



Homeowners Against Deficient Dwellings

<http://www.hadd.com> 281-486-5203

A consumer protection group for homeowners and home buyers

An Analysis of the Texas Residential Construction Commission's Warranty and Performance Standards

Homeowners Against Deficient Dwellings has completed an analysis of the Texas Residential Construction Commission's Warranty and Performance Standards for new home construction. We believe based upon this review, consumers actually have less protection today, then before the TRCC came into effect.

Among other things, the extreme limitations of the standards allow

- **cracks in the walls of new homes**
- **requires homeowners to water their foundations to preserve the foundation warranty**
- **provides only 1 year of protection for roofs, paint, siding, bricks, tile, and most every major component of the new home**
- **waives the implied warranty of good workmanship provided to home buyers since 1968**

Currently the limits defined by law are set only at 1-year for good workmanship, 2-years for air, electricity, and plumbing, and 10-years for structural defects. These limits are unrealistic for new home construction. The TRCC should have leverage in defining these limits based upon defect analysis in Texas.

HADD will continue to monitor any changes in law that could change these standards.

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Review of the TRCC's Warranty and Performance Standards By Homeowners Against Deficient Dwellings

Summary

The warranty and performance standards established by House Bill 730 in 2003 and developed by the Texas Residential Construction Commission are extremely limited and provide less protection for consumers than prior to 2003. John Cobarruvias of HADD participated in the review of the standards and in the workshop held by the TRCC. Unfortunately many of the problems with the standards are a direct result of the wording in HB730 such as the one-year limitation on good workmanship. Because of this, many defects, which in the past would be considered shoddy building, are no longer covered by the warranty. These standards lack simple common sense and instead rely on establishing a hard set of performance standards, which do not reflect good building practices.

Waiving of the Implied Warranty of Good Workmanship

Prior to HB730 consumer had the implied warranty of good workmanship granted to consumers in 1968. In a Texas Supreme Court case in 2001 the implied warranty could be waived if expressed warranties were provided.

This warranty was waived with HB730 and instead "expressed" warranty and performance standards were created. The argument by the builders was the implied warranty was vague and a source of confusion and the express warranties established precise standards for homebuilding. They also claimed this was good for the consumer.

Although the expressed warranties created by the TRCC do provide unambiguous standards, the standards are very limited and actually provide less than the implied warranties did. As an example, tile separating from the entire floor of an 18-month home is not covered by the TRCCs standards. Under the implied warranty, this would be considered as poor workmanship by most everyone involved, except, of course, by the homebuilding industry.

The implied warranty of good workmanship allowed common sense, in many cases, to determine a defect. Tile separating from the floor is NOT good workmanship except under the TRCCs standards, which the homebuilding industry supports.

The implied warranty of good workmanship is a major loss to consumers despite what the builders claim.

Watering the foundation of a new home

One of the biggest complaints about new third party home warranties, such as the Home of Texas, was the unreasonable maintenance requirement, in particular, the requirements to adequately maintain a foundation by maintaining the water content in the surrounding soil. How much water, how saturated, or how to meet these requirements have never been disclosed., but it can be used as an excuse to void the warranty when a foundation problem occurs. Unfortunately, these unreasonable requirements are still in the warranty standards.

Examples of what is not covered by the Warranty and Performance Standards

The Commission has attempted to make the warranty standards a strict litmus test on how to define a defect. The standards lack any common sense approach to determining defects and the State Sponsored Inspection and Resolution Process does not give the authority to the 3rd party inspectors to make that determination. Because of this, these are but a few examples of what would not be covered by this warranty:

- Cracks in the walls not exceeding 1/32 of an inch in width
- Hundreds of cracks not exceeding 1/32 of an inch in width
- Cracks in the exterior brick not exceeding 1/4 of an inch in width
- Ceramic tile coming off the floor or cracking after just 1 year
- Siding deteriorating after 1 year
- Interior or exterior paint fading after 1 year
- Carpet coming apart after 1 year
- Windows not operating after 1 year
- Driveway cracking and breaking apart after 1 year
- Counter tops cracking after 1 year
- Trim separating after 1 year
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Warranty Limitations

HB730 established the foundation of the warranty standards with one year for workmanship, two years for air conditioning/heating and electrical, and 10 years for structural damage. This is what the current warranty companies adhere to such as the Home of Texas warranty used by David Weekley. Unfortunately the 1-2-10 year warranty limitations have been highly criticized for many reasons detailed in “New Home Warranties. Deception or Protection” by HADD

<http://www.hadd.com/documents/warranty.pdf> Luckily the homeowner had the implied warranty of good workmanship to protect them, until HB730 waived the warranty.

The TRCC should have the authority to define these limitations on warranties used in Texas based upon defect analysis.

One Year Warranty for Workmanship Issues

The vast majority of items in new homes are now warranted for only one year, regardless of any common sense. As an example, for a home just 18-months old the following is not covered in the TRCC warranties:

- Ceramic tile separating from the floor
- Windows leaking
- Paint discoloring or washing off the exterior
- Paint peeling
- Roof leaks
- Roof shingles coming off the roof
- Carpet buckling
- Carpet stretching
- Siding coming apart or prematurely deteriorating
- Tile coming off the shower stall

- Brick falling off the house
- Cracks in bricks

In short any common sense defect that is not air conditioning, heating, electrical or structural in nature is not covered after the first year. Many defects such as brick falling off the house or a brick wall moving is not considered structural therefore is covered only for the first year.

Two Year Warranty for Air, Heating, and Electrical

When a homeowner has an air conditioner replaced in the house it usually comes with a 10-year warranty. With new home construction in Texas, it is limited to only 2 years. Again an air conditioner breaking after two years is beyond reasoning and would have been covered by the implied warranty. It is unreasonable for an air conditioner or heater or electrical problem to be warranted for only two years.

- Examples of problems not covered after two years is:
- Any part of the Air conditioning system such as condenser failure, compressor failure, temperature control, humidity control
- Any part of the heater such as gas leaks, heating coil failure, temperature control
- Electrical failure throughout the house
- Bulbs burning out excessively
- Breakers tripping
- GFCI switches tripping

Ten year structural warranty

Although the structural warranty is much better than the third party warranties used in Texas today, there are some concerns.

Defects to a foundation are determined by “Guidelines for the Evaluation and Repair of Residential Foundations” by the American Society of Civil Engineers. From the workshop it seems the Engineers are confident this is the right standard and method to use, but the TRCC has added other language that we have concerns over. Such as:

- Deflection guidelines
- Elevation guidelines
- Tilt guidelines
- Requiring “actual physical damage” to load bearing structures

It is unknown at this time if these “extra” guidelines will result in more excuses to be used in denying foundation failures.