



**OLD REPUBLIC**  
National Title Insurance Company

777 Post Oak Blvd., Suite 240  
Houston, Texas 77056  
888-678-1700 Office  
713-877-1770 Fax

# Bulletin

**To:** All Agents, Direct Operations & Attorneys in the State of Texas  
**From:** David W. Rhodes, Sr. Underwriting Counsel  
**Date:** September 24, 2007  
**Re:** HB No. 1038-Texas Residential Construction Commission

---

The Texas Legislature passed HB 1038 that expands the regulation of homebuilders and clarifies the duties and responsibilities of the Texas Residential Construction Commission (TRCC). Most of this bill does not require oversight by the title industry. There are two areas that can affect your closings.

An individual who built the home alone or with the assistance of the individual's employees or independent contractors and used as his primary residence for at least one year after the completion of construction is required to give a written notice to the purchaser of the home as follows:

"Notice of Nonapplicability of Certain Warranties and Building and Performance Standards. The Property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards."

This notice is required to be delivered to the purchaser on or before the effective date of an executory contract (the earnest money contract) binding the purchaser to purchase the property. Failure to provide the notice on or before the contract to purchase is entered into give the purchaser the right to terminate the contract on or before the seventh day after the date the purchaser receives the notice.

The notice is not required to a purchaser if the transfer is pursuant to:

- foreclosure or court order;
- by a trustee in Bankruptcy;
- by a lender who has acquired the property;
- through foreclosure or deed in lieu of foreclosure;
- between co-owners or family members;
- to or from a governmental entity;
- is only of a mineral interest, leasehold interest or security interest.

The Act also amends other sections of the Property Code to require that notices be given in a contract for home construction or improvements. It also requires that the contract include the builder's name and certificate of registration number. The bill makes the contract for construction

of a new home or improvements unenforceable against the purchaser if these items are not included.

These new requirements apply when the improvements exceed \$20,000.00 or when the builder is required to register the home with the TRCC. Registration is not required of those who have a license to practice a construction related trade if the contract is solely for the purpose for which the license is issued and the licensee does not supervise or manage the construction. The Act speaks in terms of the construction contract without specifically mentioning the mechanic's lien contract. This may eliminate the ability of a home owner to do a mechanic's lien contract with a straw or sham buyer.

**Underwriting Guidelines:**

- Require that any mechanic's lien contract for the construction of a new home; or improvements that exceed \$20,000.00 include the builder's name and certificate of registration number; AND the statutory notice.
- A copy of the Notice is attached as Exhibit A.

**Underwriting Counsel**

David Rhodes  
Steve Streiff

**Administration**

Kindra Wessel  
Monica Damian

EXHIBIT "A"

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.