



Legal Minute

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Builder and Home Registration Requirements Under the Newly Enacted Texas Residential Construction Commission Act

By Robert C. Bass, Jr.

Winstead Sechrest & Minick P.C.

What is the Texas Residential Construction Commission Act (the "Act")?

The Act is a new law that places responsibilities on builders and remodelers of single-family homes and duplexes, including nonprofit organizations. The law applies to both owner-occupied and rental properties. The law imposes registration requirements on the residential construction and repair industry, creates a mandatory dispute resolution procedure for homeowner complaints, establishes minimum building standards, and creates the Texas Residential Construction Commission (the "Commission").

What are the Registration Requirements?

The Act creates two separate categories of registration requirements: (1) Builder Registration; and (2) Home Registration.

When is Builder Registration Required?

The registration requirements apply to all persons and companies that construct, supervise or manage:

- (i) the construction of a new home;
- (ii) material improvements to an existing home (other than an improvement solely to replace or repair a roof); or
- (iii) improvements to the interior of a home (when the cost exceeds \$20,000).

The builder must conduct the work for a fixed price, commission, fee, wage or other compensation. Homeowners are exempt from the Builder Registration requirement. A charitable organization is exempt from the registration requirement only if it does not receive some form of compensation for the construction services performed.

What Form of "Compensation" Triggers the Registration Requirement for Nonprofits?

The law is unclear on the definition of "compensation" that triggers the Builder Registration requirement for nonprofits. Many charitable organizations that construct new homes or make major renovations to existing homes do not charge fees representing "profit." Instead, nonprofits merely pass through a portion of the third-party costs charged by subcontractors and suppliers. The law is unclear whether these charges constitute "compensation" requiring the charitable organization to register as a builder. Caution dictates that charitable organizations charging any amount for their construction services should register with the Commission.

When do the Builder Registration Requirements go into Effect?

The Builder Registration requirements go into effect on **March 1, 2004**. Registration applications, with instructions, are available on the Commission's website: www.trcc.state.tx.us. Failure to comply with the registration requirements may subject a nonprofit to a fine of up to \$5,000 for each violation.

What are the Fees for Builder Registration?

The Builder Registration fee is \$125. The registration is effective for one year. Tax-exempt nonprofits can obtain a fee waiver form on the Commission's website.

Who Must Register for a Nonprofit?

A nonprofit corporation must designate one of its officers to register as the nonprofit's agent. Partnerships and limited liability companies must designate one of their managers as an agent. The agent must be at least 18 years of age and a citizen of the United States (or a lawfully admitted alien). The agent must disclose whether he has been convicted or entered a plea of guilty or no contest to a crime involving moral turpitude. Moral turpitude includes fraud, intentional violence, dishonesty, deceit, misrepresentation, and hot checks. Before issuing a certificate of registration, the Commission must be satisfied with the person's "honesty, trustworthiness and integrity based on information supplied or discovered in connection with the person's application." Criminal background checks will be conducted as part of the registration process. The Commission may revoke the registration after receiving unfavorable results from a criminal background check. There will be no testing on the basis of experience or actual competence in construction.

What is Home Registration?

In addition to requiring certain builders to register, the Act also requires certain homes to be registered. A builder must register a home with the Commission when the builder:

- constructs a new home on or after **January 1, 2004**;
- enters into an agreement with a homeowner for a "material improvement" to an existing home (*i.e.*, where the exterior walls, foundation, or roof are modified resulting in an increase or decrease in the square footage of living space); or
- enters into an agreement for an improvement to the interior of an existing home for "consideration in excess of \$20,000."

When Must a Builder Register a Home?

New residential construction must be registered no later than the **15th day of the month that follows the month** in which the transfer of title from the builder to the initial homeowner occurs. Home improvements or construction where the homeowner already owns the lot and no title is transferred must be registered within **15 days** after the builder and the homeowner enter into an agreement for construction or the date the construction begins (whichever occurs earlier).

What are the Fees for Home Registration?

The registration form must be submitted to the Commission along with a **\$30 fee**. A **501(c)(3) organization may file a form requesting a waiver of the fee** (but not a waiver of the registration).

What is the Penalty for Failure to Register?

Failure to register a home may subject the builder to fines or other disciplinary action (including the revocation of the builder's registration). The Commission may also impose a **late payment penalty of up to \$500** against a builder who fails to pay the required registration fee on a timely basis.

Is There any Exemption from Registration?

A home is exempt from registration if it is constructed by a homeowner who acts "as his own builder" or who constructs the home "with the assistance of the homeowner's employees or independent contractors," so long as the home is used by the homeowner as his primary residence for at least one year after completion of construction. This exception could have a significant impact on those organizations that assist in new home construction on property already owned by the homeowner.

Unfortunately, this exemption is so broadly worded that it raises all sorts of questions. For example, what constitutes acting as one's "own builder"? When is a builder who contracts with a homeowner not an "independent contractor"? Does new home construction have to be registered whenever the property is already owned by the person who will use the home as his primary residence? Some of these questions may not be answered until the next regular legislative session in 2005.

Conclusion:

There are several unanswered questions regarding the applicability of the Builder Registration and Home Registration requirements to nonprofit organizations involved in assisting low-income homeowners. Until these questions are answered, it is recommended that organizations attempt to comply with the registration requirements to avoid potential liability for fines, as well as to benefit from potential protections afforded registered builders.

For More Information:

Forms for registration can be obtained at the Commission's website, www.trcc.state.tx.us, or can be obtained by contacting the Commission at 512-305-TRCC. The law relating to registration requirements can now be found in the new Title 16 (Chapters 401 – 435) of the Texas Property Code.