

As Published in the January/February 2005 Issue of the NAHI Forum

Trouble Brewing for New Homebuyers

A move has been afoot at least since the late nineties on the part of the National Association of Home Builders (NAHB) to fashion, promote and enact legislation designed to ultimately limit their responsibilities to new homebuyers. This action has led to last year's formation of the Texas Residential Construction Commission. I believe this to be the model after which they expect to fashion similar entities in all of the other states.

The History

American builders were deeply concerned about the future of their industry as the country entered the Second World War. The NAHB was founded in 1942 to represent the industry's interests on Capitol Hill and strive to ensure that housing remains a national priority when laws are made and policies are established. NAHB also works with federal agencies on regulations affecting housing and strives to shape decisions of the courts such that laws and regulations may be interpreted favorably for the housing industry. Their 800 state and local associations, 2,800 member board of directors and full-time staff of 300 serve the needs of their 215,000 members by working diligently to protect and promote builders' interests.

From their first real victory with the passage of the landmark Housing Act of 1949 to the recent publication of their Housing Policy for the 21st Century, NAHB has controlled and shaped the governmental and public perception of their industry to their benefit.

The Problem

Controlling legislation affecting their business has been much easier for the organization than managing the homebuyers and their attorneys. Rampant poor construction practices and corrupt or inept, or both, municipal inspectors over the years have led to a massive number of lawsuits against the nation's builders. Because the NAHB's mission is to protect its membership, and not the end user of their products, they have made little or no effective effort to rein in their membership in this arena. They have simultaneously paid lip service to promoting closer governmental oversight of homebuilders while working all the while to prevent the government from meddling in their affairs.

This growing lack of supervision throughout the country of the homebuilding process has bred poor construction practices that in turn have led to thousands of lawsuits against builders. These suits have been the impetus behind a move on the part of the NAHB to not only control from afar, but to totally infiltrate the governmental oversight of the industry at all levels.

With homebuyer dissatisfaction at an all time high the call for state- and nationwide new home lemon laws has grown audible. During the past 10 or so years the NAHB has been striving to develop a strategy for dealing with both the disgruntled homeowners and ensuing litigation.

The Plan

Back in the late nineties, under the guise of developing a *third-party* set of residential construction performance standards, the NAHB crafted and released its “Residential Construction Performance Guidelines for Professional Builders and Remodelers”. This scant volume sets out to (but never actually does) define the term “quality” as it relates to home construction. It is really just another tool in the builders’ arsenal aimed at managing the homebuyers’ expectations.

So, let me get this straight. The folks building and making a profit on sale of the house, not the folks paying for the house to be built, have the final say when it comes to what is acceptable and what is not? And, what happened to government regulation? Where exactly does that leave the model code agencies and their municipal inspectors and minions?

Well, model codes are merely minimal standards in place to insure the safety of life, limb and property. They don’t address the issue of quality or performance. Even the well-meaning third party inspector, inspecting to a strict interpretation of the prevalent code is not insuring quality or performance – only safety.

NAHB’s performance guidelines set some really tight tolerances indeed. Some examples: Interior walls cannot bow more than ½” out of line in any 32 inch horizontal or 96” vertical measurement and concrete slabs may not be more uneven than 3/8” in any 32” span.

Hypothetically then, in a family room that’s 20’ X 20’ with 12’ ceilings we can only have interior walls that are bowed 3 ¾” horizontally and ¾” vertically. And, of course, the slab foundation in this room cannot be more than 2 3/8” out of level. Even if the trim carpenter could make the room look square, he probably couldn’t walk safely across the floor!

OK, back to the plan. These strictly voluntary standards were a good start at hoodwinking the home buying public. How though could the homebuilders insure that their standards were both widely adopted and enforced?

The Solution

Texas may not quite have a corner on the good ole boy market. But when it comes to Texas builders and politicians, and Texans’ hyper conservatism notwithstanding, non-monogamous marriage has been alive and well for a half-

century or more. So, what better place for the NAHB to build the model for their latest bid to gain full control of their industry?

The Texas Builders Association (an affiliate of the NAHB) consists of more than 10,000 members in 31 local associations. The most influential of these local groups are located in Houston and Dallas. Back in the late eighties, TBA successfully pushed for the passage of the Residential Construction Liability Act (RCLA). Touted as a means through which homeowners and builders could work together to fix problem homes rather than launching into costly litigation, it amounted to little more than a blatant attempt to limit homeowners' ability to collect the treble damages often awarded by the courts in residential construction suits by way of the Deceptive Trade Practices – Consumer Protection Act (DTPA).

Through the never-ceasing extremely well funded efforts on behalf of the Texas builders' lobbyists and advocates at nearly every legislative session since RCLA was passed in 1989, an even greater restriction of homeowners' rights was achieved. In 2003 the Texas legislature presented the builders with their very own State Commission, the ***Texas Residential Construction Commission (TRCC)***.

The Bomb

The TRCC, brainchild of the Texas legislature, the Greater Houston Builders Association, the Texans for Lawsuit Reform (founded by Richard Weekley, brother of the CEO of David Weekley Homes) and their greatest single monetary contributor, Houston homebuilder Bob Perry, was obviously designed, funded and built by Texas builders for Texas builders, and is a true homebuyer's rights-stomping piece of work.

After contributing in excess of a million dollars to the campaigns of all the right Texas politicians from the Governor on down, Bob Perry's (of Perry Homes) senior vice president and corporate counsel, John Krugh, who drafted the original bill, was appointed to the board of the newly formed TRCC. The remainder of the board consists of an attorney who owns a title company, a builder, a telecom company owner who works closely with builders and developers, a lawyer who is a member of the Hispanic Contractors Association, another builder, yet another builder, an engineer for a major Fort Worth developer, and a Chief Building Official who works for a building code analysis company in the private sector. There'll be no consumer advocates and no independent home inspectors on this panel to be sure. Do you see a pattern emerging here?

The Show

Though the NAHB has done extensive and admirable research and development in the field of homebuilding through its world-renowned Research Center

(NAHBRC), they have failed to take their own researchers' advice. NAHBRC's efforts reveal that the major issues that need to be addressed by today's homebuilders are quality control and contractor education with the ultimate goal of improving durability in today's new homes.

In 1994 HUD's department of Policy Development and Research Information (PD&R) was placed in charge of the Public-Private Partnership for Advancing Technology in Housing (PATH), the stated mission of which is to "improve the affordability and value of America's homes through technology. Value includes improved energy-efficiency, durability, quality, and labor safety and reduced environmental impact and natural disaster damage." PATH's National Forum on Durability Research held in Upper Marlboro Maryland on March 31, 1999, which was sponsored by the National Institute of Standards and Technology (NIST) and hosted by NAHB Research Center, Inc., produced a background paper entitled "Improving Durability in Housing". This document states in part that, "Home inspectors are a comprehensive source of information about durability problems in homes of all ages, and some information is available from the American Society of Home Inspectors. New home warranty insurance companies have information about claims paid for major structural defects in newer homes, as well as the incidence of other types of failures covered by the insurance. Property insurance companies or their trade associations have information about claims relating to building product failures that represent covered risks. "

On PATH's website, www.pathnet.org, builders, remodelers, manufacturers, design professionals, affordable housing partners, realtors, appraisers, the insurance industry, financial services, planners, and homeowners are provided with information about the program. Not home inspectors. Much like TRCC's panel of builders and their cronies, PATH gives home inspectors no place at the table.

The Dream

The NAHB is not, as they often suggest, "building the American Dream". Home ownership, though certainly an integral part of that dream, is after all, just a part of it. The true ideal referred to here is that of financial independence and peace of mind.

Homebuilders sell their new homes on the false premise that they require little or no maintenance. That, coupled with the poor construction practices that are rampant throughout the country, has resulted in homeowners who move to new homes once deferred maintenance issues begin to show up, usually in about 4 to 7 years. Home inspectors are all aware of the systems failures and the worn look associated with properties in this age range. In most instances the homeowner has accrued little or no equity in his home before he's off on a mission to purchase another no- to low-maintenance new beauty. No equity accrual in this instance means perpetual debt to the homeowner, but infinite future business for

the builders. Additionally, the existing home markets are being flooded with poorly built homes suffering from deferred maintenance that results in decreased property values. Such decreases are directly experienced in a lower return for homebuyers on their investment. Frequent moving has a tendency to destabilize communities by preventing families from putting down roots. Just whose dream is being fulfilled here?

The Answer

Given their tremendous assets and ability to influence the nation's economy and home buying practices, the NAHB alone has the means with which to cure the problems that it has helped to create for this country. First, by placing durability and quality ahead of affordability, the organization could immediately raise the bar for its members. Second, by urging builders to change their sales procedures to focus more on quality in construction and higher durability than the current trend of ignoring quality and pushing cosmetic upgrades for a higher profit. Third, by giving home inspectors a seat at the table. This will include educating their builder members on the benefits of encouraging (instead of blatantly discouraging) the hiring of independent third-party inspectors by all new homebuyers. Sadly, I don't see any of these things happening in the near future.

As home inspectors and consumer advocates we have the obligation to our clients to make a real effort to address these issues. Unfortunately there is such a lack of unification and communication between our professional organizations that our voices may never be heard. ASHI, NAHI, NACHI, NIBI, SPREI, AAHI, HIF, NABIE, and their state counterparts like CREIA and TAREI just to name a few, are all making admirable efforts within their own arenas to forward our industry, but are competitors with their own distinct agendas. Until we can speak with one voice, the NAHB will continue in its efforts to control the building industry by limiting the home inspectors' business and eliminating the consumer rights of all homebuyers.

What I'd like to see is the formation of a council headed by the leaders of all of the nation's home inspector organizations. This group would work together in order to unify the voice of their constituents in order to positively affect the home inspection industry on a national level. I strongly urge the current and future leaders of these excellent organizations to open or broaden lines of communication between their groups with this end as a goal. Failure to do so will only act to strengthen the hold that the NAHB is exerting over our profession and the rights of our clients.

The Texas Residential Construction Commission is not the beginning of the NAHB's bid to completely control all regulation of their industry. It's quite near the culmination of that process. With this model of consumer control in place, it is but a matter of time before they succeed. Be acutely aware. They are coming soon to a State Capitol near you.