

CONSTRUCTION DEFECT RESOLUTION AND OTHER CONSUMER INFORMATION

Homes, like all structures built for human occupancy, are assembled on site, by hand, from the ground upward in the elements of nature by scores of construction professionals. As such, situations develop and questions arise involving the construction methods, practices, materials and techniques used to complete the project. Each construction issue and circumstance is different and often involves a myriad of building codes, municipal ordinances, Texas laws and federal regulations.

When questions or situations arise, it is important to discuss those promptly and directly with the home builder. The home builder's insight and expertise about the project can lead to quick resolution, provided that clear communication is established. Contact with the home builder should be done as soon as the issue becomes known especially issues involving the home's plumbing system, electrical system, roofing and structural components. It is important to all involved in the construction process that homeowners with construction questions or experiencing what they perceive to be construction defects contact the home builder in writing and by telephone to fully describe the issue.

Homeowners that have unresolved questions or concerns about their home's construction can pursue other avenues to have their concerns addressed. Listed below are suggested avenues for homeowners to take.

Helpful Tips

Homeowners with questions or concerns involving construction methods, practices, materials and techniques used to construct a home should:

- Carefully read the contract to establish how construction issues are to be handled.
- Contact the home builder through the mail and by telephone to clearly explain the situation.
- Document all contact with the home builder
- Take photos of the situation and send copies to the home builder.
- Be prepared to hire a third party inspector.

Homeowners are also encouraged to call the city to talk to the Permitting and Inspection Department or the city's Chief Building Official (CBO) about:

- Building code requirements and code amendments based on local construction practices, new products, and new technology.
- Code interpretations, if any, made by the CBO during the project's construction.
- The inspections performed on the home during construction.
- To determine if the city will dispatch an inspector to examine the situation and give an opinion based on local building code requirements.
- To determine if the city maintains a builder registration program and/or a commission that addresses contractors operating in the city and related construction issues

The Residential Construction Liability Act

For unresolved situations surrounding allegations of a construction defect, the Texas law known as the Residential Construction Liability Act (RCLA - commonly known as "Rec-la") may provide relief.

Generally speaking, RCLA applies to any action to recover from a construction defect except for personal injury, wrongful death or damage to goods. It should be stated that a party who files a suit under RCLA that is groundless and brought in bad faith or for purposes of harassment is liable to the defendant for reasonable and necessary attorney's fees and court costs. It would be prudent for homeowners to talk to an attorney knowledgeable about RCLA and its process for complete details.

A summary of the RCLA process is as follows:

- The homeowner gives written notice to the contractor specifying in reasonable detail the construction defects of the home 60 days before taking any legal action. On request of the contractor, the homeowner must provide any evidence of the defect such as photos or inspection reports.
- After the contractor receives notice the contractor shall have 35 days to inspect the situation to determine any repairs necessary. Within 45 days after receiving notice the contractor must make a written offer of settlement, and if the offer is accepted make the repairs within 45 days.
- The homeowner has the right to refuse the contractors' offer but must detail why the offer is being refused. If the offer is refused the contractor has the right to make a supplemental offer. If a homeowner does not permit the contractor to inspect the property or make repairs then certain restrictions may apply to the homeowner's ultimate settlement offer.

Smalls Claims Court

If the conflict between a homeowner and home builder or home remodeling contractor involves a contract dispute or allegations of fraud then the Texas Justice of the Peace system or Municipal Smalls Claims Court may provide relief. These courts have filing fees that are much smaller than district courts and the proceedings are less formal, with citizens representing themselves. In these courts, consumers may present their side to the judge using any information, documents or witnesses that are relevant. Look in the blue pages of the phone book or contact the city or county for information about these courts. Information can also be found at www.courts.state.tx.us

The Better Business Bureau

Most cities have a Better Business Bureau (BBB) that offers complaint mediation and arbitration services that can help solve consumer/business problems. As private non-profit organizations, however, they cannot force a solution on parties to a dispute.

Consult the phone book or search the BBB web site at www.bbb.org for more information.

The Office of the Attorney General and Legal Assistance

Homeowners with unresolved complaints may contact the Office of the Attorney General. The Attorney General's Consumer Complaint Division has a process to submit complaints. The consumer protection hotline number is (800) 621-0508.

If the homeowner is over the age of 60 or eligible for Medicare, the Attorney General offers free legal advice and other legal services. Eligible Texans can call (800) 622-2520.

Some areas of Texas also offer free legal advice provided by local attorneys. Look in the phone book under "Legal Aid" or "Legal Services" for more information.

Some law schools operate legal clinics where law students assist people under supervision of a law professor or other lawyer. Each law school can provide more information about their program.

Federal Trade Commission

The Federal Trade Commission (FTC), the nation's consumer protection agency, collects complaints about companies, business practices, identity theft, and other business related issues.

The FTC's Bureau of Consumer Protection works to protect consumers against unfair, deceptive, or fraudulent practices in the marketplace. The bureau conducts investigations, sues companies and people who violate the law, develops rules to protect consumers, and educates consumers and businesses about their rights and responsibilities. Complaints filed with the FTC help detect patterns of wrong-doing, and lead to investigations and prosecutions. The FTC enters all complaints it receives into Consumer Sentinel, a secure online database. It should be noted that the FTC does not resolve individual consumer complaints.

For more information go to www.ftc.gov or www.ftccomplaintassistant.gov

Helpful Online Resources

Attorney General – www.oag.state.tx.us

Better Business Bureau – www.bbb.org

International Code Council – www.iccsafe.org

Federal Trade Commission – www.ftc.gov or www.ftccomplaintassistant.gov

Justice of the Peace and Small Claims Courts – www.courts.state.tx.us

Texas Law and Statutes – www.texasonline.com

Texas State Agency List – www.tsl.state.tx.us