

BUILDING HOMES
BUILDING PROBLEMS

Builders' clout keeps regulations weak

Homeowner concerns often take back seat in state law

By DAN TRACY
SENTINEL STAFF WRITER

One bill would have penalized home builders \$1,000 for every day they were late in delivering a house to the buyer. Another bill made it tougher for dissatisfied homeowners to sue their builders.

The first died on the Senate calendar in the 2002 legislative session. The second passed both houses earlier this year — with only one dissenting vote — and took effect in May.

The winner in both instances: Florida home builders. "That's typical of their work," said Richard Spears, former president of the Orange County Homeowners Association Alliance and recently appointed chairman of the state Commission on Ethics.

Added Charles Pattison, executive director of 1000 Friends of Florida: "They [the builders] don't get what they want all the time, but they are influential and have as much say about growth management as any group."

From the capital city of Tallahassee to Orlando to Miami and points in between, when builders talk, politicians invariably take notes. Whether the topic is construction codes, impact fees or policing of the industry, builders argue their side and, often, get their way.

Just since 1999, they've defeated efforts to toughen rules for certifying home inspectors and require that journeyman — meaning experienced — electricians be on a job site when electrical work is being done. And they've successfully backed bills that restrict where buyers can sue builders and strengthened clauses in home-purchase contracts that push unhappy owners into arbitration to settle disputes, rather than going to court.

The home builders' clout is due in part to the fact that they're the state's second-largest industry behind tourism, employing 473,000 people and contributing \$42 billion annually to the state's economy.

It doesn't hurt, either, that the builders gave more than \$453,700 to candidates for governor, the Legislature and the state Cabinet during the 2002 election cycle, according to the Institute on Money in State Politics. The money went to 163 candidates, as well as the Republican and Democratic parties. Construction services, building materials and equipment suppliers gave an additional \$1.7 million, the institute said.

The home builders are active locally as well. In 2002, they were fined \$40,000 by the state Elections Commission for "bundling" contributions to county-commission and school-board candidates around the state. Local builders groups would give a candidate \$500 and then, records showed, sent \$500 checks to counterpart associations throughout the state, who in turn sent back the same amount as a contribution to that candidate.

'They always have access'

Money opens doors, said Pattison, whose organization fights urban sprawl and advocates protection of wildlife habitat. "They always have access," he said. "That's one of the keys. Can you get in to see somebody?"

Douglas Buck, director of governmental affairs for the 15,500-member Florida Home Builders Association in Tallahassee, makes no apologies for the builders' activism.

"We expect to elect individuals who support our industry," he said. "We support individuals who have views like our views."

The result, critics such as Spears and Pattison charge, is an industry that has used its influence to protect itself, sometimes at the expense of home buyers.

"I don't believe, as a group, that they are out to screw people," said Orlando real-estate attorney Paul Wean. "But I do believe they are very adept at looking out for themselves."

New law sets timetable

The so-called "notice and right to cure" law passed this year by the Legislature is a good example of builders watching out for their interests at the expense of the buyer, Wean said.

Sponsored in the Senate by Mike Bennett, R-Bradenton, the law makes it more difficult to sue builders, who already have a clause in virtually all of their contracts saying discontented homeowners must agree to arbitration before going to court.

warranty that covers structural flaws.

Builders say the timetable assures that homeowners will receive prompt attention to their complaints, and builders will get the chance to make repairs without the threat of being sued. But attorneys focus on a key section that gives owners 15 days to accept or reject the builder's written offer.

To say no, the homeowner must write "rejected" on the builder's actual proposal and return it within 15 days. Failure to fulfill either requirement means the homeowner accepts the repair offer and loses the right to sue.

Attorneys say the complicated formality of this provision makes it certain many homeowners will unintentionally fail to comply — and waive their rights.

"It's obvious this law was written not just to protect builders, but to protect those builders when they do not build quality homes and do not stand behind their work," said Barry Ansbacher, a Jacksonville attorney who represents unhappy homeowners.

But Bennett, who is an electrical contractor, said the law is de-

PART 7



'If this is going on, why don't we do something about it?'

— FORMER STATE SEN. BETTY HOLZENDORF
D.-JACKSONVILLE, WHO COULDN'T GET A FLOOR DEBATE ON HER ATTEMPT TO FINE BUILDERS \$1,000 A DAY FOR LATE DELIVERY OF A HOUSE

signed to stop frivolous suits, not stymie homeowners with legitimate gripes.

"We have way too much litigation," he said. "There is something wrong that I would be able to sue without telling you what the problem is and giving you a chance to cure it."

In Central Florida, though, there's no evidence of a lawsuit explosion. A check of civil court records in six counties found fewer than 200 lawsuits filed against major builders from 1997 to 2002 — a total that includes pay and job-injury disputes in addition to claims by unhappy homeowners. During those five years, more than 82,000 homes were built in metro Orlando.

Mold suits led to law

Buck said the new law was triggered by a growing number of suits filed about mold claims, primarily in South Florida, though he could not say how many mold suits had been filed in recent years. Twelve other states have passed similar "right to cure" rules.

Mold is unquestionably an emerging issue for builders and insurance companies. The Insurance Information Institute reports that insurers paid \$2.5 billion nationwide last year for repairs and litigation related to mold.

And a yearlong investigation by the *Orlando Sentinel* and WESH-NewsChannel 2 found that in a sample of 406 houses built during 2001, one-fifth had some form of mold present, often on the air handler that circulates cooled and heated air through the house. Almost six in 10 had at least one window that did not fit right, or porous caulking or cracks in the surrounding walls, all of which can result in leaks and lead to mold.

New houses are more susceptible to mold than older ones because they generally are tighter and more energy-efficient. Once moisture gets into a home, it has less of a chance to escape, allowing mold to grow.

Bennett said that next year, he intends to file more legislation to reduce the frequency of mold claims. Too many, he said, are unfounded.

"Mold has been in Florida since the beginning of time," he said. "It will continue to be here long after we are gone."

Builders, Buck said, remain wary of mold suits. But he said his association will back changes to the new law — changing the "rejected" language and possibly the time constraints — to make it more consumer-friendly. He said he couldn't be more specific.

Bill to fine builders died

While Bennett's bill zipped through last year's Legislature, former state Sen. Betty Holzendorf, D-Jacksonville, couldn't even get a floor debate on her attempt to fine builders \$1,000 a day for late delivery of a house.

Her son Kevin, she said, was four months late getting into his new home a couple of years ago, sparking, in her mind, the need for the bill. She said as many as 100 constituents contacted her to complain about tardy homes, saying their lives were disrupted because they had to live with friends or relatives or extend costly leases.

"If this is going on, why don't we do something about it?" said Holzendorf, who left the Legislature in 2002 because of term limits.

Buck dismissed Holzendorf's bill as a public display of her dismay at her son's plight. It is unfair to fine builders for being late, he said, because so many factors outside of their control, such as weather and scarcity of materials, can affect the completion date of a house.

But the builders never had to make those points in front of either chamber of the Legislature. While the bill passed out of two Senate committees — after the penalty was reduced to \$100 a day — it died on the Senate calendar. It was never even heard in its House committee.

Holzendorf, who said she normally worked well with the



'I think it speaks to the institutional dysfunction of our bureaucracy. The board is a hurdle to be jumped.'

— TIM SHEA
MEMBER OF THE ORANGE COUNTY SCHOOL BOARD, ABOUT A DOCUMENT BEING RELEASED TO BUILDERS BEFORE THE SCHOOL BOARD WAS ABLE TO SEE IT

Arbitration hearings are not public, and the outcomes are often kept confidential. But according to attorneys on both sides, the sessions usually produce lower damage awards than a lawsuit might.

The new law sets a strict 60-day timetable under which builders must either repair or dispute alleged defects in a house. Most often, these complaints come during the one-year warranty period covering defects, but they can also arise during the 10-year

Continued on 39



BUILDING HOMES BUILDING PROBLEMS

Builders group defends industry activism

From page 38

builders, said she learned they are a "very" formidable force to oppose in the Legislature.

Code was 'unified' in 2000

The Florida Building Code sets the rules — minimum standards for materials and construction practices — that builders must follow. In 2000, the Legislature "unified" an assortment of local and regional codes into a statewide standard. The legislation was based on eight years of work by a committee that included builders and industry experts and was prompted by the property devastation — much of it linked to shoddy construction — caused in 1992 by Hurricane Andrew.

The new code goes into great detail about wind loads, building methods and materials. But it has no standards for quality or craftsmanship.

Yet those are the issues that often confound and distress new homeowners the most, the *Sentinel* and WESH found.

Nearly eight in 10 of the homes examined by the paper and station had fit-and-finish flaws ranging from wavy walls, cracked drywall and sagging roofs to unanchored toilets and rooms that couldn't be cooled.

"There is nothing square or level," a disgusted John Teffner said of his \$137,000 house in north Orlando. His home has cabinets that are crooked, wavy walls and ceilings, unbalanced archways and cracked tiles.

Many government building inspectors say they are as dismayed as the buyers by the shoddy construction they see but have no power under the code to stop or correct it.

That doesn't sit well with Mike Hickman, president of the Florida Home Builders Association, who said quality and craftsmanship cannot be legislated or standardized in a code.

"What may be acceptable to you may not be acceptable to me," said Hickman, a custom builder in Lakeland.

"Quality," Hickman said, is more appropriately used by a builder as a sales tool to separate it from competitors in the marketplace.

"What I feel is important in a home's look and makeup is different from what my competitors think. That's what distinguishes me from my competitors," he said.

State Sen. Lee Constantine, R-Altamonte Springs, sponsored the code-revision bill in 2000 as a House member and had been involved in hearings on the issue since 1997. He doesn't recall a single mention of whether "quality" issues should be in the code. Said Constantine, "The issue never came up."

Builders oppose impact fees

The builders are just as active locally as they are in Tallahassee.

Earlier this year, the Home Builders Association of Metro Orlando got hold of a school-district consultant's report on impact fees levied on new homes even before members of the Orange County School Board saw it. Board administrators released the report to association Director Tom Lagomarsino after he made a public-records request for it.

School Board members were incensed, saying they felt blindsided that the builders saw the report first.

"I think it speaks to the institutional dysfunction of our bureaucracy," board member Tim Shea said. "The board is a hurdle to be jumped."

Home builders statewide, particularly in greater Orlando, oppose impact fees. Orange, Osceola, Lake, Seminole, Volusia and Polk are among the 19 counties that levy them.

In a written statement to the *Orlando Sentinel* and WESH-NewsChannel 2, the metro Orlando builders association said the current fees — which range from \$1,384 per house in Seminole to \$3,489 in Lake — have the "potential to price many first-time home buyers out of the market."

Aware of the builders' stand and hoping to avoid raising the impact fees, Shea and the board now are considering an alternative that would still make new-home buyers pay for schools — but not until after they've purchased a home. They're looking at a law passed by the Legislature last year that allows counties to create special taxing districts in new subdivisions to build schools.

Builders would construct a new school, paying for it with money raised by the sale of bonds. Those bonds would be repaid by the homeowners in the subdivision — in addition to their property taxes — for anywhere from 10 to 30 years.

"It's tremendous marketing," Shea said. "They [the builders] point to a school and say, 'There's your elementary school.'" And since the bond repayment — unlike an impact fee — isn't part of the purchase price, the home seems more affordable. In the long run, though, it could be more expensive for the homeowner.

In supporting the plan, Shea said he is not acceding to builder pressure, but instead is trying to find a solution that works for everyone.

"Mrs. Jones with three kids in school has a right to call me up. Home builders have a right to call me up," he said.

The local and Florida Home Builders associations support the school-financing idea. And long-term, they also support abolishing impact fees. So far, that's been their biggest — and virtually only — legislative failure.

State's powers are limited

The state Department of Business and Professional Regulation regulates the home-building industry. Yet its powers are extremely limited.

For instance, the department cannot disclose any investigation it is undertaking if anyone involved — usually, it's the builder — objects, even after the investigation ends. The probe becomes public only if the state Construction Industry Licensing Board, which rules on complaints investigated by the department, finds probable cause to go forward.

"All hell could be breaking loose," said Pat Ernst, a department spokesman, "but we couldn't acknowledge it, even though we might be in the middle of it."

The board also has authority only over licensed contractors. That's important because a production builder doesn't actually "build" a house; it hires a licensed general contractor to pull a permit and then pays subcontractors to erect it. So a consumer unhappy with his or her house can file a complaint only about an employee of the builder, not the company that actually sold the homeowner the house.

What's more, many construction trades aren't even licensed by the state. Carpenters, drywallers and masons, for instance, are unregulated. Yet, many of the problems uncovered by the *Senti-*

nel and WESH were the result of slipshod masonry, drywalling and carpentry.

For instance, more than 60 percent of the homes had major cracking in the block walls, foundations, driveways and decking. The most common causes, experts say, are watered-down concrete; blocks laid with skimpy or no mortar in the joints; and not allowing the pads enough time to harden. More than 160 homes had wavy or cracked drywall on interior walls or ceilings. And 26 roofs sagged, which typically indicates the carpenters installed the trusses incorrectly or put on warped board.

The department, Ernst said, concentrates much of its efforts on stopping unlicensed contractors from working and fining contractors who leave a job unfinished.

In 2002-03, the licensing board issued 158 cease-and-desist orders, fined 406 licensees and revoked 126 licenses (up slightly from 104 revocations the previous year). That's out of a total of 97,960 licensed contractors.

'The machine is broken'

The last time the department aggressively went after a major builder, the investigation blew up amid charges of politics and favoritism. Since then, its enforcement efforts have been, at best, low-key.

"The bottom line is the machine is broken. It's not working," said Bill Reeves, a Tallahassee attorney fired in 1999 from DBPR.

Reeves was one of the key investigators in a two-year \$650,000 department probe during the late 1990s of Edwin Henry, who was president of the Florida Home Builders Association in 1999.

Under Reeves, the department claimed that as many as 70 percent of the 4,000 homes Henry built in Northwest Florida were seriously flawed, with wobbly brick walls, faulty footers, cracked foundations, wavy ceilings and roofs that were not correctly anchored.

Dave Beitz, then a Seminole County building inspector who examined several Henry houses, wrote in a department document that "the construction methods and practices all appeared substandard and were so widespread and prevalent throughout the area that it seemed that this is the norm rather than the exception."

Beitz, now a building official in Mount Dora, declined comment when contacted by the *Sentinel*.

The investigation was ended shortly after Tampa land-use attorney Cynthia Henderson took over the agency in 1999. Her administrators said the probe was overzealous and flawed. The Construction Industry Licensing Board dismissed the charges.

PART 7



'We have way too much litigation. There is something wrong that I would be able to sue without telling you what the problem is and giving you a chance to cure it.'

— STATE SEN. MIKE BENNETT
R-BRADENTON, WHO SPONSORED THE SO-CALLED "NOTICE AND RIGHT TO CURE" LAW RECENTLY PASSED BY THE LEGISLATURE

Henderson was appointed by Gov. Jeb Bush; she's now a Tallahassee lobbyist. She issued a statement last week saying, "Politics did not play any role in any decision I had authority over."

Henry, who could not be reached for comment, has sued the department for defamation. Department officials declined comment on the case, because the suit is pending.

The upshot of that investigation, Reeves and others say, is that department will not get involved in cases where more than one county or prominent builders are involved.

Butterworth handled 1 case

The most recent investigation into a large builder, in fact, was done by the state attorney general, not the department.

Ernst said his department was involved early on in a three-year probe of U.S. Home but referred it to the office of then-Attorney General Bob Butterworth because investigators thought criminal charges were possible. The department handles only civil cases.

In August 2002, Butterworth's office reached a voluntary agreement with U.S. Home. The builder admitted no guilt but agreed to pay a \$300,000 fine and to honor its 10-year structural and one-year parts-and-labor warranties. It also promised not to switch materials and appliances during construction unless they were of equal or better quality than what originally was promised.

Assistant Attorney General Victoria Butler said her office got complaints from about 50 homeowners living in Sarasota, Tampa Bay and Orlando. They charged their houses had bad truss work, leaky roofs, unattached hurricane straps and missing moisture wraps. They also said that U.S. Home gave them cheaper appliances than what they paid for.

The intent of the agreement, Butler said, was "raising the [public] awareness and letting them [U.S. Home] know someone is watching, and they should do what they are supposed to be doing."

Like most production builders in greater Orlando, U.S. Home declined repeated requests for comment for this series. U.S. Home is owned by Miami-based Lennar Homes.

The problems highlighted by the Attorney General's Office don't surprise Winter Park Realtor Sharon McLarn. When she has a client thinking of building a new house, she said, she tells the client to be prepared to fight. Otherwise, she said, the house likely will have problems.

Under the law, McLarn added, it's up to the home buyer to look out for his or her interests — because there are few other places to turn for help.

"What we will be hit with," she said, "is arrogance. . . . They [the builders] get away with it because the market has been so brisk and so strong for so long."

