

**NO!** Shoddy housing programs

**NO!** Toxic Homes

**NO!** Land Grabs

**NO!** Misuse Of Power



**A.L.M.A.**

## **Austinites Lobbying for Municipal Accountability**

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Austin, TX 78746

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September 27, 2008

Sunset Advisory Commission  
1501 North Congress  
Austin, Texas 78701

Re: Texas Residential Construction Commission (TRCC)

Chairman Carl Isett:

Austinites Lobbying for Municipal Accountability (ALMA) appreciates the Sunset Staff's thorough analysis of the Texas Residential Construction Commission (TRCC). Per the Sunset Commission's report and the Public comments, ALMA supports abolishing the TRCC.

ALMA is a coalition of people, who share a common interest to restore *true* accountability of builders, housing programs, inspectors and our public officials. We hope to witness *genuine* accessibility to fair and equitable due process of the law. Unfortunately, whether it be through a court of law, or through a binding arbitration or mediation process, ALMA continues to hear from individuals who feel disenfranchised by the legal process because of time-consuming and costly obstacles which appear to be designed to stop-gap a consumer's ability to seek redress or to enforce accountability against unscrupulous practices. ALMA believes TRCC represents one such obstacle.

- *"TRCC has been criticized for helping builders skirt lawsuits from consumers seeking reparations for shoddily built homes."* - Texas Observer
- *"...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."* – Sunset Commission p. 1
- *"No other regulatory agency has a program with such a potentially devastating effect on consumers' ability to seek their own remedies."* – Sunset Commission p.1

ALMA members, through their efforts to unite their experiences by sharing their stories, have discovered a commonality of complaints relating to what appears to be:

- a lack of due process;
- mismanaged affordable housing projects,
- arbitrary and capricious code enforcement/interpretation,
- substandard construction,
- neglected warranty repairs,
- apparent violations of deceptive trade practices, and
- lax enforcement/accountability measures.

Such practices, particularly when there is inequitable access to the legal system, can move middle-income families into poverty and low-income families out of a home. Retention of homeownership is seriously compromised for families in need, and whose quality of life directly depends upon affordable homeownership. Practices that injure homeowners and lack true accountability erodes the stability of families and community, and potentially permanently displaces a cohort of people.

It sounds as if, from the Sunset Commission's report, that a homeowner's complaint to TRCC initiates a process that subsequently suspends a homeowner's right to pursue legal remedies via the court until *after* TRCC's review process is concluded. (Sunset report: "*Cases involving major defects do not receive priority processing and some have been pending as long as 20 months.*") Therefore, my question is: For fear of adverse penalty to themselves, couldn't such an added requirement upon the consumer's access to due process, discourage an otherwise injured consumer from filing a complaint against an inspector or contractor in the first place? And if some complainants are discouraged from filing, wouldn't that also imply that TRCC's "Builder information" profile (lists # of complaints etc. against a builder) is possibly skewed and could offer an artificially inflated reflection of a builder/remodeler's *true* performance? Is this not misleading to the consumer? Couldn't such a process enacted via the TRCC work against the interests of a homeowner and discourage public awareness of an unqualified builder / remodeler?

The existence of the TRCC seems misleading and gives a false sense of security to consumers because it implies that a regulatory screening process exists that effectively weeds out incompetent builders & remodelers. It also implies that an agency exists to enforce accountability and sanctions against unscrupulous practices. Yet, the Sunset Report reflects the contrary:

**For example, the Sunset Commission reports the following:**

- "...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." – pg. 1
- "By not ensuring the competence and financial responsibility of builders in Texas, the regulations do not prevent unqualified persons from entering the field and thus are not designed to prevent problems from occurring." – pg. 6
- *The current registration system does not prohibit bad builders from continuing to work in Texas' building industry.* – pg. 7
- "As a registration program the regulation of builders does not require them to satisfy basic capability."- p. 6
- *Builders are subject to the least restrictive form of regulation – registration.* – pg. 5
- "Licensing is the most restrictive form of regulation, generally requiring some level of skill or education and the passage of an examination to demonstrate proficiency... Registration is the least restrictive form of regulation, generally requiring only the identification and listing of practitioners by the regulating entity."- p. 6
- *Thirty-two other states regulate the residential construction industry, however, unlike Texas, 28 states require builders to be licensed.* - p. 13

Additionally, another variable that could possibly mislead consumers is that the Commission requires "*all local municipalities to check a builder's registration before issuing building permits.*"

When a regulatory agency such as TRCC requires a municipality to verify whether a contractor is registered w/ the TRCC BEFORE a permit can be issued, it implies to the consumer that the regulatory agency provides at the very least a screening process that would weed out unqualified contractors. – And yet, upon review of the list of registered contractors, and, as a representative of A.L.M.A., being familiar with the outcome of a number of local municipal home rehabilitation projects and its assigned contractor(s), it appears that TRCC’s screening criteria has failed to meet even this minimum standard of protection for the consumer.

Abolish – don’t revise: The findings within the Sunset Commission’s staff report states:

- “*Current regulation of the residential construction industry is fundamentally flawed and does more harm than good.*” (pg. 1)
- “*Despite changes last Session...the Commission still has no real power to require builders to make needed repairs.*” (pg.1)
- “*The Commission cannot require needed repairs, and the Process potentially threatens the Commission’s ability to objectively enforce regulations.*” (pg. 1)
- “*anything short of a true regulatory program does more harm than good, and should be abolished.*”- pg. 1

Although the TRCC may argue that it simply needs time to revise and correct the maladies of the past, the question is: Can taxpayers, homeowners and their families afford to “*wait and see*” if new revisions will ***also need revising?*** – Based on the Sunset Report findings, and on Public testimony, it appears that TRCC is seen more as an instrument that prolongs a homeowner’s and their family’s duress during a critical time when the habitability of their home is compromised and may need immediate resolution. Children grow up quickly. Why should another child’s scope of his early years be defined and overshadowed by a protracted bureaucratic process concerning the safety and habitability of his own home – particularly when the Sunset Commission has already recommended that the TRCC be abolished?

**Per Sunset Advisory Commission Report – pg. 3:**

*“Conclusion From its inception, the Texas Residential Construction Commission has received criticism of its ability to effectively oversee builders and protect Texans from poor quality construction. Although the Legislature recently listened to these concerns and made significant changes to the Commission and its enforcement abilities, these efforts only mask fundamental flaws in the State’s current approach to industry regulation. To fix these structural flaws would require an expansion of industry regulation that Sunset staff concluded cannot be accomplished in the near future. Without true regulation designed to ensure public protection, Texans are better served without the Texas Residential Construction Commission.”*

Janet Ahmad, President of HomeOwners for Better Building (H.O.B.B.) sums it up when she says: ***“The so-called fixes last session were more lipstick, smoke and mirrors,” “They can continue adding different shades of lipstick, but it’s still a builder protection agency run by the builders for the builders.”***

In conclusion, Austinites Lobbying for Municipal Accountability (ALMA) commends the research efforts of the Sunset Advisory Commission's staff report, and wholeheartedly supports its recommendation to abolish the Texas Residential Construction Commission (TRCC).

Sincerely,

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September 27, 2008

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