

Texas Residential Construction Commission

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.

*For additional information,
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Key Facts

- ◆ **Funding.** The Commission operated on a budget of about \$10.6 million in fiscal year 2008. Revenues come from fees paid by builders, and fees homeowners pay as part of the State Inspection Process.
- ◆ **Staffing.** In fiscal year 2008, the Commission employed 70 staff.
- ◆ **Registration.** The Commission regulates approximately 30,000 builders, who have registered a total of about 678,000 homes. The Commission also oversees 279 third-party inspectors, four arbitrators, and nine third-party warranty companies.
- ◆ **Enforcement.** In fiscal year 2008, the Commission took enforcement action against 116 builders.
- ◆ **State Inspection.** In 2008, the agency opened 568 State Inspection cases, which included more than 29,000 individual alleged defects. The Commission's third-party inspectors confirmed that 51 percent of the alleged defects were, in fact, post-construction defects in need of repair.

Commission Members (9)

Paulo Flores, Chair (Dallas)

Glenda Mariott, Vice Chair (College Station)

Lewis Brown, Secretary (Trinity)

Art Cuevas (Lubbock)

Kenneth Davis, P.E. (Weatherford)

Gerardo "Jerry" Garcia (Corpus Christi)

John Krugh (Houston)

Steven Leipsner (Lakeway)

Mickey Redwine (Ben Wheeler)

Agency Head

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Recommendations

1. Continue the Texas Residential Construction Commission for four years.
2. Amend the Texas Residential Construction Commission Act to include an agency purpose clause.
3. Restructure the Commission to provide additional focus on consumer issues and increase technical expertise.
4. Streamline the State Inspection Process to provide more efficient and effective outcomes and offer a mechanism for homeowners to opt out of the Process in cases where certain delays occur.
5. Improve the Commission's enforcement authority over registered builders and unregulated activity.
6. Require the agency to offer incentive to builders who fix confirmed defects.
7. Establish an Office of the Ombudsman to ensure consumer interests are represented within the agency and before the Commission.
8. Require the Commission to produce a brochure detailing agency programs to be distributed at new home closings.
9. Increase the amount of continuing education required of registered builders and remodelers.
10. Abolish the Star Builder Program.
11. Expand the eligibility to provide fee inspections as part of the County Inspection Program.
12. Direct the agency to study the possibility of adopting building codes for unincorporated areas.
13. Establish a recovery fund.

Issue 1

The State Has a Continuing Need for the Texas Residential Construction Commission.

From its inception, the Texas Residential Construction Commission has received criticism of its ability to effectively oversee builders and protect Texans from poor quality home construction. Although the Legislature recently listened to these concerns and made significant changes to the Commission and its enforcement abilities, additional changes are needed to help ensure adequate oversight of the industry and public protection. Also, the agency needs more time to assume these new powers and develop a track record for judging its ability to effectively oversee the homebuilding industry and resolve home defects through the State Inspection Process.

Recommendation

Change in Statute

1.1 Continue the Texas Residential Construction Commission for four years.

This recommendation would continue the Texas Residential Construction Commission as an independent agency for four years, instead of the standard 12-year period. The next Sunset review would include an assessment of the agency's overall performance, as in any Sunset review, and the agency's ability to implement statutory changes and management actions resulting from this current review.

Issue 2

The Commission's Statute Does Not Provide A Clear Focus and Strategic Direction for the Commission.

The Texas Residential Construction Commission Act does not help guide the Commission in the dual-purpose environment in which it operates. The Legislature charged the Commission with elements of a regulatory agency through its registration of homebuilders and remodelers. However, the Act also charges the Commission with administering the State Inspection Process, designed to resolve disputes between homeowners and builders before either party may pursue legal action. Having a regulatory agency serve such different and potentially competing functions is unusual in state government, and it challenges the agency's ability to determine how best to pursue its oversight and service functions.

Recommendation

Change in Statute

2.1 Amend the Texas Residential Construction Commission Act to include an agency purpose clause.

This recommendation would establish an agency mission in the Texas Residential Construction Commission Act, guiding the Commission's work and clearly reflecting the agency's dual purpose of

providing industry oversight and operating a service-related program through the State Inspection Process. Under this recommendation, the mission clause would define the agency's overall purpose as maintaining oversight of all builders and remodelers registered with the agency, ensuring that registered builders and remodelers are responsible and accountable to the homeowners with whom they contract.

The agency's mission would also include the Commission having a role in educating builders and homeowners about aspects of the residential construction industry affecting the building or remodeling of Texas homes. Finally, the agency's mission would include having a service role in facilitating dispute resolution regarding construction defects between homeowners and builders through the State Inspection Process. These changes would provide a framework to guide the Commission's work. The changes would also provide more clarity both to homeowners and builders regarding their expectations for the agency and to entities like the Legislature that are responsible for evaluating the Commission's overall performance.

Issue 3

The Commission Does Not Have Consumer Representation or Technical Expertise Needed for Its Unique Regulatory and Dispute Resolution Responsibilities.

The Texas Residential Construction Commission Act guides the agency's two main functions – regulation of Texas' homebuilding industry and providing a mechanism for resolving defect disputes between homeowners and homebuilders through the State Inspection Process. In creating the 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 home or remodel project should perform in a given time period and act as the benchmark for completing State Inspections. These responsibilities go beyond the traditional role of a regulatory agency, and underline the important role of consumer representation and technical expertise in the Commission's decision-making process.

Although the Commission's membership currently includes consumer representatives, members of the homebuilding industry, and technical experts, the Commission could benefit from having additional consumer representation and technical, building expertise.

Recommendation

Change in Statute

3.1 Restructure the Commission to provide additional focus on consumer issues and increase technical expertise.

This recommendation increases the size of the Commission from nine to 11 members by adding a public member and adding a requirement for both an architect and an engineer, instead of the original requirement for either an architect or engineer member. Increasing the number of public members from three to four would provide equal representation with homebuilders on the Commission, and help ensure a stronger consumer voice than now exists. Also, adding the requirement of an architect and an

engineer provides additional technical expertise in the area of building construction and performance-related issues, which is especially important given the Commission's role in approving building and performance standards.

Issue 4

Delays in Completing the State Inspection Process Threaten Its Role as a Meaningful Prerequisite to Legal Action for Aggrieved Homeowners.

The State-sponsored Inspection and Dispute Resolution Process provides a neutral, third-party review of post-construction defects. 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. The State Inspection Process is a lengthy, sometimes difficult process for homeowners seeking to remedy a problem with their home.

Statutory guidelines require homeowners to provide 30-days written notice before entering the State Inspection Process, and give the agency 110 days to process a case involving workmanship and material defects and 140 days to process a case involving structural issues. However, the agency often takes longer than the statutorily allotted timeframes to process a State Inspection case. These timeframes mean that even under the best of circumstances, homeowners must wait nearly four months to complete the State Inspection Process to address problems with their homes.

Also, once the State Inspection Process officially ends, if a defect is confirmed, builders are required to update the agency on the progress of repairing the confirmed defect. Significant parts of this process, however, are not detailed in statute and could be improved to provide the agency with more frequent information regarding the status of repairs made.

Recommendations

Change in Statute

4.1 Streamline the State Inspection Process to provide for more efficient and effective outcomes.

This recommendation would simplify the Commission's State Inspection Process, by reducing requirements and shortening timeframes. As a result, State Inspection cases would be closed more quickly, resulting in increased customer satisfaction. Under this recommendation, the State Inspection Process would be amended in the following ways.

- ◆ Eliminate the requirement for homeowners to provide an initial, 30-day written notice to a builder or remodeler before filing a State Inspection request with the Commission.
- ◆ Decrease the statutory timeframe provided for the agency to assign a third-party inspector to a State Inspection case from 30 days to 10 days after the Commission receives the State Inspection request.
- ◆ Authorize the Commission to use its own staff to conduct inspections in emergency situations.
- ◆ Decrease the timeframe for third-party inspectors to complete structural case reports from 60 days to 45 days.

4.2 Amend the State Inspection Process to allow both parties to opt out if the Process goes beyond the newly shortened specific statutory timeframes.

Under this recommendation, both parties to a State Inspection case would have the right to stop the State Inspection Process and pursue legal action if the final action by the agency's Appeal Panel goes beyond the 30-day statutorily allowed timeframe, or if the Process, at any point, goes beyond 90 days for inspections involving workmanship and materials and 105 days for inspections involving structure, as the reduced timeframe in Recommendation 4.1 provides. By establishing hard dates after which both parties may exit the Process to pursue legal action, the recommendation would provide greater certainty for homeowners and builders and provide an escape from the delays that prolong the current Process.

4.3 Clarify statute to provide timeframes for re-inspection of repaired defects.

Under current Commission rule, if a homeowner accepts a builder's offer to repair, the builder is required to re-hire and pay for the third-party inspector who performed the initial State Inspection to inspect the completed repair work. This recommendation would amend statute to specify timeframes for these re-inspections as 30 days for workmanship and material cases and 45 days for structural cases. This recommendation would also clarify that homeowners who do not accept a builder's offer of repair can immediately pursue legal action.

4.4 Clarify statute to require builders to report the status of repaired defects.

Under current Commission rule, builders are required to submit information relating to any activities, including settlements, repair efforts, arbitration or litigation, which have occurred as part of the findings in the State Inspection Process. This recommendation would codify this process in statute and increase the frequency of reports to every 21 days, instead of the current 45-day timeframe, allowing the agency to be more frequently updated on the status of repairs.

4.5 Require the agency to implement a priority scheme for processing State Inspection requests.

This recommendation would require the Commission to adopt procedures for processing State Inspection requests, which would include assessing cases to better prioritize its efforts when appropriate. When developing these procedures, the agency should consider emergency circumstances, including habitability, and complexity of case material, including structural defects as compared to workmanship and material complaints. This change would give priority to those complaints that justify swift action and immediate attention.

4.6 Authorize third-party inspectors to include additional defects in the final inspection report.

This recommendation would allow third-party inspectors to add defects discovered during the inspection that are not included on the original State Inspection request. Inspectors would be authorized to use their own judgment in determining whether a defect should be included in the initial inspector's report and should not base this determination solely on a request by either the homeowner or the builder. Items added by the inspector and included in the inspector's report as defects would be the responsibility of the builder to repair. In addition, the defects must relate to violations of codes, standards, or warranties. This recommendation would provide consumers with an additional review of the quality of their home, allowing for an opportunity to repair any suitable defects discovered by the inspector's technical review.

Issue 5

The Commission Lacks Discretion to Take Enforcement Action as It Determines Necessary.

The Commission is charged with overseeing the homebuilding industry, including more than 30,000 builders and remodelers. Currently, however, statutory restrictions limit the Commission's authority to discipline registered builders and remodelers, including suspending or revoking a registration. Also, while the Commission currently has cease-and-desist authority to take action against unregistered building activity, the process is cumbersome and, thus, rarely used by the agency.

Recommendations

Change in Statute

5.1 Clarify the Commission's authority to suspend or revoke a builder's registration and take general enforcement actions.

This recommendation would allow the Commission to consider revocation and suspension of a builder's registration without the builder satisfying a prerequisite of repeated violations that result in disciplinary action. The Commission would also be authorized to take disciplinary action against a builder or designated agent for failure to participate in the State Inspection Process, failure to respond to a Commission request, or failure to comply with the requirements of the County Inspection Program without the builder having to violate these requirements multiple times.

These changes give the Commission direct authority to assess the builder's violation, compliance history, and other relevant information when taking disciplinary action, including revocation and suspension actions, as is common with most regulatory agencies. This recommendation also ensures that all builders, including those new to the field or who build few homes, are held accountable for any violations of the Act or Commission's rules, subject to the judgment of the Commission.

5.2 Clarify the Commission's cease-and-desist authority.

This recommendation would clarify that the Commission has clear, direct authority to issue cease-and-desist orders to stop unregistered activity that undermines the Commission's regulations and threatens public safety. In addition, this recommendation would grant the Commission authority to assess administrative penalties as a part of a cease-and-desist order. Providing the Commission with clear cease-and-desist authority would help the agency to more quickly protect consumers from illegal building activity and help instill greater confidence in the Commission's regulatory authority.

Issue 6

Builders Have Little Incentive To Fix Defects Confirmed Through the State Inspection Process.

The Commission's State Inspection Process is designed to resolve defect disputes between homeowners and builders through a neutral, third-party review of alleged defects. Although builders are statutorily required to comply with this Process, the Commission does not have the authority to require a builder to fix any confirmed defects. As a result, only half of all defects confirmed through the State Inspection Process are remedied by the builder. Currently, once the State Inspection Process is complete, a copy of the Commission's findings regarding the case is available under the builder's listing on the Commission's website.

Because the Commission does not remove information about completed State Inspections from its website or files – even if the builder repaired the defect to the satisfaction of the homeowner – the builder has less incentive to fix defects confirmed through the Process. Also, while a builder has a case going through the State Inspection Process the Commission does not pursue enforcement action against that builder so that it will not further disrupt communication with the builder in the Process. The effect is to encourage builders to draw out their participation in the State Inspection Process as a way to delay or even avoid enforcement action.

Recommendations

Change in Statute

6.1 Amend the Texas Residential Construction Commission Act to delete all public records of a State Inspection request if the builder fixes the defect.

This recommendation would require the agency to remove State Inspection request forms, case material, and final recommendations from its website and internal files if the builder repairs the confirmed defects – regardless of the timeframe in which the repairs occur. All State Inspection records would thus no longer be considered a public record at the time the repair is confirmed by the agency. The agency would confirm the validity of the repair with the homeowner and the inspector who performs the second inspection to ensure that all defects are, in fact, repaired. This recommendation provides an incentive for builders beyond an offer to repair the confirmed defect, to complete the repair to the homeowner's satisfaction.

Management Action

6.2 Direct the agency to use the disciplinary process to help negotiate repair offers.

Under this recommendation, the Commission would be required to begin the disciplinary process against a builder involved in a State Inspection case once the third-party inspector issues the final report. Currently, the agency does not pursue disciplinary action against a builder involved in an open State Inspection case. This change would encourage the builder to make repairs by allowing the agency to negotiate lower disciplinary action if repairs are made to a consumer's satisfaction.

Issue 7

Statute Does Not Reflect the Commission's Current Efforts to Meet Consumer Needs and Represent Consumer Interests.

Before January 2008, the Commission's involvement with all State Inspection cases ended once the inspector's report or appeal panel's decision was issued. Since then, the agency has used 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 restore broken communications between the homeowner and homebuilder and facilitate home repairs by gaining the cooperation of both parties, through informal repair agreements. The program has enjoyed success in improving communication between homeowners and builders and facilitating needed repairs, but the Ombudsman is not detailed in statute, compromising its longevity as a program within the agency and its clout with homebuilders. In addition, the current Ombudsman position is limited in its authority to represent consumers' concerns.

Recommendation

Change in Statute

7.1 Establish an Office of the Ombudsman to ensure consumer interests are represented within the agency and before the Commission.

Under this recommendation, the Office of the Ombudsman would be detailed in statute, formalizing the existing program which helps facilitate defect repairs following completion of the State Inspection Process. Within the Office, the lead Ombudsman would be required to be a licensed attorney and would be hired by and report directly to the Commission. The lead Ombudsman's main duties would include overseeing staff to carry out the post-State Inspection mediation process between builders and homeowners. The Ombudsman would also be responsible for commenting on rules and other policy changes before the Commission.

Formally establishing this Office in statute ensures that future Commissions provide a resource to consumers after the agency's official jurisdiction ends with the State Inspection Process. This recommendation also gives consumers an additional voice within the agency and before the Commission.

Issue 8

The Current Method of Providing Resource Information to Homeowners Does Not Adequately Ensure They Receive Needed Information.

The Commission currently produces a homeowner information booklet that is mailed to all homeowners when the builder or remodeler registers the home with the agency. Information contained in this brochure includes a description of the statutory warranties, the Commission's building and performance standards, the State Inspection Process, and other resources for homeowners with potential defects in their new home or remodeling project. The usefulness of this informational booklet is diminished

because it is mailed once the builder registers the home, and arrives separately from other important documents related to the home and often months after the new home is purchased. Also, because an unknown number of homes go unregistered by the builder without the homeowner's knowledge, these consumers similarly are less likely to be aware of the Commission's role.

Recommendation

Change in Statute

8.1 Require the Commission to produce a brochure detailing agency programs to be distributed at new home closings.

Under this recommendation, the agency would continue to produce, and update as needed, a homeowner information booklet, made available online or in a hard copy format. However, the agency would no longer mail this booklet to a homeowner once the home is registered. Instead, closing agents would be required to distribute this publication at a new home closing. This recommendation would continue the Commission's responsibility to provide brochures to homeowners with newly remodeled homes who do not go through the closing process. The Commission would be authorized to make any needed adjustments to the home registration process to facilitate this new process. Changing the point at which the Commission's information booklet is distributed ensures that homeowners receive the information with other important documentation and through a process that is not dependent on the builder registering the home.

Issue 9

Current Continuing Education Requirements Do Not Ensure Builders Remain Up To Date on Industry Changes.

In 2007, the Legislature required all registered builders and remodelers to receive continuing education. Builders who registered with the Commission before September 1, 2007 are required to complete five hours of continuing education within five years. Builders registering with the Commission after this date are required to complete five hours of continuing education within the first year and then satisfy the requirement for five hours every five years thereafter. The staggered nature of these requirements causes a confusing array of dates that the agency and builder track for completing continuing education, none of which coincide with builders' registration renewal date, which occurs every two years. Also, with the exception of newly registered builders, the current requirement does not ensure that builders remain aware of changes within the industry.

Recommendation

Change in Statute

9.1 Require registered builders and remodelers to complete three hours of continuing education every two years.

This recommendation would increase the amount of continuing education requirements that registered builders and remodelers must satisfy from five hours every five years to three hours every two years to coincide with their registration renewal. New requirements would be effective on September 1,

2009, but would not be considered as a part of renewal until September 1, 2011, giving registrants an opportunity to comply with the new requirements.

Increasing the amount of continuing education required by builders helps ensure that they have greater access to education on new building techniques and changes in the homebuilding industry. Changing to a two-year cycle would allow for aligning the requirement with registration renewal to help the agency in its efforts to ensure compliance and would provide a greater opportunity for training regarding regulatory changes resulting from the biennial legislative cycle.

Issue 10

Texas No Longer Has a Need for the Star Builder Program.

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 services. To qualify, a builder must meet certain criteria and provide documentation indicating experience, education levels, training, financial stability, insurance, and building practices.

Although the Legislature intended for the Star Builder Program to assure consumers that designated builders provide a higher level of quality construction and service, few builders have applied to the Commission for a Star Builder designation. The Commission maintains that few builders are part of the Program because the designation is rarely recognized by consumers in the marketplace and the application process is not worth the small benefit received by having the designation. Currently, out of the approximately 30,000 registered builders, only 31 have the Star Builder designation.

Recommendation

Change in Statute

10.1 Abolish the Star Builder Program.

This recommendation would remove the Star Builder Designation from statute. Abolishing the program would allow the agency to focus on its main tasks of regulating the homebuilding industry and administering the State Inspection Process.

Issue 11

Qualified Professionals Are Currently Excluded From Performing County Inspections.

In 2007, the Legislature created the County Inspections Program, which aims 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 on framing and mechanical systems before sheetrock is installed, and a full inspection upon project completion.

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. The demand for inspectors in unincorporated areas is high, however certain professionals who are trained and otherwise qualified to perform these types of inspections are currently not statutorily eligible to register with the Commission as a fee inspector under the County Inspections Program.

Recommendation

Change in Statute

11.1 Expand the statutory eligibility to provide fee inspections as part of the County Inspections Program.

This recommendation would include plumbing inspectors licensed by the Texas State Board of Plumbing Examiners and certified building officials as eligible to perform fee inspections as part of the County Inspection Program. Adding these two professions to the list of eligible fee inspectors increases the pool of qualified professionals who are able to provide this inspection service to builders across the state.

Issue 12

No Entity Studies Information Regarding the Effects of Building Codes on Rural Texas.

In 2007, the Legislature amended the Texas Residential Construction Commission Act to require individuals building in unincorporated areas of the state to adhere to specific building codes. Although these statutory requirements are relatively new, the codes detailed in statute have been replaced by newer versions and are out of date. No analysis has occurred, however, to determine the possible effects that updating these codes in statute would have on the quality of construction in rural areas or on the cost of housing.

Recommendation

Management Action

12.1 Direct the agency to study the possibility of adopting building codes for unincorporated areas.

This recommendation directs the agency to create an advisory committee to research the feasibility of adopting new or amending existing building codes that apply to unincorporated areas of the state. In developing this research, the committee should include expertise from the following organizations:

- ◆ the Building Officials Association of Texas;
- ◆ the Texas Association of Counties;
- ◆ the Texas A&M University Department of Construction Science; and
- ◆ any other organization that has expertise in the area of building codes.

Also, in developing this research the committee should conduct its work in an open meeting and take public comment from various stakeholders in accordance with the Open Meetings Act. Under this recommendation, the committee should complete this study by January 1, 2011 and submit the findings in a report to the Sunset Commission and the agency's House and Senate oversight committees. Using information compiled by the committees, the 82nd Legislature would be able to re-evaluate the issue of discrepancies between building codes in urban and rural areas of the state.

Issue 13

Texas Lacks the Means to Indemnify Homeowners From Unpaid Judgments Against Homebuilders.

Recovery funds provide a means for indemnifying persons from harm when responsible parties fail to make good on judgments against them. While Texas operates a State Inspection Process to resolve defect disputes, the State does not operate a recovery fund to indemnify homeowners who have won judgments against builders, but never receive the required payment, typically because the builder has gone out of business or has failed to maintain needed financial responsibility. Without a recovery fund, Texas homeowners lack a potential remedy for wrongs perpetuated by builders.

Recommendation

Change in Statute

13.1 Establish a consumer recovery fund.

This recommendation would establish a recovery fund to reimburse consumers for damages caused by builders. Under this recommendation, consumers would only be eligible for reimbursement if they have pursued the State Inspection Process to resolve a defect that has gone without remedy because the builder is no longer in business. Additional details regarding the recovery fund, including a process for accessing the fund and a funding mechanism would be determined during the 81st Legislative Session. By establishing a recovery fund, Texas would provide consumers with another remedy for dealing with defect disputes, which would otherwise go unresolved or be resolved at the expense of the homeowner.

Fiscal Implication Summary

None of the recommendations regarding the Texas Residential Construction Commission would have a fiscal impact to the State. However, one recommendation could have a fiscal impact to the State, depending on whether or not the Legislature expands the provision, as discussed below.

- ◆ **Issue 13** – As currently recommended, establishing a consumer recovery fund would not have an impact to the State, however the current recommendation does not specify a funding stream for the fund. Depending on how the Legislature chooses to appropriate funding to the fund, this recommendation could have a fiscal impact to the State.

