

TRCC Sunset Review (HOT summary of 9/23 public hearing)

The Sunset Advisory Commission (mostly Texas Senators and Representatives with two public members) held this public hearing to understand stakeholder views of the Texas Residential Construction Commission (TRCC), and it was clear that there was wide disparity between homeowners and builders that must be addressed if the TRCC is to survive as a state agency.

These notes were captured by Wayne Caswell (consultant to Homeowners of Texas) on a laptop PC while listening to testimony and represent his understanding of what was said. Underlined highlights and [editorial comments] were added later. When Wayne left the proceedings at about 8:45PM after giving his own testimony, it seemed that several builders were still waiting to testify but no homeowners that he recognized.

Sunset Staff Testimony

- **Kelly Kennedy** (sunset staff project manager, with others on her team) covered her group's focus. "No authority. Does more harm than good. Greater lack of trust than other agencies. Not enough commitment to establish a true regulatory structure. Recommends abolish TRCC to rely instead on RCLA."
 - **Senator Bob Deuell (R. family physician)** Questioned, "Why not fix vs. abolish? In the end, you need the ability to force resolution of problems."
 - **Representative Ruth Jones McClendon (D. San Antonio businesswoman)** She agreed with protection from unscrupulous contractors and, because of TRCC problems, the sunset review process. She questioned whether the authors of RLCCA were interviewed since she was one of them but was not contacted. "How many builders punished from bad practices?" (page 33 = 16 put out of business) The 500 who were denied registration were due to administrative (not substantive) reasons. McClendon explained her own homeowner frustration by being advised not to go to court (too expensive & unlikely outcome) and her steps with Attorney General, suggesting that TRCC process "should" be a less expensive resolution. She wants a "real solution," not just to abolish the TRCC.
- **Joey Longley (Sunset Staff Director)** – "A true solution would need education, licensing, real warranties, and enforcement."
 - **McClendon** referenced the other states that require licensing, implying "why not here," and she said it would be FOUR YEARS to justify and build a true regulatory agency, referencing past problems getting roofers licensed (her bill didn't pass). So, she thinks fixing TRCC is a faster and cheaper solution than starting over. **Joey** defended his assertion that "TRCC is unfixable." McClendon wants staff to help the Commission prepare recommendations to the Legislature, addressing how to give consumers the protections they want/need. (New document, not rewrite of report. Not a "tweak" of TRCC but something more.) One McClendon idea is a "recovery fund" to tap when a person was taken and can't otherwise recover. People think they have protections in place, but they don't. "If TRCC cannot become a regulatory agency, it should go away."
 - **Senator Glenn Hegar, Jr. (D/R? Sunset Vice Chair, background?)** responded that "protecting of consumers" is the ultimate objective. He reiterated that the public will have "7 days for post-hearing responses."

- **Senator Juan “Chuy” Hinojosa (D. attorney)** He said we must allow access to the courts. An alternative might be optional certification (e.g. as a better builder). He said TRCC as structured now offers no consumer protection. He does support sunset staff recommendation to abolish TRCC.
- **Charles McMahan (R? public member, background?)** He was troubled by this report and the statement, “never meant to be a true regulatory agency.” If never intended to be a regulatory agency, why are you evaluating it that way? 17 states have “no regulations,” and there’s a reason for that – difficult to regulate. License requirements (education, financial, insurance) are a problem since the agency can’t evaluate credentials. He referenced studies that said “absence of regulation is why Texas has done better in down economies.” He implied that the biggest problem is small builders. \$10M budget / 500 inspection requests (\$18K/request), so regulation too expensive. Mandatory Arbitration works. Evaluate TRCC based on why it was established – as a Registration agency, not a regulatory one. “You’ll always have bad actors to get rid of.” 99.9% of builders are doing a good job. More importantly is, “how do you resolve the dispute.” Let’s look at other states for speedy resolution. Let’s get help for homeowners that need it. [NET: McMahan seemed to be in the pocket of big builders. Bob Perry?]
- **Representative Lois Kolkhorst (R. business owner, investor)**. Referenced electricians & plumbers vs. roofers, framers, etc. “Why didn’t we license them too?” (Joey – The Legislature needs to clearly define what the TRCC is for: register or regulate.) Lois asked, “How many homeowners want a ‘buy back’ even after repairs made?” She struggles with the complexity of regulating and how to actually do that. “Housing police – No.”
- **Representative Linda Harper-Brown (D/R? corporate president)**. “Doing away with TRCC would leave an unregulated industry. Would licensing home builders help?” (Joey could not confirm that and offered to look at best practices in other states.)
- **Representative Carl Isett (D/R? Sunset Chair, background?)**. He defended that staff report in acknowledging that a larger “regulatory” debate is needed.

TRCC Response

- **Paulo Flores (TRCC Chair, background?)**. “We will cover where we’ve been, where we are and where we’re going.” He referred to himself as a “public member,” primarily representing homeowners against builders, frustrated with courts as quick & economical solution. [REALLY?] Even after winning “everything,” the builder filed bankruptcy. “Lawsuits are simply NOT the best way to disputes.” TRCC created in just 4 months, but blessed with talented resources. “Fair & Balanced.” He’s proud of “performance standards,” with help from Texas A&M to cover all soil types, etc. Before then, the standard was whatever the judge or jury would rule at some future time. “There’s no economic way to take most cases to courts, so many people would be left out of a remedy.” Doubled staff to keep up with workload. “Powerless to prevent re-registrations under different agent.” Bothered by bold statements in staff report with no backup or footnote. [He’s trying to discredit the entire report with a few pointed examples.] Referenced p.12, 3rd bullet re. up to 3 inspections for new home constructions. He compared today vs. days with no inspections or statutory warranties. Suggests a “voluntary mediation program” early in dispute process (i.e. while they’re still speaking to each other). “It’s been less than a year since TRCC got new powers.” “If we do NOT bring value, then we SHOULD be abolished.” **MISSION: “Building a Better Texas.”** [SOUNDS noble]

- **Representative Dan Flynn (R. businessman / rancher).** “I’m NOT in favor of abolishing TRCC – needed for homeowners AND builders.” “Do you believe TRCC is balanced – industry vs. consumer?” (**Paulo** responded with pride in new standards.) “Why did **HB-1038** not get you to submit your recommendations two years ago?” Dan said he was “amazed how few people know TRCC even exists. Is advertising the answer? Paulo, “Go to our web site to check out your builder.” [but homeowner records aren’t public – consider something like AngiesList.com]
- **Hinojosa.** “I don’t believe you. You’re denying homeowners access to the courts. Inspections should not be judgment-proof [i.e. appeal proof].”
- **Harper-Brown.** She asked why SIRP process take so long. (**Paulo:** “We lost two appeal engineers to Iraq and retirement, and no one want to work for TRCC in sunset mode.) “What do you do when the home is uninhabitable?” (**Paulo** passed and said a staff member would respond later. They never did.)
- **Senator Craig Estes (R. Chairman of Board, Estes, Inc.).** “Never meant to be a regulatory agency. Do you see TRCC as regulatory? As protecting the public?” (**Paulo** say’s TRCC acts “as a dispute resolution mechanism.”) “What steps are needed to make you a true regulatory agency?” (**Paulo:** “Requires a paradigm shift, education and licensing.”) “Did it surprise you that staff recommended abolishing TRCC?” (**Paulo:** “Yes. ‘Would have expected ‘fix’ vs. abolish.”)
- **McClendon.** Asked about “500 builders shut down.” (**Paulo:** “Exec Dir will address that.) The ‘fraud & deceit’ is new power.” (**Paulo** defended “administrative” punishments as examples of bad business management.) “With Hurricane Ike, do builders coming into Texas need to register with TRCC?” (**ExecDir:** Yes.) “Is there away to catch them?” (**ExecDir:** Yes, they have ability to issue “cease & desist. And by registering, we know who they are and where they live. ‘Also encouraging out-of-state builders to partner with local builders.”)
- **McMahon.** ‘Asked about how to improve process resolution process. (**ExecDir:** Umbuzman program, inspector bonus for timely response, etc). “How can you shorten the time?” (**ExecDir:** Increase fees & bonuses or use technology (scan, email...)) “If you exceed time targets, do you notify homeowner?” Unknown.
- **Red Wine (public member).** “If abolish is decided, OK.” He agrees with much of the staff report. “I don’t feel we’ve created a fair and unbiased agency to protect consumers. We haven’t earned and don’t deserve consumer trust.” He suggests posting consumer complaints, allowing builders to advertize TRCC registration # (easier to check them out).” Does NOT agree with abolishing since both builders & consumers will lose and the number of bad builders could increase. He submitted a list of proposed changes – should have been done earlier, not while under the gun of sunset. “The consumer goes without a voice, so is unrepresented in rule making. So, they agreed to hire a full-time consumer advocate attorney.” “Need statute to require TRCC to hear consumer voice, as well as telecom, insurance, etc.” TRCC generally agreed on the idea of a recovery fund, pulled from excess that flows into General Fund, or alternatively funded by added fees when builders apply for license or fines paid when “licensed builder” doesn’t perform. [BUT HOW LICENSED?] He agrees with builder licensing (ALL builders) and referenced discussion with other states. He asks for 4 public members instead of 3. Ask Legislature to direct insurance industry to design a construction bond policy, including remodeling projects. Need to regulate warranty companies and allow homeowners to shop around for builders that use insurance-backed warranties, as opposed to builder warranties. Sunset Commission needs the resolve to save TRCC if TRCC staff can show resolve. The Sunset review was a good thing, since it raises issues and prompts improvements. Asks for 2-

year moratorium “not to abolish but to apply changes,” with review again.

[In my view, Red Wine’s testimony was the highlight of the entire hearing, and it was refreshing to see a TRCC commissioner with consumer perspectives and not in the builders’ pocket. We should reach out to him with support and exchange of ideas.]

- **Dan Flynn.** Questioned licensing of ALL builders. “Even “brother-in-law” builder. (Yes)
- **Louis Brown (private member, inspector).** CREDIBLE. He provides services for ~200 builders and has seen builder attitudes change greatly since TRCC. He’s been asked to mediate between builder & homeowner. He’s neutral to licensing but bullish on TRCC. Hurricane Ike victims are hiring TRCC-registered builders. He agreed that there are unscrupulous inspectors and said TRCC has the only forensic process. He also endorses “RE-INSPECTION” to follow-up and make sure problems are fixed.
 - **Flynn.** What about Star Builder program? (**Brown:** Builders “asking” him to get tougher on inspections. [REALY?] ‘Just need to publicize the agency.)
 - **Isett.** What’s the condition of the Inspector industry, and would ENO insurance help? (**Brown:** no opinion but wants home to be “code certified.”)
 - **Deuell.** Do you think allowing an option of going to court is good for consumers? His question refers to the time lag for TRCC process.
 - **McMahon.** When are consumers denied access to courts? (**Pablo:** arbitration should be voluntary vs. mandatory. “60% are the ‘only’ resolution option since not economical to go to court.” “Homeowners ARE required to first go through TRCC, then arbitration or court, but no longer have burden of proof of defect due to inspector report. TRCC can ‘not’ be the judge, jury and executioner, and BOTH parties should have access to courts.” He finally agreed that TRCC “delays” access to courts.)
- **Art Quevas (home builder).** “My best competition is someone who provides quality housing. I’d rather focus on bad builders, not good ones. The mortgage and banking industry now ask for TRCC registration #.
 - **Flynn.** “What do you think about licensing?” (**Art:** It doesn’t reflect on the integrity and honesty.)
 - **McMahon.** Why register individual homes? (**ExecDir:** So we know when warranty begins, AND as revenue stream.)
- **Jerry Garcia (home builder).** Spoke about county inspections (HB-1038 only operating for 3 weeks) and “flippers” who do substantial remodeling themselves (over \$10K) without registering and then resell. HB-1038 now gives TRCC the power to issue cease and desist orders. [REALY?] He endorses mandates for more home builder education. “They have to be educated, registered and able to read a set of plans.” [This should include contractors or their direct supervisors, i.e. non-English speaking.]
 - **Kolkhorst.** How many homes do you build per year? 7-8. (Lois is from Branham and worries about who to hire and how to get them to the small town.) Where do the inspectors come from? (no answer) What education does a consumer need when buying their largest investment? How do they get it? And what responsibility do “they” have if they buy without it? (TRCC says it’s providing consumer education.) She said she’s heard from builders who endorse abolishing TRCC. She says “full-blown regulation will be a costly process, and the consumer will pay in the end.”
 - **Guy at Left End (a past Sunset Chairman?).** He wasn’t introduced but often piped in with comment and opinion, endorsing professional licensing or at least phased-in licensing.

- **Ken Davis (engineer).** Discussed codes vs. performance standards. He told a story of \$7K foundation self-repair vs. \$10K+ legal expense, so he repaired it himself. [Later there was debate and uncertainty over whether punitive damages and attorney fees could be covered. From what I heard. I left with the impression that the answer was NO, but it wasn't clear.]
- **Steven Leipster (public member from Marriott).** His issues are "how can we close the gap" and "how can we educate the consumer?"
- **John Crew.** Many misconceptions. There's no blocking of access to courts. [REALLY? How about an emergency priority process to shorten the time.] TRCC does "not" conduct arbitration. TRCC is "not" a licensing agency. Consumers pay nothing to file a complaint. [REALLY?] The court system can't handle cases that TRCC can (good for lower-income). Please give HB-1038 the chance to work (effective 9/1/08) and measure effectiveness.
 - **Deuell.** Asked about giving access to courts before or during TRCC process. (TRCC prefers mediation and then binding arbitration and says that even the SIRP 147 day average is shorter than legal action.)
 - **Flynn.** Fair & unbiased? So why do we have such a disconnect between builders and consumers? (No answer, but the ExecDir described a new ombudsman position.) [Disconnect points to TRCC as builder-protection agency formed without consumer input.]
 - **Kolkhorst.** How often are homeowners still wanting "buy-back" even after defects fixed? (TRCC: Some actually got builders to buy it back though ombudsman program.)
- **Glenda Marriott (remodeler).** TRCC recognizes the importance of Education. TRCC consumer education touches 31M times. Builders & Remodelers need 5 hours per year of continuing education, but she asked for double that.

TRCCA Author

Commissioners apparently wanted to hear from one of the authors of the act enabling TRCC to understand the thinking behind it.

- **TX Representative Ritter (D/R? background?)** He described himself as coming from the building materials industry, where he has seen both good & bad builders.
 - Before TRCC, there was absolutely no oversight, No building standards, and No statutory warranty.
 - The main objective was to "help people who don't have the means to hire a lawyer."
 - Another objective was to provide independent inspectors to replace the battle of builder inspector vs. homeowner inspector.
 - SIRP is not perfect, but it's a "start."
 - Complicated industry with many special interests (homebuilders, consumers, realtors, insurance companies, etc.
 - It's easier to kill legislation than to pass new legislation, so if we can't even pass a bill to license roofers, what will the effort be like to replace TRCC vs. fix it?
 - Every craftsman in TX should be licensed (only electric, plumbing, HVAC today).

- HB-1038 made major changes, but it still didn't give TRCC enough teeth.
- We need to learn from our mistakes, but we cannot & should not undo what was done.
- **McClendon.** Concerned about authors not interviewed, she asked if he was able to address his concerns to the sunset staff. (YES, a 45-60 min interview, but there was no follow-up.) How to guard against fly-by-night builders after Hurricane Ike? After HB-1038, need TRCC reg.# and permit. (Response: Keys to success are "code & code enforcement.")

Public Testimony

[I apologize for any misspelled names and missed key points as these public testimonies flew by so quickly. While they were "supposed" to be limited to 3 minutes, it was obvious that certain builder representatives got much more time by continuing to speak after the buzzer or by responding to numerous "softball" questions. It almost looked orchestrated.]

- **Little.** The city of Beaumont (after hurricane) will enforce a requirement for builder & remodelers to have TRCC registration #.
- **Carol Hempfield (homeowner).** When a dispute ensued, the builder asked her to contact TRCC. Both were surprised when SIRP confirmed all 215 defects. Even so, TRCC offered no enforcement. Can't find an attorney to take the case since deck stacked against homeowners. Builder is expecting homeowner to "get frustrated and just walk away." It doesn't make sense to continue paying mortgage on a home she'll never be able to sell. Her inspection report is NOT on TRCC web site. Never offered ombudsman.
- **Robert Bush (attorney).** Act implemented building AND performance standards, including in unincorporated areas. HB-1038 setup phased inspection to these new codes starting this month. TRCC defined performance standards (limited warranty).
- **Scott Morman (Texas Association of Builders).** Wants shorter SIRP time. Don't abolish this NEW agency. ½ million jobs are created in building industry. 588K homes registered. 1993 homes complaints. Builders subject to \$10K fine for failing to offer a repair. [REALLY?] Now there are standards in compensations vs. \$100K here and \$0 next door when defects are the same. He guessed that builders would be split on the licensing issue. Enforcement OK now but can be improved. For whatever question that was directed at him, he replied that TAB is ready to work with the legislature to make improvements. [His testimony and responses to questions went on for more than 20 minutes!]
- **Shirley Cage (homeowner).** The builder didn't teach employees about new technologies (e.g. floating struss system). English/Spanish was problem. I have to disclose problems that weren't disclosed to me. [builder didn't disclose expansive soil and arsenic contamination]
- **Tom Archer (President, Homeowners of Texas).** Recommended the licensing of builders and trades, including foundation, framing, roofing and pool building, and offered continued help in replacing (or revamping) the TRCC. Friendly, balanced, non-partisan tone. **Flynn:** "Tell me about your organization. How many members. Who's on your board? How are you funded?" [Flynn seemed antagonistic and distrustful of "non-profits," probing to understand any "hidden" bias or motivation.]
- **Jerry Thompson (insurance backed structural warranty)** His company is a TRCC-approved 3rd party warranty program. He wants all warranty companies to provide the same coverage, likes the TRCC but will accept improvement. Warranty regulation is from insurance industry. Price sensitivity = affordability. \$300 one time for \$100K house. Only 2 or 8 warranty companies meet TRCC requirements. Flynn: "What or who decides if there's a problem (covered claim)?"

- **Christopher Carter (structural engineer).** Continue TRCC, which is proactive vs. reactive. Sunset staff report identified the major issues, so now just fix them. Need to fix performance standards.
- **Paul Codaro (Home Builder Assn of Greater Dallas).** Gave back his time.
- **Sandy Bradshaw (homeowner).** Band-Aid repairs. Hutto homes are NOT repairable since built on expansive clay soil. Fire destroyed AC. Serious mold (disabled & 13yr old granddaughter). Implosion of home. Homeowners walk away from mortgage when defects decimate home values.
- **Lou McCreary (General Counsel for Homeowners of TX).** Option 1: abolish TRCC and defer licensing to TX Dept of Lic & Reg. (RCLA worked well) Option 2: redo TRCC as true consumer protection agency. SIRP is a fatal flaw since the TRCC is not a legal body equipped to determine a ruling.
- **Steven Karaker (TX Assn of Community Development Corps)** represents 1st time and low-income home buyers interested in lasting value. He prefers fixing vs. abolishing. Previously a TX Senator serving on TRCC.
- **Marsha Kushner (Houston homeowner).** My crooked builder is still building even though Governor Perry intervened. After inspections, “We found that your builder did nothing wrong.” Belongings falling apart too.
- **Mark Evelwein (TRCC inspector and “house flipper”).** Restructure commissioner appointments for less builders & more inspectors. Recovery fund. License with continuing education (24hr/yr). Mandatory Statewide code adoption since each municipality can strip or add provisions. [HOT would like to see more commissioners with consumer interests.]
- **Nancy Henshel (homeowner)** spoke on the issue of taking a builder to court. The amount you can receive now eliminates punitive damages and attorney fees, thus diluting incentive of homeowners to file or incentive of the builder to repair beforehand. Warranty won’t cover.
- **Thomas Grimes (N.TX builder, 3-4/yr, with complaint filed against him).** Homeowner used TRCC to hide from builder’s legal remedy.
- **Pamela Bolt (TX Watch Dir of Policy Research)** TX Watch offered an extensive list of suggestions “before” HB-1038. 3rd party SIRP inspection should be voluntary. Star Builder program should be mandatory for all builders, NOT abolished. [Look at AngiesList.com as a model builder rating process.]
- **Dorena Corente (Sugarland homeowner)** Builder is confident that TRCC will do nothing to resolve defects. Her home was built on a spring, effecting foundation, mold, etc. Frustrated after fighting for 5 years.
- **Justin Buroughs (attorney)** Threat of SIRP caused builder to do the right thing. SIRP findings can help in builder negotiation. If 60 day SIRP resolution, then desire to litigate should go away, but he had no problem with voluntary SIRP. It would be helpful to have more qualified structural inspectors who can handle foundations. [Credible testimony. A commissioner commented that Justin could help write the new legislation.]
- **Eddie Martin (President, Tilson Homes).** Opposes sunset report.
- **John Carborubius (consumer advocate).** Interested in the word “disconnect” – When TRCC was created, not one consumer organization was asked for input in solving the problem. Warranty worthless since tile that pops after 2 years is no longer covered. Please ask for feedback from consumers themselves. The state-mandated limited warranty replaced the “implied warranty of good workmanship.” John suggests including homeowners in a survey to determine what problems actually occur and what warranty periods

are reasonable. **Kolkhorst said** that homeowners should turn bad builders into the Better Business Bureau or Attorney General's office. [While I found John's testimony helpful, his responses to a battery of questions grew increasingly defensive and even antagonistic.]

- **Rick McGuire (Lubbock builder)** He was previously on the TRCC warranty and standards advisory committee and said that standards "complement" building codes. As a businessman, it's important to know his obligations so he can price the home accordingly.
- **Caroline Betta (Take Back Your Rights)** Endorses sunset to abolish TRCC, largely because of the lengthy and frustrating delay.
- **Janet Amad (Homeowners for Better Building)** When did we get to the point that you can't tell the difference between Fannie Mae and TRCC. Hurricanes are unavoidable, but TRCC was manmade (or rather builder made). Fearless and confident builders simply throw up homes with binding arbitration. TRCC policies only deceive the public and give false security. Why did you trust the builders to act as "experts" representing consumer interests?
- **Damon Lyons (President, Centex Homes)** Building performance standards are essential, but it takes way too long to resolve problems. (100 days to build home but 147 days to resolve problem) 32K homes in 4.5 years. ~80 TRCC complaints. [Several times, commissioners and builders pointed to the low number of TRCC complaints to suggest that the homes were well made, but earlier they said few homeowners even know about the TRCC and that more advertising and consumer education was needed.]
- **Michael Moore (Pres. San Antonio Bldrs. Assn)** Keep TRCC. Homeowners said "cumbersome process" and "unaware of it." Builders said "long delays in dispute resolution."
- **George Alejos (LULAC)**. Abolish TRCC since it was created as home builder agency, NOT consumer protection agency. He spoke of a San Antonio community with significant problems since 2002 (before TRCC). "LIPSTICK ON A PIG BUT STILL A PIG" [great tagline]
- **Janet Wall (Ft. Worth homeowner)**. Educated couple (RN w/ Masters and a PhD husband) who are also remodelers. Deceptive contractor. Supports keeping TRCC but with major enhancements. Ex. All builders registered. All licensed. Mediation is only option. Clarify the difference between Contractor (subcontracts all) and Builder (knows basic building science). The contractor's attorney threatened to foreclose due to non-payment.
- **Cheryl Turner (Darling Homes in Dallas)**. She once testified AGAINST adopting the TRCC but now wants to KEEP it. SIRP gives a forum for "small claims." Warranty and Performance standards are a great help.
- **Pam Frazee (Sunbank Homes in Dallas)** Told story of homeowners using their own inspector when TRCC inspector found "no fault." TRCC now expects him to fix those defects and to pay for the homeowner's inspector too.
- **Wayne Caswell (Consultant, Homeowners of Texas)**. With market size of over \$30 Billion, why no effective regulatory oversight? Introduced a cover letter from Carole Keeton Strayhorn describing the Comptroller's TRCC review and homeowner survey, emphasizing her recommendation to "blast this TRCC 'builder protection agency' off of the bureaucratic books." [no questions from Commission since someone else sent the same document earlier]