regulation, and elements required for licensure.

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
<b>States with Licensure and WITHOUT Agency-level Resolution Mechanisms (17)</b>				
Alabama	Home Builders Licensure Board	<ul style="list-style-type: none"> <li>Licenses residential homebuilders who have built one home in the last year or five homes in the last five years.</li> <li>Licenses remodelers who have grossed more than \$250,000 in the previous calendar year.</li> </ul>	<ul style="list-style-type: none"> <li>Must pass a business, law, and trade exam.</li> <li>Must provide evidence of experience and ability.</li> <li>May be required to submit financial statements, satisfactory credit report, proof of positive net worth, or satisfaction of judgments.</li> </ul>	Independent Licensing Agency
Alaska	Department of Commerce, Community, and Economic Development – Division of Occupational Licensing, Contractors Registration Section	<ul style="list-style-type: none"> <li>Registers-with licensing-like demands-general contractors building new construction or renovations exceeding 25 percent of the value of the structure.</li> </ul>	<ul style="list-style-type: none"> <li>Must pass a trade exam.</li> <li>Must complete a craftsman home program.</li> <li>Must post a surety bond, or cash deposit of \$5,000 - \$10,000.</li> <li>Must have liability insurance coverage.</li> <li>Must possess a separate and valid Alaska business license.</li> <li>Must complete continuing education to maintain licensure.</li> </ul>	Umbrella Licensing Agency
Arkansas	Arkansas Contractors Licensing Board	<ul style="list-style-type: none"> <li>Licenses contractors building residential construction projects exceeding \$20,000, excluding sub-contractors.</li> <li>Offers a voluntary remodelers license.</li> </ul>	<ul style="list-style-type: none"> <li>Must pass a business and law exam.</li> <li>Must provide evidence of experience and ability.</li> <li>Must provide a financial statement and proof of a positive net worth.</li> <li>Must provide verifiable references.</li> <li>Must have workers' compensation insurance coverage.</li> </ul>	Independent Licensing Agency

## Appendix B

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
Connecticut	Department of Consumer Protection Occupational and Professional Licensing – Department of Consumer Protection Licensing Services	<ul style="list-style-type: none"> <li>◆ Registers new construction contractors of single-family, two-family homes, or condominium units.</li> <li>◆ Registers certain home improvement contractors who charge amounts exceeding \$1000 in contracts over a 12-month period.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must disclose any debts or unsatisfied judgments.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation coverage.</li> <li>◆ Must attest to criminal background information.</li> </ul>	Registration Program under an umbrella Licensing Agency
Georgia	State Licensing Board for Residential and Commercial Contractors	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors, and provides for various trade classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and trade exam.</li> <li>◆ Must provide evidence of work and practical experience in residential contracting or must have a college degree in a related field.</li> <li>◆ Must have a minimum net worth of \$150,000 and a minimum line of credit in the amount of \$50,000.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must pass a criminal history check.</li> <li>◆ Must complete continuing education to maintain licensure.</li> </ul>	Independent Licensing Agency
Hawaii	Department of Commerce and Consumer Affairs – Professional and Vocational Licensing Division, Contractors License Board	<ul style="list-style-type: none"> <li>◆ Licenses residential construction businesses and responsible managing employees of each licensed business.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and a trade exam.</li> <li>◆ Must provide evidence of supervisory experience in residential construction or evidence of certain technical training.</li> <li>◆ Must provide credit reports, a financial statement, and tax clearance.</li> <li>◆ May require a surety bond.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> </ul>	Independent Board under an Umbrella Licensing Agency

## Appendix B

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
Louisiana	State Licensing Board for Contractors	<ul style="list-style-type: none"> <li>◆ Licenses contractors building single-family construction exceeding \$50,000, and provides for various trade classifications.</li> <li>◆ Registers home improvement contractors doing work exceeding \$7,500, and provides for various trade classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass business and law exam, and a trade exam.</li> <li>◆ Must provide a notarized financial statement showing a net worth of \$10,000 or more, post a bond, or provide a letter of credit or other security.</li> <li>◆ Must have general liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must complete continuing education to maintain licensure.</li> </ul>	Independent Licensing Agency
Mississippi	Mississippi Board of State Contractors	<ul style="list-style-type: none"> <li>◆ Licenses individuals building residential construction projects exceeding \$50,000.</li> <li>◆ Licenses remodelers doing residential remodeling projects exceeding \$10,000.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a trade exam.</li> <li>◆ Must provide evidence of experience.</li> <li>◆ Must submit financial statements.</li> <li>◆ Must have workers' compensation insurance coverage.</li> </ul>	Independent Licensing Agency
Minnesota	Department of Labor and Industry	<ul style="list-style-type: none"> <li>◆ Licenses residential building contractors and remodelers.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and a trade exam.</li> <li>◆ Must have a five-year business history, and disclose any bankruptcies or unpaid judgments.</li> <li>◆ May require bonding in certain instances.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must complete continuing education to maintain licensure.</li> </ul>	Umbrella Licensing Agency
New Mexico	Construction Industries Division – Regulation and Licensing Department	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors, and provides for various trade classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam.</li> <li>◆ Must pass a trade exam or may substitute a 20-hour course completion from an approved school.</li> <li>◆ Must provide evidence of work experience.</li> <li>◆ Must post a bond, give cash collateral, or audited financial statement.</li> <li>◆ Must have workers' compensation insurance coverage.</li> </ul>	Umbrella Licensing Agency

## Appendix B

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
North Carolina	Licensing Board for General Contractors	<ul style="list-style-type: none"> <li>◆ Licenses general contractors who enter into contracts for residential construction projects exceeding \$30,000, and provides for various construction project classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and a trade exam.</li> <li>◆ Must provide a financial statement or obtain a surety bond.</li> <li>◆ Must post a performance and payment bond for projects valued at more than \$300,000.</li> </ul>	Independent Licensing Agency
South Carolina	Residential Builders Commission	<ul style="list-style-type: none"> <li>◆ Licenses residential building and residential specialty contractors building projects exceeding \$5,000 and specialty work exceeding \$200.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and a trade exam.</li> <li>◆ Businesses must hold a Commission-issued residential business certificate of authorization.</li> <li>◆ Must provide evidence of experience under the supervision of a licensed builder.</li> <li>◆ Must post a surety bond or submit a financial statement.</li> <li>◆ Must submit a credit report.</li> <li>◆ Must have workers' compensation insurance coverage.</li> </ul>	Independent Commission under an Umbrella Regulatory Agency
Utah	Department of Commerce -- Division of Occupational and Professional Licensing	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors building residential projects exceeding \$1,000, and provides for various specialty classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and a trade exam.</li> <li>◆ Must provide evidence of experience and education.</li> <li>◆ Must demonstrate financial responsibility or post a bond.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must submit to criminal background check.</li> </ul>	Umbrella Licensing Agency
Virginia	Department of Professional and Occupational Regulation – State Board for Contractors	<ul style="list-style-type: none"> <li>◆ Licenses businesses building construction projects exceeding \$1,000, and provides for various classifications by project value.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam.</li> <li>◆ Must pass a technical exam, including demonstrating knowledge of the building code.</li> <li>◆ Must complete a business course.</li> <li>◆ Must provide evidence of experience.</li> <li>◆ May require proof of another specialty license.</li> <li>◆ Must provide financial statements documenting a net worth exceeding \$45,000, or attest to having no outstanding debts or judgments.</li> </ul>	Independent Board under an umbrella regulatory agency

## Appendix B

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
Washington	Department of Labor and Industries	<ul style="list-style-type: none"> <li>◆ Registers construction contractors.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must post cash deposits or surety bonds.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance.</li> </ul>	Umbrella Licensing Agency
West Virginia	West Virginia Division of Labor – Contractor Licensing Board	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors, building projects exceeding \$2,500.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam, and a trade exam.</li> <li>◆ Must have unemployment compensation and workers' compensation insurance coverage.</li> </ul>	Independent Board under an Umbrella Regulatory Agency
Wisconsin	Department of Commerce – Safety and Buildings Division	<ul style="list-style-type: none"> <li>◆ Licenses contractors, for one- and two-family dwellings.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a trade exam.</li> <li>◆ Must post a bond or have liability insurance coverage.</li> <li>◆ Must have unemployment compensation and workers' compensation insurance coverage.</li> <li>◆ Must complete continuing education to maintain licensure.</li> </ul>	Umbrella Regulatory Agency
<b>States with Licensing and WITH Agency-Level Resolution Mechanisms (11)</b>				
Arizona	Registrar of Contractors	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors building projects, exceeding \$1,000, or if the project requires a building permit, and provides for various construction classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business management exam.</li> <li>◆ Must pass a trade exam depending on the type of construction.</li> <li>◆ Must provide evidence of practical experience or completion of an apprenticeship.</li> <li>◆ Must post a surety bond or cash deposit.</li> <li>◆ Must participate in a consumer's recovery fund or post an additional bond.</li> <li>◆ Must submit to a criminal background check.</li> </ul>	Independent Licensing Agency
California	Contractors State License Board	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors building residential projects exceeding \$500, and provides for various trade classifications.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a law and business, and a trade exam.</li> <li>◆ Must provide evidence of experience.</li> <li>◆ Must demonstrate that operating capital exceeds \$2,500.</li> <li>◆ Must post a security deposit or bond and has bond requirements for other responsible parties.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must submit to criminal background check.</li> </ul>	Independent Licensing Agency

## Appendix B

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
Florida	Department of Business and Professional Regulation – Construction Industry Licensing Board	<ul style="list-style-type: none"> <li>◆ Certifies residential contractors who meet competency requirements.</li> <li>◆ Registers residential contractors working towards fulfilling competency requirements.</li> <li>◆ Certified contractors can work throughout the state – registered contractors can only work locally.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business, financial management, contracting, and project management exam.</li> <li>◆ Must provide evidence of experience or education.</li> <li>◆ Must provide a credit report, or a financial statement showing net worth.</li> <li>◆ Must have public liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must submit to a criminal background check.</li> <li>◆ Must complete continuing education to maintain licensure.</li> </ul>	Independent Board under an Umbrella Licensing Agency
Maryland	Division of Occupational and Professional Licensing – Home Improvement Commission	<ul style="list-style-type: none"> <li>◆ Licenses home improvement contractors.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass an exam on rules, regulations, and business subjects.</li> <li>◆ Must provide evidence of experience or related education.</li> <li>◆ Must provide proof of financial solvency by submitting a credit report.</li> <li>◆ Must maintain liability insurance.</li> <li>◆ Must provide copies of conviction records, if applicable.</li> </ul>	Independent Commission under an Umbrella Licensing Agency
Massachusetts	Massachusetts Department of Public Safety – State Board of Building Regulations and Standards	<ul style="list-style-type: none"> <li>◆ Licenses construction supervisors for any work involving structural elements on structures less than 35,000 cubic feet.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a building code exam.</li> <li>◆ Must provide evidence of experience and/or education.</li> </ul>	Independent Board under an Umbrella Regulatory Agency
Michigan	Department of Labor and Economic Growth Bureau of Commercial Services – Michigan State Board of Residential Builders and Maintenance & Alteration Contractors	<ul style="list-style-type: none"> <li>◆ Licenses residential builders.</li> <li>◆ Licenses maintenance and alteration contractors doing work exceeding \$600.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law, and a trade exam.</li> <li>◆ Must complete Board-approved prelicensure education.</li> <li>◆ May require a credit report, surety bond, and financial statement.</li> <li>◆ Must attest to criminal background information.</li> <li>◆ Must complete continuing education to maintain licensure.</li> </ul>	Independent Board under an Umbrella Regulatory Agency

## Appendix B

State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
Nevada	Nevada State Contractors Board	<ul style="list-style-type: none"> <li>◆ Licenses residential and home-improvement contractors, including subcontractors.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a construction management and trade exam.</li> <li>◆ Must provide proof of college education, other training, or references.</li> <li>◆ Must provide evidence of experience.</li> <li>◆ Must submit a financial statement.</li> <li>◆ Must post a bond.</li> <li>◆ Must have workers' compensation insurance.</li> <li>◆ Must submit to a criminal background check.</li> </ul>	Independent Licensing Agency
New Jersey	Department of Community Affairs – Division of Consumer Affairs	<ul style="list-style-type: none"> <li>◆ Registers residential contractors and home repair contractors.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Home repair contractors:                             <ul style="list-style-type: none"> <li>◆ Must have commercial general liability insurance.</li> <li>◆ Must submit to criminal background checks.</li> </ul> </li> </ul>	Umbrella Licensing Agency
North Dakota	Secretary of State	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors building projects exceeding \$2,000, and provides for various classifications based on the value of the project.</li> </ul>	<ul style="list-style-type: none"> <li>◆ May require a performance bond.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> </ul>	Umbrella Licensing Agency
Oregon	Construction Contractors Board	<ul style="list-style-type: none"> <li>◆ Licenses residential general contractors.</li> <li>◆ Licenses residential limited contractors working on projects exceeding \$5,000, but not exceeding \$40,000.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass a business and law exam.</li> <li>◆ Must complete Board-approved training.</li> <li>◆ Must provide documentation of outstanding construction-related debts and judgments.</li> <li>◆ General contractors must post a surety bond.</li> <li>◆ Must have liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must provide documentation of any criminal background information.</li> <li>◆ Must complete continuing education (licensees and their employees) to maintain licensure.</li> </ul>	Independent Licensing Agency
Tennessee	Department of Commerce and Insurance – Board for Licensing Contractors	<ul style="list-style-type: none"> <li>◆ Licenses residential contractors or contractors managing construction projects exceeding \$25,000.</li> <li>◆ Licenses subcontractors doing work that exceeds \$25,000 in certain trades.</li> <li>◆ Licenses home improvement contractors doing work valued at \$3,000-\$24,999 in certain counties.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must pass business and law, and any applicable trade exams.</li> <li>◆ Must provide a financial statement.</li> <li>◆ Must have general liability insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must provide a reference letter from a past client.</li> </ul>	Independent Licensing Board under an Umbrella Regulatory Agency

## Appendix B

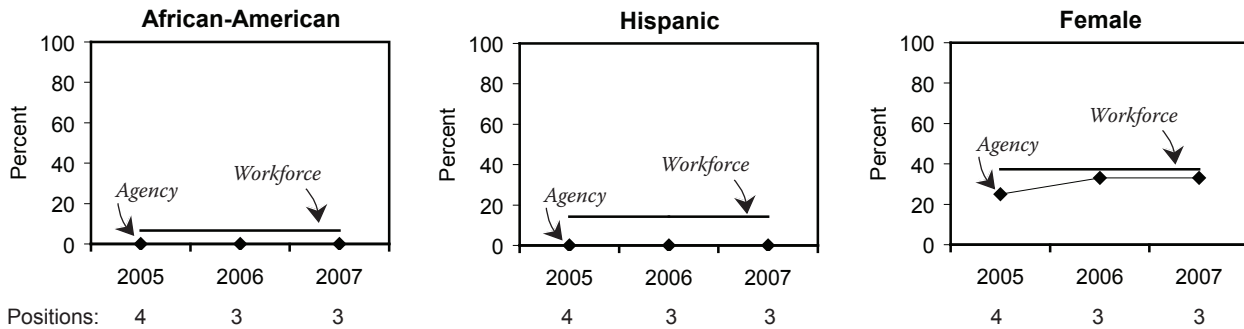
State	Agency Name	Level of Regulation	Key Requirements for Licensure	Organizational Structure
<b>States with Registration Only and WITH Enforcement or Resolution Mechanisms (2)</b>				
Rhode Island	Contractors' Registration and Licensing Board	<ul style="list-style-type: none"> <li>◆ Registers all contractors only for the purpose of settling claims filed against them.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must have liability and property damage insurance coverage.</li> <li>◆ Must have workers' compensation insurance coverage.</li> <li>◆ Must complete continuing education to maintain registration.</li> </ul>	Independent Regulatory Agency
Texas	Texas Residential Construction Commission	<ul style="list-style-type: none"> <li>◆ Registers builders and remodelers.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Must fulfill basic statutory eligibility requirements.</li> <li>◆ Must designate business type.</li> <li>◆ Must submit to a criminal background check.</li> <li>◆ Must complete continuing education to maintain registration.</li> </ul>	Independent Regulatory Agency
<b>States with Registration Only and WITHOUT Enforcement or Resolution Mechanisms (3)</b>				
Delaware	Department of Finance Division of Revenue	<ul style="list-style-type: none"> <li>◆ Registration is for revenue purposes only.</li> </ul>	Not applicable.	Not applicable
Iowa	Iowa Division of Labor – Contractor Registration Section	<ul style="list-style-type: none"> <li>◆ No license required, but all construction contractors, including subcontractors, must register if they earn at least \$2,000 a year, including subcontractors.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Out-of-state contractors must post a bond.</li> <li>◆ Must have workers' compensation insurance coverage.</li> </ul>	Registration Program under an Umbrella Regulatory Agency
Montana	Department of Labor and Industry – Employment Relations Division, Contractor Registration Unit	<ul style="list-style-type: none"> <li>◆ Registers independent contractors and contractors with employees, working on projects exceeding \$2,500.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Independent contractors must submit various documentation requirements based on a point system that must total 15 points, to prove eligibility. For example, proof of business location = 6 pts., on a professional list, or affiliation = 3 pts., business name registered with Secretary of State = 3 pts., and business license permit = 3 pts.</li> <li>◆ Registered contractors must have workers' compensation insurance coverage.</li> </ul>	Registration Program under an Umbrella Regulatory Agency

# Appendix C

## Equal Employment Opportunity Statistics 2005 to 2007

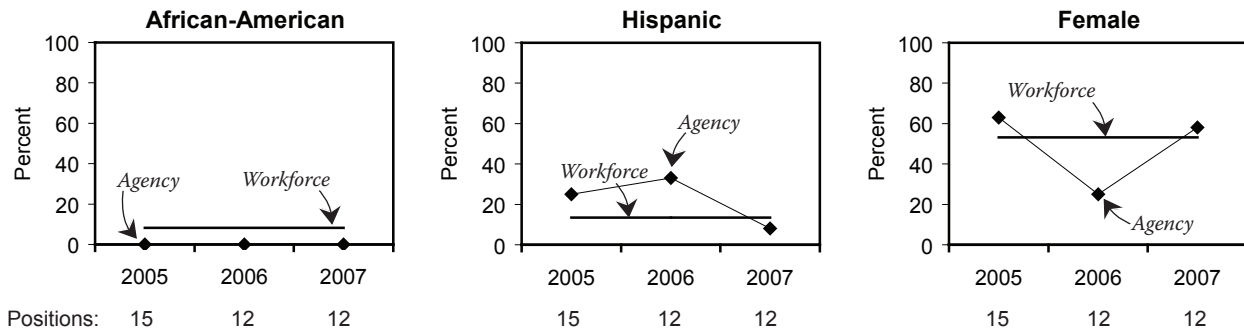
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Residential Construction Commission.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2005 to 2007. Generally the agency has exceeded percentages for Hispanics and females in most categories, however, fell short for African-Americans. Until recently, the agency had no Service/Maintenance employees.

### Administration



The agency fell short of meeting percentages for African-Americans, Hispanics, and females in all three years.

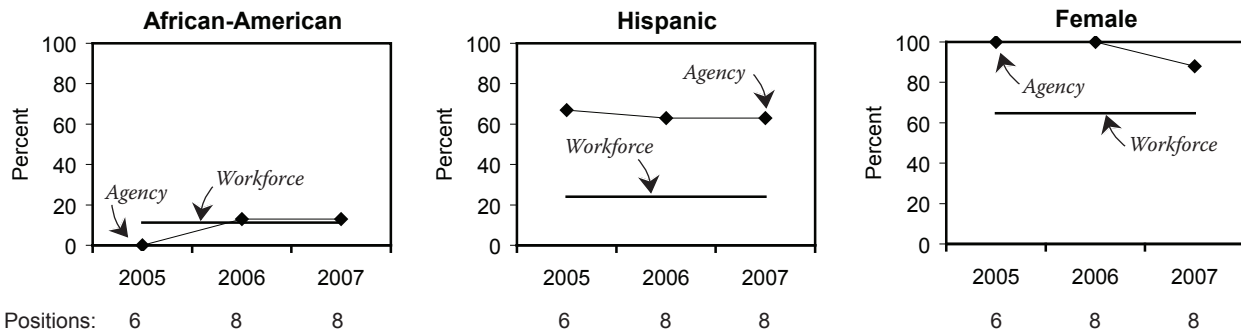
### Professional



The agency exceeded percentages for Hispanics and females in two years, but fell short for African-Americans in all three years.

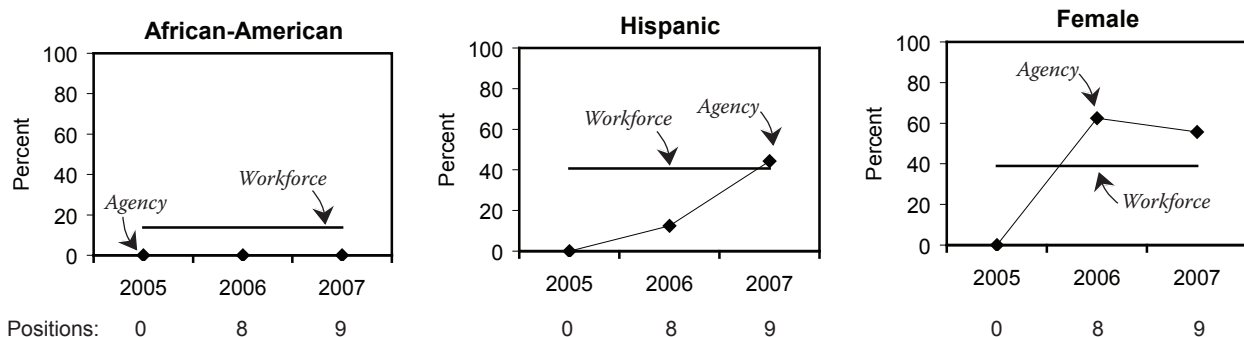
# Appendix C

## Administrative Support



The agency exceeded percentages for African-Americans in two years and exceeded percentages for Hispanics and females in all three years.

## Service/Maintenance<sup>3</sup>



The agency fell short of meeting percentages for African-Americans in 2007, but exceeded percentages for Hispanics and females during that year. The agency has no employees in this category until 2006.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501.

<sup>3</sup> The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

# Appendix D

## Current Texas Residential Construction Commission Fees

Description	Fee Amount*
<b>Builders</b>	
Initial application	\$500
Biennial renewal	\$300
Late registration	\$500
Late renewal	\$300
Star Builder annual application	\$100
Secondary designated agent initial application	\$25
Home registration	\$40 (Paper) \$25 (Online)
Late home registration	\$40
<b>Arbitrators</b>	
Initial application	\$50
Biennial renewal	\$50
Late renewal	\$50
<b>Third-Party Inspectors</b>	
Initial application	\$50
Annual renewal	\$50
Late renewal	\$50
<b>Third-Party Warranty Companies</b>	
Initial application	\$500
Annual renewal	\$300
Late renewal	\$300
<b>Arbitration Filings</b>	
Late Filings	\$100
<b>Other</b>	
Change of information (all registered entities)	\$25
Duplicate certificates (all registered entities)	\$25
<b>State Inspection Process</b>	
Homeowner requested State Inspection – All types of inspections	\$250**
Builder requested State Inspection – Workmanship and Materials inspection	\$450

## Appendix D

### *Current Texas Residential Construction Commission Fees*

<b>Description</b>	<b>Fee Amount*</b>
Builder requested State Inspection – Workmanship and Materials inspection containing more than 50 items	\$900
Builder requested State Inspection – Structural inspection	\$650
Builder requested State Inspection – Structural inspection with unrelated Workmanship and Materials items	\$800
Builder requested State Inspection – Structural inspection with more than 50 unrelated Workmanship and Materials items	\$1,250

\* Builder registration and renewal fees are required to be set at statutory maximum levels.

\*\* Homeowner's must pay an initial fee to file a State Inspection request, however, if a defect is confirmed the \$250 fee is refunded.

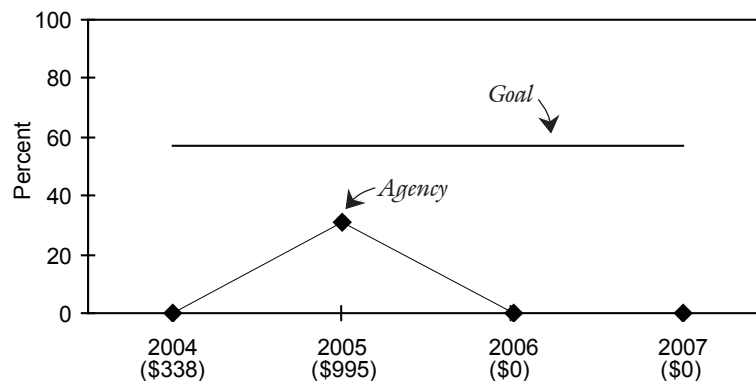
# Appendix E

## Historically Underutilized Businesses Statistics 2004 to 2007

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Residential Construction Commission's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. Generally, the agency has exceeded the state's HUB purchasing goals when making more significant purchases in the last four fiscal years.

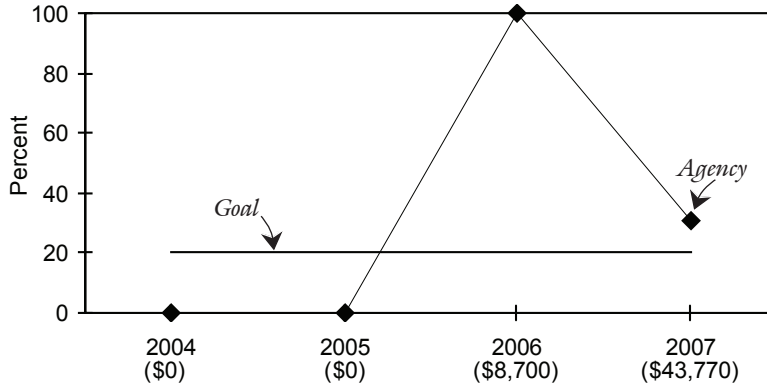
### Special Trade



The agency fell short of the State's goal for HUB spending for special trade each year. However, the agency's purchases were minimal during the first two fiscal years, and the agency did not make any purchases in this category during fiscal years 2006 and 2007.

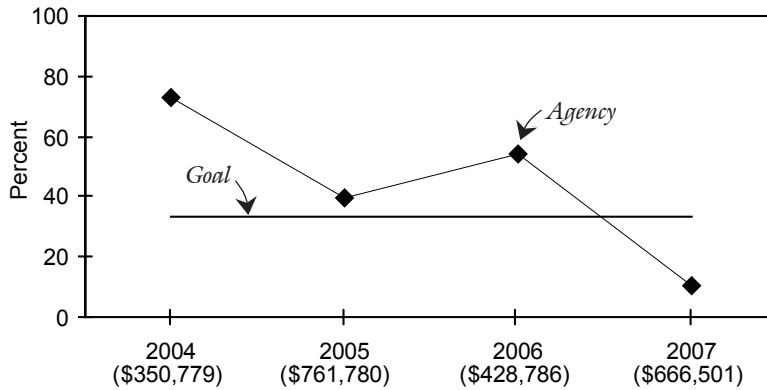
# Appendix E

## Professional Services



The agency exceeded the State's goals when purchasing professional services in fiscal years 2006 and 2007.

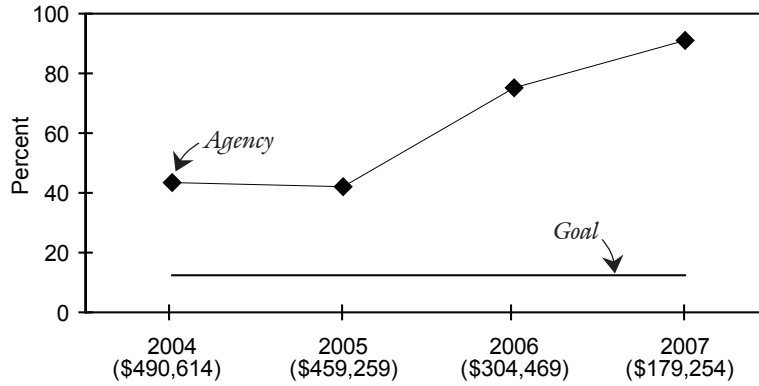
## Other Services



The agency exceeded the goals for this category, but fell short of the goal in fiscal year 2007.

# Appendix E

## Commodities



The agency exceeded the goals for this category.

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<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.



# Appendix F

## Star Builder Program Requirements

Experience
<p><u>Sole Proprietor Applicant must have:</u></p> <ul style="list-style-type: none"><li>◆ 12 years of experience as a builder; or</li><li>◆ 7 years of experience as a builder with five years active trade association membership related to the construction industry; or</li><li>◆ 3 years of experience as a builder with proof of completion of educational requirements from an association such as the National Association of Home Builders Graduate Builder and Remodeler Programs.</li></ul> <p><u>Business Entity* must have:</u></p> <ul style="list-style-type: none"><li>◆ 12 years of experience as a builder; or</li><li>◆ 7 years of experience as a builder with five years active trade association membership related to the construction industry; or</li><li>◆ 5 years of experience as a builder and a four-year college degree in the field of construction sciences; or</li><li>◆ 3 years of experience as a builder with proof of completion of educational requirements from an association such as the National Association of Home Builders Graduate Builder and Remodeler Programs.</li></ul> <p>* A business entity that registers fewer than 40 homes must have one responsible party to demonstrate eligibility. A business entity that registers more than 40 homes must have one responsible party and one employee involved in onsite construction activities who can demonstrate eligibility.</p>
Proof of Financial Responsibility
<p><u>Documentation from Financial Institution</u></p> <ul style="list-style-type: none"><li>◆ Applicant has an excellent relationship with financial institution; and</li><li>◆ Applicant is eligible for extension of credit for residential construction; and</li><li>◆ Applicant is not in default of any credit obligation;</li><li>◆ Financial Institution has no knowledge of applicant or affiliate having the following:<ul style="list-style-type: none"><li>- filed for bankruptcy in any state in past seven years;</li><li>- overdrafts or past due notices;</li><li>- delinquency in property taxes;</li><li>- unsatisfied judgments; or</li><li>- property liens from nonpayment of subcontractors.</li></ul></li></ul> <p><u>Notarized Affidavit</u></p> <ul style="list-style-type: none"><li>◆ Applicant attests to the following:<ul style="list-style-type: none"><li>- not having filed bankruptcy;</li><li>- current on all state property taxes;</li><li>- no unpaid judgments; and;</li><li>- no property liens.</li></ul></li></ul>

# Appendix F

## Star Builder Program Requirements

<b>Insurance Requirements</b>
<ul style="list-style-type: none"><li>◆ Obtain general liability policy of \$300,000 to \$2 million per occurrence depending on the number of homes applicant registered.*</li></ul> <p>*Remodelers must have registered more than 25 homes and builders must have registered 50 homes. The insurance requirement doesn't apply to builders that register fewer than 25 homes.</p>
<b>Builder Practices</b>
<ul style="list-style-type: none"><li>◆ Applicant must offer at least three premium services to customers, such as the following:<ul style="list-style-type: none"><li>- a green building program such as the Model Green Home Builder Guidelines sponsored by the National Association of Builders;</li><li>- the Certified Aging-in-Place Specialist Program or EasyLiving Home Certification Program; and</li><li>- enhanced foundation services, including site engineering, additional inspections, and foundation document retention.</li></ul></li></ul>
<b>State Inspection Process Complaint Restrictions</b>
<ul style="list-style-type: none"><li>◆ Applicants must agree to actively participate in any eligible State Inspection request submitted by a homeowner and agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.</li><li>◆ An applicant is ineligible if the number of homeowner-submitted State Inspection requests against that applicant that resulted in a finding of a construction defect in the final non-appealable inspection report exceeds two homes for applicants that registered 40 or fewer homes or five percent of the number of homes registered for applicants that registered more than 40 homes in the preceding twelve months.</li></ul>
<b>Continuing Education</b>
<ul style="list-style-type: none"><li>◆ Members must submit evidence of having 16 hours of approved continuing education each program year.</li></ul>

# Appendix G

## Commission Enforcement Powers Comparison Fiscal Year 2007 vs. Fiscal Year 2008

Fiscal Year 2007	Fiscal Year 2008
<b>Grounds for Disciplinary Action</b>	
Fraud or deceit in obtaining registration or certification.	Same
Misappropriation of trust funds in the practice of residential construction.	Misappropriation or misapplication of trust funds in the practice of residential construction.
Naming false consideration in a contract.	Same
Discriminating on the basis of race, color, etc.	Same
Publishing a false or misleading advertisement.	Same
Failure to honor a check issued to the Commission.	Failure to honor a check issued to the Commission, or any other instrument of payment, including a credit or debit card or electronic funds transfer.
Failure to pay an administrative penalty.	Failure to pay an administrative penalty or fee.
A final nonappealable judgment arising from a construction defect or other transaction between the person and the homeowner.	Failure to pay a final nonappealable court judgment arising from a construction defect or other transaction between the person and the homeowner.
Failure to register a home.	Same
Failure to remit the fee for registration of a home.	Same
Failure to reimburse a homeowner the amount ordered by the Commission.	Failure to reimburse a homeowner the amount ordered by the Commission, regarding SIRP fees.
No Equivalent Provision	Engaging in statutory or common law fraud or misappropriation of funds.
No Equivalent Provision	Repeated failure to participate in SIRP, if required.
No Equivalent Provision	Failure to register as a builder.
No Equivalent Provision	Using an expired or revoked certificate of registration.
No Equivalent Provision	Falsely representing being a registered builder.
No Equivalent Provision	Acting as a builder under a name other than the name disclosed to the Commission.
No Equivalent Provision	Aiding, abetting, or conspiring with someone who is not registered to evade Commission rule or law.
No Equivalent Provision	Allowing the certificate of registration to be used by another or acting as an agent of an unregistered person.

## Appendix G

### ***Commission Enforcement Powers Comparison Fiscal Year 2007 vs. Fiscal Year 2008***

Fiscal Year 2007	Fiscal Year 2008
No Equivalent Provision	Acting as an agent of someone who does not hold a registration to evade Commission rule or law.
No Equivalent Provision	Failure to reasonably perform on an accepted repair offer or repeated failure to make an offer.
No Equivalent Provision	Repeated failure to respond to a Commission request for information.
No Equivalent Provision	Failure to obtain a building permit before construction.
No Equivalent Provision	Abandoning a construction project, if found to have done so by court judgment.
No Equivalent Provision	Repeated failure to comply with the requirements of Subtitle F (Inspections of New Residential Construction).
No Equivalent Provision	Otherwise violating the Commission rule or law.
<b>Other Disciplinary Powers</b>	
Revocation or suspension of a registration or certification.	Revocation or suspension of a registration or certification for repeated prior violations that have resulted in disciplinary action involving at least three homes registered by the builder, or at least one percent of the homes registered by the builder during the preceding 12 months.
Probation or suspension of a registration or certification.	Same
Formal or informal reprimand of a registered or certified person.	Same
Administrative penalty.	May impose an administrative penalty at an increased level.
No Equivalent Provision	Referral of a criminal nature to a local district attorney or county attorney for investigation.
No Equivalent Provision	Issuance and order to cease and desist from a violation to enforce compliance.
No Equivalent Provision	Suit in district court for injunctive relief and to collect an administrative penalty.

# Appendix H

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## Staff Review Activities

During the review of the Texas Residential Construction Commission, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Commission meetings; met with staff from legislative agencies; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies and functions in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this review.

- ◆ Interviewed Texas Residential Construction Commission members.
- ◆ Observed a State Inspection and interviewed the third-party inspector overseeing the case.
- ◆ Interviewed staff from the College of Architecture, Construction Sciences Department at Texas A&M University in College Station.
- ◆ Interviewed staff from the Texas Department of Licensing and Regulation.
- ◆ Reviewed State Inspection case files.
- ◆ Attended a review of appealed State Inspection cases conducted by agency staff.
- ◆ Toured several homes with alleged post-construction defects and interviewed homeowners.
- ◆ Attended a Limited Warranties and Building and Performance Standards Advisory Committee Meeting.
- ◆ Accompanied agency staff to a public speaking event in Kerrville, Texas regarding the implementation of the County Inspections Program.
- ◆ Solicited feedback on the Commission's performance from all third-party inspectors.
- ◆ Interviewed individual homeowners who have gone through the State-sponsored Inspection and Dispute Resolution Process.
- ◆ Met with various consumer interest groups and residential construction industry representatives.
- ◆ Observed the operations of the agency's customer call center.
- ◆ Attended an contested case hearing at the State Office of Administrative Hearings.



# NEW ISSUES



# New Issues

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The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

## **Overall Mission and Agency Programs**

2. Modify the Texas Residential Construction Commission Act to more clearly define the agency's legislative purpose and to help the Commission more fully and effectively carry out its mission and meet its legislative purpose. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
3. Establish a Residential Construction Public Counsel to act as an advocate for consumers and to ensure consumer interests are presented and represented. The Public Counsel would be staffed by an attorney whose clients are the people of Texas and whose interest is protecting and serving the interests of Texas consumers. The Public Counsel's responsibilities would include commenting on Commission rules, proposed changes to the Warranties and Performance Standards, and other Commission business from a consumer perspective. In addition, the Public Counsel would also be available to serve as an informational resource for homeowners who are involved in a dispute with a builder that is in the State Inspection Process. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
4. Formalize the Ombudsman Program as a homeowner assistance program to provide guidance to homeowners who have construction disputes with builders and remodelers (either under the Commission or, if adopted, under the Residential Construction Public Counsel.) Ombudsmen currently help investigate complaints and broker fair settlements between aggrieved parties wherever practicable. Ombudsmen also work to make sure that builders and remodelers make repair offers if the Inspection confirms a defect; that the builder or remodeler secure a follow-up inspection, as required by law; and that the parties reach a final resolution. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
5. Allow the Commission to conduct voluntary mediation of disputes between homeowners and builders or remodelers. The Commission would be authorized to provide non-binding mediation to those homeowners and builders or remodelers interested in trying to reach quick resolution in lieu of having an inspection conducted under the State Inspection Program. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
6. Create a recovery fund for consumers. The recovery fund would use excess revenue generated by the Commission to create and fund a recovery fund in the Texas Safekeeping Trust Company administered by the Comptroller of Public Accounts. Upon first payment of a claim to a consumer, the Commission would be granted the authority to revoke or suspend a builder or remodeler, preventing them from doing further business in Texas. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
7. Delete arbitrator registration and the arbitration award filing requirement. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)

8. Delete the Star Builder Program. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)

### **Organization**

9. Reconstitute the Commission as an unbiased agency that is not packed with the Texas Association of Builder's pre-approved appointees. (Douglas A. Garrett – Building Performance and Comfort, Inc., Leander)
10. Abolish the Residential Construction Commission and establish a builder licensing program with the Occupations and Licensing Commission. (Lou McCreary – Law Offices of Lou McCreary, Austin)
11. Abolish the State-sponsored Inspection and Dispute Resolution Process and require mediation before suit or demand for arbitration, if limitation periods permit. (Lou McCreary – Law Offices of Lou McCreary, Austin)
12. Establish a new Texas regulatory agency that includes a dispute resolution mechanism to provide a separate administrative complaint process to resolve disputes more quickly and efficiently than through litigation. (Tom Archer, President – Homeowners of Texas, Inc., Austin)
13. Create a new state agency with dispute resolution mechanisms to license homebuilders as well as swimming pool, framing, flashing, roofing, and foundation contractors. (Tom Archer, President – Homeowners of Texas, Inc., Austin)

### **Licensing**

14. Strengthen registration requirements and warranty obligations to include individual homeowners who make interior renovations of more than \$10,000 to a home they do not occupy. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
15. Increase continuing education requirements for builders and remodelers from five hours over five years, to a five hour per year requirement. The five hours of continuing education per year would include: three hours involving technical building issues, one hour regarding the Texas Residential Construction Commission Act and Commission rules, and one hour in ethics. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
16. Require all builders and remodelers to take a minimum of 16 hours of continuing education each year. (Douglas A. Garrett – Building Performance and Comfort, Inc., Leander)
17. Increase the amount of required continuing education for builders. (Lou McCreary – Law Offices of Lou McCreary, Austin)
18. Require builders to prove a basic understanding of sound building science and durable, healthy, efficient, and comfortable home construction. (Douglas A. Garrett – Building Performance and Comfort, Inc., Leander)

19. Require all licensees to pass a written test administered in English, suitable for the trade or profession. Testing should include reading and understanding of construction plans. (Lou McCreary – Law Offices of Lou McCreary, Austin)
20. Require all licensees, including both individuals and companies, to pass a written test administered in English. (Tom Archer, President – Homeowners of Texas, Inc., Austin)
21. Require all builders to pass a test or examination as a qualification for registration. (Barry S. Thombs, Vice-president and Co-owner – The RockAway Company, Inc., Haltom City)
22. Require all licensees to maintain adequate liability and workers compensation insurance for all jobs, without exception. Insurance must cover all trades of work and the certificate of insurance should be filed with building officials, if applicable, and the owner. Failure to keep insurance coverage current on all jobs would result in a loss of licensure and civil penalties. (Lou McCreary – Law Offices of Lou McCreary, Austin)
23. Require all licensees to maintain adequate liability and workers compensation insurance for all jobs without exception. Also require all licensees to prove financial solvency. (Tom Archer, President – Homeowners of Texas, Inc., Austin)
24. Require all registered builders to provide proof of a minimum \$2 million umbrella insurance policy as a qualification for registration. (Barry S. Thombs, Vice-president and Co-owner – The RockAway Company, Inc., Haltom City)
25. Require each business principle to provide an audited financial statement and a certified credit report. (Barry S. Thombs, Vice-president and Co-owner – The RockAway Company, Inc., Haltom City)

### **Building Performance Standards and Warranties**

26. Formalize the Warranties and Standards Advisory Committee in statute to allow for the reimbursement of travel expenses for those who serve on the committee. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
27. Require all residential construction projects, including remodeling and swimming pools, to be built by licensed contractors or builders using licensed framers, roofers, foundation companies, remodelers, swimming pool contractors, engineers, plumbers, and electricians. (Lou McCreary – Law Offices of Lou McCreary, Austin)
28. Require all new and remodeled light frame buildings and structures, and all parts thereof, to be constructed to safely support all loads as prescribed by the minimum standards of the International Residential Code. (Lou McCreary – Law Offices of Lou McCreary, Austin)
29. Require each stage of construction to be inspected, documented, and approved by a licensed code inspector or a professional engineer licensed in Texas. (Lou McCreary – Law Offices of Lou McCreary, Austin)
30. Require drainage and geotechnical evaluation of lots to, at a minimum, comply with the International Residential Code. Also require a geotechnical engineer to perform a geotechnical test and provide a professional engineer-sealed report on soil properties,

groundwater locations, and other design parameters on all lots that likely have expansive, compressible, shifting or other unknown characteristics. The geotechnical engineer providing these services would also be required to maintain professional liability insurance. (Lou McCreary – Law Offices of Lou McCreary, Austin)

31. Require surface drainage and geotechnical evaluation of all lots to, at a minimum, comply with the International Residential Code. Lots containing expansive, compressible, shifting, or other unknown soil characteristics should be tested by a geotechnical engineer licensed by the state of Texas. In these circumstances, the geotechnical engineer should conduct a geotechnical test and provide a professional engineer-sealed report of soil properties, groundwater locations, and other design parameters required for proper foundation design. (Tom Archer, President – Homeowners of Texas, Inc., Austin)
32. Require all subdivision plans consisting of two or more proposed residential lots to be engineer-approved, with the appropriate seal. In reviewing the plans, the engineer should review the existence of potential flooding, expansive clays, groundwater, and proper draining diversion, including a listing of lots and a statement that all lots are suitable for construction of residences. The professional engineer providing these services would also be required to maintain professional liability insurance. (Lou McCreary – Law Offices of Lou McCreary, Austin; Tom Archer, President – Homeowners of Texas, Inc., Austin)
33. Require all residential construction projects in excess of \$10,000 to be inspected by a licensed inspector or building official and to meet all applicable building codes. Homes built outside a municipal jurisdiction would be governed by the most current International Residential Code. Also, all homes would be required, at a minimum, to be inspected at the foundation, framing, roofing, and finishing stages. All trusses must be engineered trusses and be accompanied to the jobsite, as specified in the International Residential Code. (Lou McCreary – Law Offices of Lou McCreary, Austin; Tom Archer, President – Homeowners of Texas, Inc., Austin)
34. Require all new and remodeled light frame buildings and structures to safely support all loads as prescribed by the minimum standards of the International Residential Code. Structural elements that exceed the limits of the International Residential Code must be designed in accordance with accepted engineering practice. Also, require each stage of construction to be inspected, documented, and approved by a professional engineer licensed by the state of Texas. (Tom Archer, President – Homeowners of Texas, Inc., Austin)

### **Enforcement**

35. Grant the Commission real power to enforce construction standards based on sound building science, accepted industry standards, and manufacturer requirements. (Douglas A. Garrett – Building Performance and Comfort, Inc., Leander)
36. Strengthen penalties for misuse of construction trust funds. (Lou McCreary – Law Offices of Lou McCreary, Austin)
37. Require any builder selling a home with a deficient foundation to buy the house back and reimburse the owner all costs. (T. June Melton, P.E. – Amstar Engineering, Inc., Austin)

38. Strengthen criminal and civil penalties for misuse of construction trusts funds. (Tom Archer, President – Homeowners of Texas, Inc., Austin)

### **Dispute Resolution**

39. Provide a process for on-site dispute resolution during construction to resolve construction disputes. (Lou McCreary – Law Offices of Lou McCreary, Austin)

### **Inspection**

40. Grant the Commission's Executive Director the authority to immediately dispatch a Commission employee to act as a State Inspector in emergency circumstances. The Commission's State Inspectors would be required to have the same qualifications as those required of a third-party inspector. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
41. Rename the State-sponsored Inspection and Dispute Resolution Process the State Inspection Program. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)
42. Grant authority to the Commission to perform re-inspections and charge the builder or remodeler for the re-inspection. (A. Duane Waddill, Executive Director – Texas Residential Construction Commission)

### **Other**

43. Do not penalize homeowners in the process or financially for failing to accept the findings of the arbiter. (Douglas A. Garrett – Building Performance and Comfort, Inc., Leander)
44. Require all residential construction contracts to be on a form approved by the State. (Lou McCreary – Law Offices of Lou McCreary, Austin)
45. Require all home warranty contracts to be on a State-approved form and backed by insurance. Also require all home warranty rates to be approved by the Commissioner of Insurance. (Lou McCreary – Law Offices of Lou McCreary, Austin)
46. Provide tuition grants for trades. (Lou McCreary – Law Offices of Lou McCreary, Austin)
47. Require all records of public agencies concerning licensees to be public, including consumer complaints against licensees. (Lou McCreary – Law Offices of Lou McCreary, Austin; Tom Archer, President – Homeowners of Texas, Inc., Austin)
48. Require all residential construction contracts and third-party warranty company contracts to be on a State-approved form. (Lou McCreary – Law Offices of Lou McCreary, Austin)
49. Support legislation to regulate the homebuilding industry and assure all future homebuyers that a home is built in compliance with the U.S. Department of Housing and Urban Development's minimum property standards and the state-adopted International Residential Code before it is sold. (Rosa Rosales, National President – League of United Latin American Citizens, San Antonio)



# SUNSET STAFF REVIEW OF THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION



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