



Sunset Commission Recommends Abolition of Texas Residential Construction Commission

by Richard M. Alderman

In 2003, the Texas Legislature enacted the Texas Residential Construction Commission Act, creating the Texas Residential Construction Commission (“TRCC”). The TRCC was allegedly created to oversee the construction industry in Texas and protect consumers. The fact that the Commission was proposed and supported exclusively by the homebuilding industry is a good indication of the extent to which consumer protection was a true objective.

Recently, the Texas Sunset Advisory Commission reviewed the Texas Residential Construction Commission, and to the surprise of no one, except perhaps Texas homebuilders, concluded that: *“The Texas Residential Construction Commission Fails to Provide Meaningful Oversight and Public Protection Because of Fundamental Structural Flaws in the Current Regulatory Approach.”* The Sunset Commission’s key recommendation is, *“Abolish the Texas Residential Construction Commission and repeal the Texas Residential Construction Commission Act.”*

As the Sunset Commission concludes:

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.

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

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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.

The Sunset Committee's Report and comments are at <http://www.sunset.state.tx.us/81.htm#trcc>.