

# The sun sets on the Texas Residential Construction Commission

What does the end of this state agency mean for buyers of new homes, Texas REALTORS®, and the agency itself?

by Lori Levy

Remember the “Seinfeld” episode where Jerry realized that everything in his life always ended up even? In that show, a cancelled gig was replaced by a last-minute booking. He was dumped by his girlfriend only to meet a new love interest. And to test the theory, Jerry’s friend Elaine threw a \$20 bill of Jerry’s

out the window, only for him to find another \$20 bill in an old pair of jeans. No matter what happened to Jerry, he always ended up right back where he started.

Well, folks, that is where buyers of new homes will find themselves later this year—in the same situation as they were prior to the establishment of the Texas Residential Construction Commission.

The TRCC, which was created in 2003 to provide a process for consumers to resolve disputes with builders (which includes people who build new homes or make certain improvements to existing homes), has been “sunsetting” by the 81st Texas Legislature. That means the agency will begin winding down its operations and, eventually, cease to exist.

It’s not every day you hear about state government getting smaller. How did this happen?

## The countdown has begun

Most Texas state agencies are required to go through what is called the sunset process. The Texas Sunset Commission reviews agencies to ensure they are achieving their core missions and to eliminate duplication or inefficiencies in agencies. The TRCC went through the sunset process prior to the legislative session. While legislation was filed to continue the agency, it failed to pass, leaving the TRCC with a sunset date of Sept. 1, 2009.

The sunset of the TRCC means a return to 2003—to a time when there was no required registration of homebuilders and homes, no required dispute resolution over defects, and no specified place to file complaints regarding homebuilders. Consumers will be right back where they were six years ago.



### What this means for buyers of new homes

As of press time, the TRCC was in the process of determining its course leading up to its required closing. Winding down agency operations is no easy task. Due to the timing of the legislative year, the TRCC still operates under current law until Sept. 1, 2009. The agency is then given until Sept. 1, 2010, to finish up its business. The TRCC has already adopted an end date of Aug. 31, 2009, for builder- and home-registration requirements, inspection requirements outside of city limits, and availability of the inspection and dispute-resolution process for homeowners. The timing of ceasing other TRCC functions is still being discussed.

Along with the sunset of the TRCC, statutory requirements on builders and homeowners also expire. State law will no longer require builders to provide certain notices and include certain contract provisions. No longer will consumers have to use the TRCC's dispute-resolution process to settle claims over defects. Statutory warranties and building and performance standards, including the warranty of habitability, that had been implemented by the TRCC, will no longer be applicable.

### What Texas REALTORS® need to know

If you are representing a buyer of a new home, you need to be aware of these changes regarding home construction and builders as they occur. You may see provisions change in builder contracts. Certain provisions will no longer be included and other provisions may look different. Required notices will also change.

For example, the current notice

that sellers are required to give new-home buyers regarding registration with the TRCC (TREC 43-0; TAR 1927) will no longer be required. The requirement to give the part of the notice relating to a builder's TRCC registration will end on Aug. 31, 2009, when the TRCC statutes expire. The first part of that notice, regarding sellers who are exempt from TRCC statutes, is a little more confusing. That notice requirement comes from a different area of the law that won't expire. Both the TRCC and the Texas Real Estate Commission will be looking at that issue this summer. It is expected that the requirement will be removed, since the underlying statute will no longer have any effect beginning Sept. 1.

Another example is the current requirement that construction contract provisions relating to binding arbitration be conspicuously printed or appear at least in 10-point bold type. A binding-arbitration provision that does not meet those standards is currently not enforceable. As of Sept. 1 of this year, that requirement also goes away. Does this mean builders will immediately include binding-arbitration provisions in smaller, harder-to-read type? Not necessarily, but you need to be aware, and make sure your clients are aware, that construction contracts may be changing and should be closely scrutinized.

### Where do you go from here

The sunset of a state agency does not affect any consumer rights that have vested, or proceedings that were begun before the TRCC's demise. Any homeowner currently participating in the TRCC's dispute resolution process will be able to complete that process. Furthermore, any homeowner who purchased a home built prior to Sept. 1, 2009, will still be protected by the statutory warranties and building and performance standards provided in the TRCC statutes.

As of Sept. 1, new-home buyers who discover defects will no longer be required to take their case against a homebuilder to the TRCC. These buyers will once again "have their day in court," as the saying goes, just as they did before the TRCC came into being (unless, of course, they sign a contract with a mandatory binding-arbitration clause).

With the end of the TRCC, new-home buyers will be right back where they started, just like Jerry. ★

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### Track changes

You can keep abreast of updates to TRCC policies and time lines at [www.trcc.state.tx.us](http://www.trcc.state.tx.us).