

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:10 a.m. on February 21, 2002 in Room 521-S of the Capitol.

All members were present except: Rep. John Ballou - excused

Committee staff present: Jerry Donaldson, Legislative Research
Renae Jeffries, Revisor of Statutes
Bev Adams, Secretary

Conferees appearing before the committee: Rep. Ray Merrick
Nancy Seats, HADD
Julia Barton, Homeowner/Victim
Don Welsh, Acro Home Buyer Service
Carolyn Hall, Homeowner/Victim
Zula Crutchfield, Homeowner/Victim
Dave Holtwick, Homebuilders of Greater Kansas City
Wes Galyon, Wichita Area Builders Assn.

Others attending: See attached list

Hearing on: HB 2835 - Home Owner Warranty act.

Rep. Ray Merrick appeared before the committee in favor of the bill. It was requested by several of his constituents. The act would create statutory warranties for home buyers and homeowners and also prevents home solicitors from engaging in certain deceptive practices. He stated that 99% of builders are okay. (Attachment 1) He answered many questions from the committee.

Jerry Donaldson, Research, will bring back to the committee the Interim Study done several years ago.

Nancy Seats, President of Homeowners Against Deficient Dwellings (HADD), appeared supporting the bill. HADD is a not for profit organization registered in the State of Kansas. Their mission and goals are to educate the public so that they will not be HADD when purchasing a new home, and to assist to the best of their ability those who have been HADD. She showed a video which has been shown on Channel 4 in Kansas City showing the home of Julia Barton. Ms. Seats stated that a certain builder in the Kansas City area gives a warranty on his homes, but no homeowners who have complained have had work done or it was just a cosmetic fix. (Attachment 2) She concluded her testimony by answering questions.

Julia Barton, Homeowner/Victim, appeared to tell us about her bad home. She is just one of thousands who have had problems. She asks for things to be fixed and gets the answer that the builder will get to it. Her one year warranty will soon be up and she is still waiting.

Don Welsh, Owner/Broker of the Buyer's Agents, Acro Home Buyer Service, stated that most new homes have a one year warranty, but with the builder only. These warranties are only as good as the builder. When looking at a model home, people need to know that the real estate agent selling the homes represents the builder. A home buyer should have their own agent for their protection. (Attachment 3)

Carolyn Hall, Homeowner/Victim, was a consumer representative and served on a Task Force which met several years ago. Nothing much has happened since the task force met. New home builders do not have crews to perform warranty work. She feels that the bill is a good start to cure the problem.

Zula Crutchfield, Homeowner/Victim, hired a remodeling firm to finish her basement. She said just because one is educated or an informed consumer does not mean he/she can't be deceived by a remodeling contractor. She has filed a suit against him, and found out there are over 25 court petitions filed against him. She had to

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S of the Capitol at 9:10 a.m. on February 21, 2002.

hire another contractor to finish the work after she had paid the first one over \$9,000 of the \$13,078.84 estimate. Her ending cost on the job was \$30,000. (Attachment 4)

Dave Holtwick, Director for Kansas Governmental Affairs for the Homebuilders of Greater Kansas City, appeared as an opponent of the bill. Their association represents approximately 1,000 businesses in the Kansas City area engaged in the home building industry. He feels that the bill is poorly drafted and confusing. Recently, Johnson County implemented a "Contractor Licensing Program" that set guidelines for all commercial and residential builders, as well as electricians, plumbers and HVAC contractors. This program provides a means for local building code officials to discipline problem contractors that they did not have before. (Attachment 5)

Wes Galyon, President/CEO of Wichita Area Builders Association, appeared as an opponent of the bill. They are a not-for-profit trade association affiliated with the National Association of Home Builders, and the Kansas Building Industry Association. They believe the bill is not needed in view of the fact that there is already offered in the market place a number of comprehensive warranties available for use by builders and remodelers in Kansas, and otherwise available to consumers. (Attachment 6)

Chairman Lane announced that the hearing on **HB 2835** would continue tomorrow, February 22, at 9:00 a.m.

The meeting was adjourned at 10:52 a.m.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 21, 2002

| NAME | REPRESENTING |
|------------------|--|
| Zula Crutchfield | Home owner |
| Connie Burns | Whitney B. Damon, PA |
| Nancy Seals | HADD |
| Bryans Smith | KTLA |
| Walter Lee Smith | KMHA |
| WESS GALYON | Kes. Bldg Industry Assn + Wichita Area Bldg Assn. |
| Dave Holtwick | Home Builders Association of Greater K.C. |
| Erik Sartorius | City of Overland Park |
| Nancy Lewis | WDAT-Fox 4 |
| Janet Stubbs | KBIA |
| David Harder | AG's Office |
| BILLYANEK | Kansas Assn of REALTORS |
| | |
| | |
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TOPEKA
 HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: ENVIRONMENT
 FINANCIAL INSTITUTIONS
 HEALTH & HUMAN SERVICES
 UTILITIES

Mr. Chairman and members of the committee. Thank you for the opportunity to testify in favor of House Bill #2835.

This bill was requested by several of my constituents. They have purchased new homes and are having problems getting work done to fix problems with these homes. Hopefully this bill will address some of these problems. House bill #2835 is similar to a bill that is being heard in the Missouri legislature at this time.

This bill creates statutory warranties for homebuyers and homeowners and also prevents home solicitors from engaging in certain deceptive practices.

Home Solicitation: This act prohibits home solicitors from selling products financed by the consumer's home, which would put the consumer at risk of losing his home. This act outlaws certain unfair and deceptive practices relating to home improvement loans made to consumers. It prohibits home solicitations where a home improvement loan is made encumbering the person's home to pay for the loan.

Statutory Home Warranties: This act mandates warranties to protect new home purchasers from losses caused by faulty, major construction defects and non-compliance with building standards.

New Home Warranties: There are three distinct new home warranties created by this bill. The first covers the home against faulty workmanship and defective materials due to non-compliance with building standards for a three-year period. The second warranty covers new homes against faulty installation of plumbing, electrical, heating and cooling systems for a five-year period. The third warranty covers the home against major construction defects such as the foundation, for a ten-year period. These warranties would also apply to work done by home improvement contractors.

If the vendor or the home improvement contractor violates these implied warranties the homeowner may bring a cause action against the person for actual damages.

The house vendor or home improvement contractor will not be held liable for damages caused by the homeowner, forces of nature or normal wear and tear.

I have been asked to make two amendments to this bill. The first one would be to delete Section 11 (b) (1). The second would address a concern from the Manufactured Housing Association. They are already required to offer warranties at both the state and federal level so they have asked for an amendment that will be given to you during their testimony. I have agreed to these two amendments.



Homeowners Against Deficient Dwellings
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URL: www.hadd.com

February 21, 2002

Members: Kansas House Committee, Business Commerce & Labor

My name is Nancy Seats, President, Homeowners Against Deficient Dwellings (HADD). We are a not for profit organization registered in the State of Kansas. Our mission and goals are to educate the public so that they will not be HADD when purchasing a new home, and to assist to the best of our ability those who have been HADD.

It is difficult to reach every buyer before their purchase, which means that we have MANY victims who find it impossible to hold their builders accountable and responsible for the substandard work that they have done. We desperately need consumer protection for the largest single investment a family ever makes, their home. Not one family should buy into the "American Dream" of home ownership only to find themselves living in their "Worst Nightmare".

I have had desperate pleas for assistance from victims who live in \$100,000 homes all the way up to \$1,000,000 homes in the state of Kansas. The Better Business Bureau, the District Attorney, and the Attorney General's office advise that this is a civil matter and you need to find an attorney. Most families have put every dime they have into a new home. Attorneys don't take these cases on contingency because many times even if they win the case they can't collect the judgment. The builder simply dissolves his company and starts a new one under a different name. My own case was in the court system for five years. I eventually had a jury trial, but the most the jury could give me was the loss in value OR the cost of repair. The jury could not give me attorney and expert fees so I still did not have enough money to repair my home. This should not happen to hard working citizens who only wanted a safe and sound home for their family.

I am working now with a 27 year old young man from Kansas who designed, and had built a home that cost over \$200,000. It needs about \$100,000 worth of repair work done. He filed a lawsuit and his builder declared bankruptcy. A family in Hallbrook found mold and mushrooms growing on their bedroom wall. Another family in Edwardsville purchased a new manufactured home that was just over \$100,000. Not long after moving in toxic mold and back up of sewage into the basement was found. The family had to move out leaving all of their possessions behind, a year ago and has had to move five times always living with

**House Business, Commerce & Labor Committee
2-21-2002
Attachment 2**

someone or living in a home that was temporarily vacant. They have four children one of whom is in school, and there is no end in sight. There are hundreds of families in Kansas with similar situations. How many of you would be able to afford to fight these problems financially, physically, or emotionally?

Warranties given by the builder whether one year or ten years are a marketing tool for the builder. I don't know a single family who has ever had their problems resolved through the builder warranty. My attorney said that I was lucky not to have a builder warranty because the state implied warranty could be used.

The remodelers who get their money and do no work or substandard work are too numerous to mention. Then we get to the predatory lending. Some remodelers suggest that they can get financing for home improvements for the family. They prey on the poor. All they have to do is sign over the deed to their home and pay an undisclosed high rate of interest. One family had their home paid for. They now owe \$38,000 because of a financing scam and are in bankruptcy.

Francis Jeffery Miller, Miller Enterprises, is a builder in the State of Kansas. The Missouri Attorney General filed suit against him for substandard construction and fraudulent lending. The suit has concluded, but the families involved have not satisfactorily had their homes fixed and the fraudulent lending was never addressed. The Kansas Banking and Finance Commission has had him in court two times that I know of. He got a slap on the hand and was told never to do it again. HE IS!! The Attorney General and the Johnson County District Attorney have done nothing to stop this from happening to Kansas families. A victim from Overland Park will testify about her experience today. Many residents of Kansas have serious problems with this company. Please watch Fox 4, 9 and 10 PM news on February 27th to view an investigative report that Nancy Lewis did on this builder.

HB 2835 will not cost the State of Kansas a dime. It simply gives the citizens of the State consumer protection that they do not now have. I urge you to pass this important Bill out of Committee and work with the full House and Senate for passage this year. Missouri is the Show Me State. I urge you, the elected officials of Kansas to SHOW the elected officials of Missouri that you care about the well being of your citizens. Remember – you have to have a license to fish in Kansas, but ANYONE can be a builder.

Nancy Seats, President
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February 20, 2002

To: House Business Commerce & Labor Committee
Re: House Bill 2835

Representatives:

I have practiced law in Kansas City, both Missouri and Kansas, since 1979. The vast majority of my practice consists of civil trial work. From time to time during my career I have represented clients in commercial construction litigation and I have done a fair amount of contract litigation. In the last few years I have been called upon to represent homeowners in an increasing number of bad house cases involving new construction.

I admit that I did not fully realize the extent of the problems with new house construction until a little over two years ago. It was then that I had the privilege of representing Nancy Seats in litigation concerning her own home. Ms. Seats is the current president of HADD, Inc., an advocacy organization for homeowners. What I found startling was what transpired during the jury selection process. At the end of my questioning of the jury panel I asked whether there was anyone who had problems with a homebuilder. About 40% of the panel raised their hands. When I asked whether any felt that their problems would cause them to be biased against a builder, several admitted that they felt they could not be fair. One gentleman said words to the effect that he worked in the construction industry, he saw how basements were built, that water poured in them like it was coming out of a hose and the builders didn't care. While that jury panel was probably not a good statistical sampling, their responses were telling of the perversity of the problems in new home construction.

In the past several years a number of people have come to me about poor construction. The pattern of each case is nearly identical. In virtually all the cases the

homeowners have put every dime they had into what they hoped would be their brand new worry free dream house and then gone into substantial mortgage debt. After moving in severe problems develop. The basement leaks, structural cracks develop in the foundation walls, the roof leaks, wind comes through closed windows strong enough to ruffle curtains and blow out candles, electrical panels short out and wood starts to rot because the siding material is improperly installed.

The homeowner then calls the builder. The builder comes out a few times, puts some caulk around, maybe fixes some cosmetic problems, but when the severe problems are not fixed, and the homeowner calls repeatedly the builder quits answering the phone and seemingly disappears from the face of the planet. It is then when they come to see me.

I guarantee you that not a one of them wants to be in my office. All they want is for the builder to come in and fix the problems. Even with all of the frustrations they have had by the time I see them they are still reluctant to sue anyone. I am typically asked to do everything I can to get the builder to fix the problem short of filing a lawsuit. Yet because of the builder's non-responsiveness they are left without any desirable options. They can live with the problem, which in many instances involves a real health and safety risk, they can fix it themselves, which may involve substantial cost or they can sue. They can try to sell the house, but with the disclosures they are required to make the sale may not be possible, or, if it is, the house is sold at a substantial loss.

What I have to tell them is that if the builder will not fulfill his obligations there is no way the legal system will make them whole. I have to tell them that with a good result at trial the best they can hope for is to actually receive about half of what it will cost them to repair the problems because they will have to pay experts to testify at trial, they will incur deposition costs, all in addition to my fees. Then, I have to tell them that they are probably looking at one to two years before their case will get to trial. The best I can tell them is that if things go well they will be in a better position financially than if they had not pursued litigation.

There are lawyers who will not take these cases. I mentioned that I have had experience in commercial construction litigation. It takes nearly as much work to handle a case involving a poorly built \$100,000.00 house as it does to handle a poorly built multi-million dollar commercial building. The other costs, such as expert's and deposition fees, are not much less either. The difference is that the typical home owner cannot afford the commercial litigator's hourly fee, and the eventual pay off when the case is taken on a contingency fee is small in comparison to the amount of work the lawyer must do to represent the client. In the words of one lawyer, these cases are too labor intensive.

House Bill 2835 will not solve all of these problems. However, it will give builders incentive to build the house the right way in the first place. It will also give the builder incentive to return and repair problems. Finally, if resort must be made to the courts, the homeowner has a chance to recover nearly as much as the full cost of repair.

House Bill 2835 also addresses another issue, the one-year limited warranty. More and more home construction contracts contain the one year limited warranty. This warranty looks to the typical buyer like a great and beneficial provision. It is not. In fact, it often operates as a builder protection clause.

The typical one year limited warranty covers any repair brought to the builder's attention during the first year of occupancy. But, if the problems do not develop during that period, if they are not reasonably discoverable during that period or they are otherwise totally unknown or unknowable, the builder is relieved of any obligation of repair. A homeowner may not know that his artificial stucco exterior is improperly installed until dry rot develops around his windows or a wall fails because of rotted studs, all of which will probably not occur until after one year. He may not realize that what started as a normal concrete shrinkage crack in his basement wall is actually a structural crack until it widens to 1/4th inches, which will probably not happen until after one year. Yet if any of these things happen the builder has effectively relieved himself of any obligations to the homeowner.

In this regard the mandatory warranty provisions of House Bill 2835 are a vast improvement. While the most comprehensive warranty is only for three years, it nevertheless injects some degree of certainty regarding the homeowner's rights. It also provides for a much longer warranty period for the most severe potential problems.

At the risk of playing amateur psychologist, I want to pass on one observation. In my career I have been involved in domestic matters, to a limited degree criminal matters and personal injury matters. In general, the emotions involved in bad house cases run higher than in any of these other categories, no matter how tragic the circumstances. I believe it is because homeownership is such a major part of the American Dream. When a family invests the vast majority of its financial assets in a new home with the hope of fulfilling the American Dream only to have the dream destroyed by the neglect and lack of concern by the homebuilder, the emotional toll is overwhelming.

For the sake of all Kansans, please support House Bill 2835.

Sincerely,

/s/ Daniel L. Fowler

Daniel L. Fowler

The story of 7916 W 142 Street, Overland Park, KS

In November of 1999, I purchased lot #100 in Southern Oaks Subdivision in Overland Park, KS. The lot was one of the last remaining in the subdivision, and the subdivision agent had opened it up for any plan, that is approved by the subdivision committee and any builder.

Being a designer by trade, and not being able to find a house plan that met all of the requirements I had for a house, I decided to design.

At the same time, I began the process of finding a builder who would be willing to take on a custom home. Through one of the mortgage brokers who was trying to get my loan, I found the name of Michael Waszak of Waszak Realty, Inc. I gave my real estate agent Mr. Waszak's name and asked her to check into his ability to do the house in my price range. I then proceeded to visit a house that he had built in Southern Oaks and speak with the owners. They appeared to be very happy with the work that Mr. Waszak had done and the house looked to be of excellent quality.

Shortly there after, my agent informed me that Mr. Waszak was willing to meet and felt he could take on the project. We began negotiations as I finished the drawings and Mr. Waszak agreed to build the house at a price that was acceptable to me. Of course, no one mentioned to me (a first time home buyer) that the cost didn't include over \$11,000 in real estate fees. The also didn't tell me that when Mr. Waszak put an allowance in place, claiming that he could easily do it for that price, the price would go up if he couldn't.

Anyway, we signed the contracts with the majority of my stipulations in place and then Mr. Waszak proceeded to hire subcontractors to build the house. Things went rather well, all be they kind of slow, at first. The concrete went in, and the framing began. Mr. Waszak expressed that he was impressed with the technique and quality of the framing work. However, that all changed when I arrived, one day, to find several windows missing or broken. Mr. Waszak was there and was waiting for the police to show up. He blamed the theft on the framers and said his insurance wouldn't cover it because they were outside of the structure.

From that point on, the project went down hill. Mr. Waszak refused to be on site when the subcontractors were working, and a majority of the notes I gave him went unheeded. Suddenly it became a battle to get the house done at all. He refused to talk to the low voltage contractors and landscapers that I brought into the project, he refused to meet with my agents and I, and half the time I couldn't get a hold of him because he was "at another site".

Finally, at the end of June, almost 4 month past the original promised deadline (which cost me several thousand dollars in month-to-month rent increases and lost loans), the house was "complete". We argued about final cost, since he tried to add an extra \$3000 to the cost for hardwood and tile, even though he had adamantly claimed that he could do it for the price he quoted in the allowance (we eventually split the cost), and charged me \$400 for a sink I had found for \$250, because he neglected to order the one I had found in time. Then, we also laid out a \$4000 escrow for items that needed to be finished that weren't (a mistake made by my agents and I was to not include several items that were "expected" to be finished in that list, like cleaning the windows). In the end, however, we closed on the house, mostly because I already had \$20,000 down on it and \$20,000 plus invested in lights, faucets, and other extras that Mr. Waszak had suggested I buy myself so it would "save me money".

After closing, Mr. Waszak had 30 days to finish the escrow list. On the 30th day, I called him and reminded him that he had one more day (it was a 31 month day, so I decided to be generous). The next day, his painters showed up as I was leaving for work, but when they saw how much was left to do, they packed up and left. Apparently, after that, Mr. Waszak came in himself to "finish" the work, which included staining wood work a different color than what was already in the

house, not varnishing what he stained, and slapping together some "fixes" that were obviously sub par.

Wanting to get it all over with, however, the arbitrator, George Burns of JC Nichols, sent a letter saying the work was done and the Money should go to Mr. Waszak. Fortunately the Escrow stated that I had to agree, and I didn't, so the money ended up in court.

During this process I also had a sprinkler system installed. When the company installed it they pointed out to me that my plumbing system lacked a spigot for draining the water from the pipes to work on them. I also began having electrical issues. I decided it was time to bring in a neutral party to look the place over, so I hired John Byron, who is an independent inspector. John spent several hours in the house and made some startling discoveries. The one that really set off alarms was the lack of flashing on the outside of the house. His comment was that, without flashing, within 3 years all of my woodwork would rot away. His finally synopsis of the house was that it was a 3-month-old house that was in the shape of a 5-year-old house. He suggested I call in a General Contractor to give it a thorough going over.

At this point, I called in Jeff Algie, who had rebuilt a house that he sold to a friend of mine. My friend couldn't say enough good things about his personality and his quality of work. Jeff spent many hours going through the house and making a list of what was wrong, what it would take to fix it, and an estimated cost for the fix.

At this point, I had already retained the legal services of Ralph Munyan, due to the escrow issues, and Mr. Waszak had retained Doug Lancaster. So, once Jeff gave me this list, I had Ralph pass it on to Doug as a list of items that needed to be repaired under the new home warranty, noting that some of the issues were even breeches of the contract. We received no response.

After giving them ample time to respond to our letter, we decided that the only course of action was to sue for the repairs, since Mr. Waszak had made it very obvious that he had no intention of making good on his contract. We filed suit to which he immediately counter sued for the escrow money (the court dropped his counter suit).

The lawsuit has been a long drawn out pain. Through the different process of negotiation, mediation, etc, I have learned just how often Mr. Waszak had lied to me through the building process (for instance, he admitted during negotiations that he never had insurance). I also learned that he had no remorse for leaving me with a house that was in shambles, and was more than willing to choose bankruptcy over making things right. In the end, that's exactly what he did. He drug out the case long enough that whatever money he had in the company could be moved elsewhere, before the 12 month period where he couldn't move anything, and the filed for bankruptcy.

So, that's where I stand. Mr Waszak's company is in bankruptcy and claims around \$8000 in assets, \$3500 of which is my escrow money. I, on the other hand, have what has been estimated as around \$100,000 in damages, poor quality work, unfinished work, etc. There are even some issues where, if I do not fix them, they will make the house unlivable.

I've meet with one of the best creditor side bankruptcy attorneys in the area and her comment was "There are NO laws to protect innocent people from those who want to take advantage them". I've tried going to The Better Business Bureau, Call for Action, and the Attorney General and none of them have been of any help at all. In general, there appears to be nothing I can do except bend over and take it.

Short list of issues with 7916 W 142 Street

Keep in mind that this house cost \$226,000 and is in south Johnson County. This is the short list. There are several details missing

Cantilever built improperly in Great Room. The room is pulling away from the house. Must be jacked up and braced.

Roof over Great Room not properly ventilated. Sweating through and staining the ceiling.

Carpet promised "above builder grade", actually cheapest carpet available according to flooring company. Laid improperly so seems are highly visible and carpet is buckling in many areas.

Paint thin, washes off of walls with a washcloth and water. (cheapest quality available, according to painting company)

Several cracks, bumps, indentations, etc on the walls throughout the house

Circular window has very irregularly shaped sheetrock around it

Stucco was painted, not colored

No flashing on the outside of the house

Cracks in sidewalk

Beam across garage door water damaged and bowing

Tile work around hot tub bath not properly sealed

Hardwood floors not properly sized, gaps at walls

Trim not stained properly in some areas, cracked in other, missing in others.

Wood cap on stair rail missing (as per plans)

No storm door (paid extra for in contract)

Floors not screwed down (required in contract)

Deck falling off of the house, large spans with improper support, poorly cut and cheap material used.

Missing back splash on bathroom vanity

Bathroom vanity top improperly seated

Desktop wrong shape (as per plans)

Furnace not on it's own circuit

Fuse box only 150 amp (250 standard for area)

Ceiling patches not blended well, highly visible

Cabinets stained improperly (wrong color)

Varnish on doors cloudy

Paint on windows (still)
External paint job spotty

Stucco drips on garage door

Front door improperly painted

Furnace improper size for house (poorly installed, according to furnace repair man)

Cabinet pieces missing in bathroom

Doors fit improperly, hard to open and close and do not seal properly

Insulation around some windows questionable

Woodwork around fireplace incomplete

Cabinet trim missing in kitchen

Improper light wiring in kitchen

Bi-fold doors cut up, then stained and hung

Missing closet door handles

Scott ELLIS

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Nation's Home Builders Grow Worried about Mold

Feb. 11--ATLANTA--During the last few years, America's home builders have grappled with rising material costs, labor shortages and a growing burden of government regulation

But the housing industry's current foe has been around since the dawn of time: mold

A series of multimillion-dollar legal awards and exploding consumer concern about mold contamination have caught the attention of the residential construction industry, which convened in Atlanta over the weekend for the National Association of Home Builders' annual show.

"It's one of the most important issues home builders face," said Bruce Smith, a California home builder who has spent the last year heading the 200,000-member association.

"We've gone from talking about dirty office buildings to mold in houses.

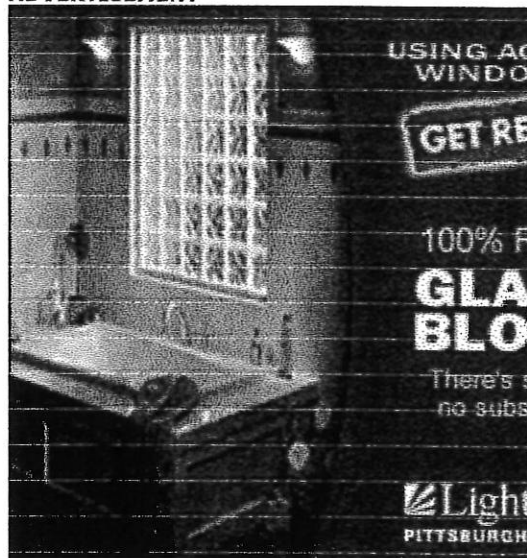
"It's an issue that is affecting the housing industry very much," he said. "The potential mold problems are huge."

Home-builder worries about liabilities resulting from mold infestation have reached a fever pitch after a series of highly publicized court awards. Homeowners in Texas, California and other states have won as much as \$32.1 million in damages after their homes were invaded by t

So far, most of the litigation has been against insurance companies, but builders fear potential liability.

So many people at the builders' convention showed up for a seminar on mold litigation that the crowd overflowed the meeting hall.

ADVERTISEMENT



"It's the current media rage and the current legal rage," Patrick Perrone, an attorney with the Jersey law firm McCarter & English LLP, told the builders. "Lawsuits are being filed from California to Florida, and from Florida all the way up to Maine.

"If you are a builder, you can't ignore this," Mr. Perrone said.

In reaction to the flood of moisture-related mold claims, the housing industry is scrambling to change construction techniques, and to improve construction materials and mechanical systems.

But in many cases, the problem can be solved by builders acting quickly at the first customer complaint about moisture in a new house.

"If you hear about a moisture problem, don't let it become a mold problem," Mr. Perrone said. "You have to act quickly. You can go from a \$1,000 repair job to a multimillion-dollar verdict."

Even if builders aren't sued for mold problems, they are already paying the price. Reputable builders say that their liability insurance costs have, in some cases, gone up by 100 percent or more.

"We are a business made up mostly of small businesses, and the rising cost of insurance is becoming much a problem," said Mr. Smith.

Tom Kenney with the National Association of Home Builders' research center said builders already know that some of their houses have problems with moisture.

"We've found that 28 percent of the builders reported that they had mold in at least one house under construction in the past year," Mr. Kenney said. "Eighteen percent have reported one occupied house with a mold problem."

Most often the growth of mold is caused by easy-to-fix problems like a roof or plumbing faulty installation of materials, he said.

There is still a lot of disagreement in the building industry over whether today's more tightly sealed houses contribute to the growth of mold and other indoor air pollutants.

"On balance, we are not finding that," Mr. Kenney said. "We cannot tie it to tight housing point in time."

Maybe not, but manufacturers of air handling systems have capitalized on mold concerns with a new generation of heating and air-conditioning systems. Dozens of such products that help control indoor air quality were displayed to builders at the Atlanta show.

Manufacturer Broan-NuTone of Wisconsin was showing off a range of whole-house heating and fresh-air systems designed to screen mold spores and bring outside air into the house.

Other firms, such as Michigan-based Evolve Corp., were touting exhaust systems that pull moisture out of bathrooms to prevent buildups in the rest of the house.

Chicago-area builder Scott Sevon is building a whole line of homes he says are certified by the American Lung Association as "health houses."

"We are learning to be very concerned about the indoor air environment," he said. "I know your dishwasher puts out five pints of moisture into the air every time you run it."

"As a builder, you have to know what you are doing and know what products you are using in the home," he said.

David Stumbos, an executive with Dallas-based ~~Centex Corp.~~ Centex Corp., knows firsthand about mold damage in houses.

He told builders that he has spent months repairing his family's Dallas house after a water heater leak pumped thousands of gallons of water into the crawl space under the house.

"We build 22,000 houses a year, and it's my job to understand this problem," he said. "What you have to do is find the water that caused the mold and get rid of it."

And in the case of mold contamination, time is quite literally money, Mr. Stumbos said.

"In my particular case [the damage] was probably in excess of \$50,000," he said. "I spent a lot of money for a broken water pipe."

MORE INFORMATION

Severe mold contamination has led to a series of high-dollar damage claims that builders often ignore:

- \$32.1 million award by an Austin court for a family whose home was overrun by mold.
- \$18.5 million awarded to a California family for mold damage.
- \$17.4 million awarded in Florida for mold caused by construction defects.
- \$11 million Delaware award for mold damage.

Common sources of mold-causing moisture in new homes:

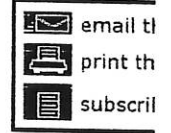
- Improper storage of building materials during construction.
- Roof and plumbing leaks.
- Faulty or improperly installed siding, shingles, and windows.
- Condensation caused by improper ventilation.
- Improper site drainage around house.

SOURCES: McCarter & English LLP, National Association of Home Builders

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Representative Merrick and Committee Members

HB 2835 The homeowner warranty act

I am Don Welsh, the Owner/Broker of The Buyer's AgentsmAcro Home Buyer Service, 7400 College Blvd. Suite 301, Overland Park, KS 66210. This brokerage is one of only a few real estate brokers in the state of Kansas that provides real estate services to home buyers only. Our team of five agents have over 60 years of construction experience, including one agent with a Master's Degree in environmental engineering and two agents with a degree in construction technology. As a result of these backgrounds, we assist many of our clients with the construction of new homes.

Consumers must deal with many problems in the process of purchasing new homes, homes under construction, and/or custom built homes. While there are many reputable builders in Johnson County, there are also a number of builders that cause problems for the industry. At the present time two of our former clients have lawsuits pending with builders that have not performed to satisfactorily carry out the requirements of their warranty plans. In addition, I have recently served as an expert witness for another lawsuit against a builder and real estate broker. In addition I have had a client who was having a home built by a builder that filed bankruptcy and left the state before he completed the home. In each of these cases there were no state laws which provided any form of protection for the consumers.

The homeowner warranty act, with the inclusion of the right to be reimbursed for legal fees and ability to collect punitive damages, will provide a needed protection for consumers who have limited means to bring charges against builders who default on their contracts. In addition it is a hardship for these consumers to own homes which in many instances can not be sold or must be sold thousands of dollars below the purchase price.

Future legislation should address the following needs for home buyers that prefer to have homes built or who buy spec homes through real estate brokers that represent builders.

1. Informed agency disclosures (including the existence of exclusive buyer broker services) that require the real estate sales people at model homes to properly inform buyers that they represent the builder and that they have the right to secure an agent to represent them.
2. Performance bonds be required on all construction where the builder requires the buyer to deposit non-refundable earnest money (often exceeding \$20,000) with no way effective way to recoup these funds should the builder default on the contract.

Bula Crutchfield

Good morning. I would like to thank you for this opportunity to speak to you today about my experience with a remodeling contractor.

Let me first say just because one is educated or an informed consumer does not mean he/she can be deceived by a remodeling contractor.

On or about April 8, 2000 I hired Mr. Ken Miller of Miller Remodeling to remodel my basement. I had consulted with a number of other contractors before selecting his company. Before selecting Miller, I made sure all of my "i" were dotted and "t" crossed. (Or, at least I thought so.) I contacted his references and the Better Business Bureau. All passed with flying colors.

Mr. Miller indicated to me that he would do the work himself and had licensed contractors to do the plumbing and the electrical work. Their cost would be included in the contract and he would pay them. He further, stated that his previous clients have been satisfied with his work.

On May 11, 2000, Mr. Miller mailed his estimated assessment/estimate of the cost to remodel my home. I reviewed the estimate he provided to me. He stated that the completion date would be 4 weeks or 120 hours at a cost of \$13,078.84 with final hookup cost of \$240.96. He also guaranteed that his work would past Olathe code requirements. The estimate sheet also provided a breakdown of how payments would be made. The estimate also stated a five-year warranty with completion time of 4 weeks or 120 hours.

Miller started work on in June 2000. I provided him with a third of the money to purchase bathroom supplies and other supply material. Once the framing walls were completed I provided him with an additional funds for the plumber and electrician. After receiving this money all work stopped in early August. This would be the last time I would see Miller. By this time, he received \$9,000 from me.

I lost all patience with Miller with his consistent excuses and illnesses, and informed him that I was going to file legal actions against him (chapter 61) because of his unprofessional performance, timing to meet contract deadlines, and quality of work. Also the work that he had done on my home was failed the code requirements and I had to get another contractor to correct his poor work. On October 25, 2000, I filed a Chapter 61 (TAB 3) against Miller for breach of our contracts.

Prior to filing court papers, I obtained court document, which shows Miller 's professional character, and that his behavior is a continued pattern. He has had over 25 court petitions filed against him (see TAB 23). It is also my belief after looking at the other court litigation's Miller has been involved in that he intentionally fraud homeowners by establishing a contractual agreement (with no intention of completing work).

Mr. Miller had gone by numerous company names. When I hired him, the name of his company was Miller Remodeling. It has since to A and M Contracting (913-393-4827). The Better Business Bureau (BBB) informed me they did not have any negative reports on Miller's most recent company (The one I hired him under). However, after my complaint BBB is now using his name and address as a default when the system.

This continuous pattern of Miller and other contractors like him has to stop **has to stop** because he has hurt me and other home homeowners in the Johnson County area.

Do you know what contractors refer to Johnson County as "contractors' paradise because there is no law in the area to protect homeowners from their deception.



**HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY**



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Testimony in Opposition of HB2835
House Business, Commerce and Labor Committee
February 21, 2002

Chairman Lane and committee members:

Thank you for the opportunity to speak to you today. My name is Dave Holtwick and I serve as Director for Kansas Governmental Affairs for the Home Builders Association of Greater Kansas City. Our association represents approximately 1,000 businesses in the Kansas City area engaged in the home building industry.

When I learned House Bill 2835 would have a hearing before the Business, Commerce and Labor Committee, it seemed strange but the more I thought about it, it became clear. This legislation would have a very negative impact on business, commerce and labor in the state of Kansas. In fact, a hearing was held recently on the bill this one was modeled after in a neighboring state and it never left the committee. For the sake of consumers and the residential building industry, I hope the same fate awaits this bill.

House Bill 2835 is poorly drafted and confusing. For instance, in Section 1 (a), "Building Standards" are defined as standards of the home building industry for the geographic area in which the dwelling is situated. Does geographic area mean city, county, state or what? Also, "standards of the home building industry" is unclear. Kansas does not have state-wide building codes. Is this referring to municipal building codes or could it be form contracts, warranties and performance standards adopted by a trade association such as the Home Builders Association?

Section 1 (f) states that a "Major construction defect does not include damage resulting from movement of the soil caused by flood, earthquake or other natural disaster." What about sink holes? Would that be considered under the "other natural disaster" designation? These are but a few of the examples of ambiguous and confusing language contained in the bill.

Strong, consistent building codes adopted and enforced by local units of government will do more to deliver safe, well-built homes than a warranty program. Our association has worked with cities and counties for years to develop strong building codes that are consistent from city to city. Most recently, we have worked to help pass the International Residential Code, part of the International Code family of codes, to establish codes that guide builders to produce safe, well-built homes. Many of the cities in our area have adopted or plan to adopt the International Residential Code.

Recent housing surveys conducted in our area show a great need for more diversity in housing...choices. Fees and regulations imposed by all levels of government are making it increasingly difficult to build homes for the average or median wage earner. The residential building industry is currently regulated by city and county codes, EPA regulations, Army Corps of Engineers regulations, just to name a few.

This legislation would add yet another level of regulation and expense to be supported by the home buyer. House Bill 2835, if enacted, would increase the cost of homes throughout the state

House Business, Commerce & Labor Committee

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Do Business With A Member

Attachment 5

by thousands of dollars, making it more difficult for teachers, police officers, fire fighters, nurses and many others to afford a home—new or resale.

An educated, well-informed buyer is another solution. We encourage home buyers to educate themselves and to talk with friends and neighbors as well as various home builders when considering building a home. The Home Builders Association offers numerous publications and videotapes to help home buyers understand the process of buying and maintaining a new home.

Additionally, Johnson County recently implemented a "Contractor Licensing Program" that sets guidelines for all commercial and residential builders, as well as electricians, plumbers and HVAC contractors. Not only does the program establish guidelines for contractors to qualify for licensing, it contains requirements for them to retain their license including continuing education courses related to building codes and standards. The Unified Government of Wyandotte County/KCK is considering participating in this program with Johnson County and Miami County has implemented their own version of Contractor Licensing, very similar to this one. This program provides a means for local building code officials to discipline problem contractors that they did not have before.

Provisions are currently in place to protect consumers including the ability to litigate, if necessary. House Bill 2835 would add unnecessary regulation and expense to the building industry resulting in higher housing costs and less housing choices. I encourage you to vote against House Bill 2835. Thank you.

TO: CHAIRMAN AND MEMBERS OF BUSINESS COMMERCE AND
LABOR COMMITTEE

FROM: WESS GALYON, PRESIDENT/CEO
WICHITA AREA BUILDERS ASSOCIATION

RE: HOUSE BILL 2835

Members of the Committee.

I'm Wess Galyon, President/CEO of the Wichita Area Builders Association.

We are a not-for-profit trade association affiliated with the National Association of Home Builders, and the Kansas Building Industry Association. Our membership consists of 1020 members, 290 of which are builder members (land developers, home builders, remodelors, and light construction contractors), and 730 of which are suppliers of various products and services to the housing and light construction industry.

I am here today on behalf of our Association and the Kansas Building Industry Association to speak in opposition to House Bill 2835.

It is our opinion that this bill is not needed in view of the fact that there is already offered in the market place a number of comprehensive warranties available for use by builders and remodelors in Kansas, and otherwise available to consumers. And while there are a number of them available, the two, and perhaps best known and most widely used, are the 2-10 Warranty and the Bonded Builders Warranty. These are in addition to those developed and used by professional builders and remodelors who belong to Associations like ours that have been designed to address what is warranted, and what is not, in relation to the particular types of homes they build, or remodeling services provided.

We believe it is important that you know that members of Associations such as ours must also subscribe to Codes of Ethics and Standards of Practice that govern how they conduct their business affairs in dealing with persons for whom they perform services. And, in an effort to police our own industry, we have established Grievance & Ethics/Dispute Resolution Committees that essentially set in judgment of member activities in regard to how well they comply with our respective Codes of Ethics and Standards of Practices. If, and when, our Associations receive complaints from a customer of a builder or remodelor (and in ^{our} area we receive 25-30 a year) we seldom find what is being complained of to be of major significance. Irregardless, we deal with it the complaint as a serious concern on behalf of the property owner and take immediate steps to inspect property owners property, make judgements as to what the builder or remodelor should be required to correct, and in what time frame, in accordance with Residential Construction and Performance Guidelines contained within this guide for professional builders and remodelors as published by the National Association of Home Builders.

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Attachment 6

In addition to what we are doing in the private sector, it is important to note that cities and counties have under home rule authority the ability to adopt (and most have) building codes and standards deemed appropriate for their areas. And they employ building code enforcement personnel to assure their adopted codes and standards are complied with during construction. Such codes and standards are designed to assure the property is properly sited on the parcel of land on which it is being built, footings and foundations are properly constructed, the structure properly framed, roofed, and sided, plumbing, electrical, and mechanical systems properly installed, the interior of the structure properly finished out, and checked by a final inspection so as to assure the property will perform as intended. We have found that the adoption of good codes and standards coupled with good code enforcement at the local city and county levels is the best way to assure mistakes are not made that result in problems for property owners in any particular area.

In closing, I would say, again, that express warranties are not missing in the market place, nor are implied warranties. There are a number of third party warranties available for builders to use, or they may develop and utilize their own as I have indicated many do. And, as I have indicated, there are others available for consumers to purchase if it is their desire to do so desire. So, we do feel that this bill is needed nor will not serve any useful purpose in consideration of our efforts to build good quality housing and keep it as affordable as possible for the people we build and remodel structures for in our respective areas.

The private sector is dealing effectively with issues of concern in this regard and we would ask that you allow that to continue to be the case.

I would be glad to stand for any questions you might have.

Thank you.