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## TRCC dies, leaving questions

[By Jennifer Hiller](#) - Express-News

The often-criticized agency that oversees home building in Texas will be dismantled.

As the legislative session wound down this week, lawmakers did not act to save the beleaguered Texas Residential Construction Commission from the state's Sunset process.

Now the decision — which many say is unlikely to be reversed in a special session — has consumer advocates, builders' groups, attorneys and even agency officials themselves scratching their heads over how the agency's death will occur.

No one quite seems to know how the TRCC, created in 2003, will close its doors or what happens to the homeowners and builders who are in the middle of the agency's inspection process.

“We've been an experiment since our creation, and we'll be an experiment in our demise,” TRCC Executive Director Duane Waddill said.

The 5-year-old commission long has been accused of offering more protections for builders than it does for homeowners.

Now the laws that push homeowners and builders into the TRCC's dispute resolution process and regulate home building will end Sept. 1. The agency has another year to wind down its operations.

The Sunset Advisory Commission staff last year recommended abolishing the agency, in part because of the inability of the agency to force builders to repair shoddy construction work. Homeowners were forced to go through the agency before going to court, but didn't trust it, the staff report said.

“No other regulatory agency has a program with such a potentially devastating effect on consumers' ability to seek their own remedies,” it said. And in 2006, an audit from the Texas comptroller's office branded the agency a “paper tiger” and said the agency shields builders from responsibility.

This session, lawmakers appeared ready to clearly outline the terms of the agency's demise and the applicable laws to guide consumers and builders in the future.

But Joey Longley, the Sunset Commission's executive director, noted that the bill died in conference committee.

The House had approved the legislation, but the Senate voted 17-11 to adjourn without passing it. The continued operation of the agencies that oversee transportation and insurance also were part of the so-called “safety net” bill and likely will be the topic of a special session. “Usually the statutes provide a little more

detail,” Longley said. “In this case, we don't have that.”

Waddill said the TRCC's board will meet Wednesday to adopt a plan. Possible options include making the inspection and resolution process an optional one for consumers in the last year of the agency's existence or simply finishing out the 200 pending cases it has now.

“We're here and committed to getting them done and inspected as best we can,” Waddill said.

In September, Texas reverts to the pre-TRCC law, the Residential Construction Liability Act, which limited damages homeowners could seek and gave builders the right to repair poor construction.

Previous case law had established an implied warranty of workmanlike construction and habitability in home building, San Antonio attorney Gary Javore said.

But Javore said there was never a standard definition of what “workmanlike construction” meant.

“Whoever had the more personable expert would win the case. Standards would change from case to case,” Javore said.

Alex Winslow, executive director of Texas Watch, advocated eliminating the agency, but also said the previous RCLA law offered inadequate consumer protection. He expects the Legislature will address the home building industry again.

“We got the agency out of the way and now can start with a fresh slate in the next session,” he said. “We can create a process or agency so that builders are held accountable and homes are built right the first time. The TRCC never really served those goals,” he said.

In the short term, though, things are murky.

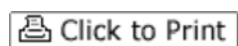
“We're already hearing from homeowners and consumers,” Winslow said. “They're confused.”

Ned Muñoz, vice president of regulatory affairs and general counsel for the Texas Association of Builders, said many consumers benefited from the agency

“I think it's unfortunate that a lot of the consumer groups who were clamoring for the TRCC's demise will have nowhere to turn for these disputes,” Muñoz said. “Now all they'll have is costly legislation.”

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