

# EIGHT-PENNY NEWS

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## Home Warranties: Complaints Raise Questions

Ten-year home warranty programs, such as those offered by the Home Warranty Corporation (which runs the HOW Home Owner Warranty program) and Home Builders Warranty (HBW), present home builders with a tempting prospect: In return for meeting certain guidelines and paying a few hundred dollars per house, the builder can offer clients the assurance of a limited warranty. Over 25,000 builders have found such warranties a strong marketing advantage and signed on.

With reregistration levels hovering around 90%, it's clear that many of these builders like the programs. But

in some cases, both builders and homeowners have found, in the words of one unhappy homeowner, that "what you don't see is what you don't get."

Their complaints came to light during a special hearing before the U.S. House of Representatives Subcommittee on Housing and Development last fall. Homeowners told congressional members that HOW, HBW, and other home warranty companies have denied legitimate claims, delayed claim payments, and used high-pressure tactics to persuade people to settle for less than they were entitled to. Some builders have also

voiced complaints about HOW's handling of claims and have dropped the program.

Industry spokespeople deny these allegations, saying that the two dozen present court cases and other complaints are exceptions to the rule, and that most claims are handled routinely to the customer's satisfaction.

**The big two.** Most of the complaints center on the country's two largest warranty programs, Home Owners Warranty (HOW) and Home Buyers Warranty (HBW) Corporation. Attorney Ben DiMuro of Alexandria, Va., who has represented clients

involved in a claim against HBW, says the two dozen known pending court cases are "just the tip of the iceberg."

Testifying before the U.S. House subcommittee, DiMuro said that "what we see before Congress and in the courts right now are the \$200,000 to \$300,000 claims that litigants can afford to prosecute." Smaller cases, he says, "never make it to litigation because they are simply too small for the average homeowner to fight about and hire attorneys. They never get resolved, and HOW's and HBW's deceptive trade practices never get rectified." DiMuro said a review of the Montgomery County, Va., business records in the last year, for example, shows 12 to 15 unresolved complaints averaging \$2,000 to \$12,000. Based on these numbers, DiMuro estimates there may be tens of thousands of unresolved claims nationwide.

Tennessee's Department of Commerce and Insurance also testified at the congressional hearings, charging that HOW "did not sufficiently monitor the contractors who perform work under claims repair for HOW" and that "the 'strict' standards for contractors advertised in HOW literature were lax and were not an assurance of a quality builder" because "HOW did not meaningfully screen builders

*continued*

### STATE BY STATE

**Vermont:** Lower interest rates and an improved economic outlook pushed first-quarter 1992 home sales up 41% from the same period in 1991, according to the Vermont Association of Realtors. The increase was felt statewide. Prices, however, didn't move much. Statewide they rose slightly, from \$106,995 to \$108,408; while in the Burlington area they actually fell, from \$121,514 in early 1991 to \$121,421 in 1992. Vermont, the least overbuilt of the six New England states during the late '80s boom, is expected to be among the first to recover.

**Maine:** When the people of Union, Maine, voted this March to reject a proposal to upgrade their riverside shorefront zoning ordinance to meet new, more restrictive state zoning standards, the town became the 11th to do so in recent months. Union voters even went so far as to vote out an older set of similar restrictions. Some observers, according to the *Boston Globe*, feel this is a sign of increasing resistance in Maine to land-use and property rights restrictions. Some blame such restrictions for aggravating New England's recession.

**Rhode Island:** The long, severe building recession may be easing in this state, if building permits and home-show attendance are reliable indicators. Single-family building permits for the first quarter almost doubled from 1991 levels, from 315 to 600; remodeling permits were also up, though not as radically. Builders were also encouraged by the 50,000 people who attended the Rhode Island Builders Association (RIBA) Spring Home Show in Providence; according to RIBA's newsletter, many of the shoppers talked serious business, and some "actually had blueprints" under their arms. □



Home warranty programs insure against major structural defects like those affecting this house. Critics charge, however, that some insurers have oversold the policies and underpaid on damage claims.

## What Goes Down...

New England's economy is finally on the road to recovery, led by a modest pickup in home sales and construction spending, according to the region's leading forecasting group, the New England Economic Project.

Basing their forecast mainly on the strength of so-called "leading indicators" that predict future activity, the economists said that construction activity should continue to slowly expand in 1992, eventually pulling employment and other key economic elements upward with it. The economists, well aware that most New Englanders have felt few real signs of change, pointed to

several late spring developments to back this assertion:

- Though unemployment was still high, job losses had bottomed out. New hires were finally matching layoffs.
- Help-wanted ads were up
- Retail sales had picked up
- Home sales jumped significantly. February new home sales for the region were 25% higher than in February 1991, while existing homes sales were up 15% that month as well (from the previous year). Some states saw even bigger jumps: Vermont, for instance, saw a 41% increase in home sales in the first quarter of 1992,

compared to the year before.

- Total starts and permits in the region also jumped significantly from 1991 levels, up 46% and 45% respectively in March. In Rhode Island, permits jumped 64% from early 1991 levels.
- Finally, consumer confidence, which has long been at record lows in New England, has shown a steady upward swing, rising from a low of 31 last October to 39 in April, according to the Mass Insight Group's index of consumer confidence.

All this is good news for small contractors, many of who are now getting more calls and signing more contracts than

they have in the last couple of years. As one Massachusetts contractor put it, "The survivors are starting to feel things are getting better."

As of May, the good news hadn't yet spread to the unemployed, however, except in a couple of spots. Unemployment for the region, in fact, stood at 8.2% in January, up from 7.9% last year. In construction, this rate was closer to 15%, with even higher figures in the beleaguered Massachusetts and southern New Hampshire markets. But the Project's economists were confident that, as construction spending led a modest recovery, employment opportunities would increase, putting many of these people back to work. □

## From What We Gather

**OSHA inspections of residential jobs are rising dramatically**, according to a recent National Association of Home Builders builder survey. Builders across the country are reporting sharp increases in the number of Occupational Health and Safety Administration visits to single-family home sites, and higher fines. A Texas builder, for instance, was fined \$7,300 for violating the OSHA HazCom standard, \$2,250 for "poor housekeeping," and \$1,800 for not posting two required OSHA posters. A Utah builder was fined \$20,000 for not meeting OSHA trenching standards.

**A New York court awarded \$600,000 to a construction worker who was injured** when the porch roof he was walking on collapsed five years ago. The worker, James Galmes, developed "early arthritic changes" in his spine, according to his lawyer, who charged that the employer neglected to provide state-mandated safety devices — a ladder or scaffold — to prevent the fall. The court agreed. Galmes, who now works as a computer technician, collected \$5,815 for medical expenses; \$7,560 for four months of lost work; \$150,000 for pain and suffering; and \$411,624 for future pain and suffering.

**Mickey Mouse has met the affordable housing crisis**, and he seems to be winning. Walt Disney World in Orlando, Fla., faced with problems finding housing for its help, contracted late last year with a local developer to build two apartment complexes with a total of 500 units to provide affordable housing for employees and area residents. The project is expected to create 300 construction jobs in central Florida.

**The 84 Lumber building supply chain is offering complete house packages** to consumers, starting at \$39,900. The program, called 84 Lumber Affordable Homes

Across America, offers comprehensive materials and design and spec packages for homes ranging from \$39,900 to \$69,900. The packages, of which there will eventually be 30, include virtually all materials and fixtures. The move is part of an increasing trend in building supply stores to sell complete services and packages as well as building materials.

**Lead detectives are gathering** for the first industry-wide lead detection and abatement conference and expo, Lead Tech '92, which will be held September 30 to October 2 at the Hyatt Regency in Bethesda, Md. The three-day

event, sponsored by IAQ Publications, will include technical sessions, seminars, panel discussions, and trade exhibits. The cost is \$525. For registration or other information, contact IAQ Publications, 4520 East-West Hwy., Suite 610, Bethesda, MD 20814; 301/913-0115.

**Pay late, I'll talk about your mama:** That's the approach used in one rather blunt bill-collection notice we recently came across. The notice reads: "Dear Sir: You have been on our books for one year. We have carried you longer than your mother did. Please send payment." No word on how effective it is. □

## Surviving an OSHA Inspection

For many builders, getting inspected by the Occupational Safety and Health Administration rates somewhere between being audited by the Internal Revenue Service and sitting down with a workers comp adjuster. More often than not, OSHA inspections take time away from the job and wind up costing the builder money.

According to the National Association of Home Builders (NAHB), residential construction sites are increasingly targeted for inspection. Part of the reason is that these sites have been "neglected" for too long in favor of commercial construction sites. Also, as commercial construction decreases due to the recession, inspectors are more often targeting home sites.

Whatever the reason, the NAHB recently introduced a booklet called *How to Survive an OSHA Inspection* that may help make the process less painful. Here are some of the tips offered in the publication:

- Complying with the Hazard

Communication Standard (HazCom) should be top priority to avoid OSHA fines. HazCom requires contractors to educate employees about any hazardous chemicals they're exposed to in the workplace. If you don't think you're using hazardous substances, think again: wood dust, paint, concrete, and glue are just a few of the common materials that may require worker protection.

- Many construction workers have been injured or have died because of improperly built trenches. As a result, OSHA is strict about trenches being properly sloped or shored. If you aren't sure what the restrictions are, call your local OSHA office and ask for their trenching guidelines.
- An estimated 25,000 injuries and up to 36 fatalities a year result from falls from ladders and stairways. OSHA recently developed requirements that must be followed whenever stairs and

ladders are used in new construction, remodeling, or even painting and decorating.

- Inspectors look for such basic safety items as fire extinguishers and first aid kits. Have them on hand.
- Since the job-site supervisor or lead carpenter is most likely to be on site when the inspector visits, they should be trained in how to respond to such a visit. For instance, they should verify the inspector's credentials and ask the purpose of the inspection. They should also accompany the inspector for the entire visit.
- During the next 18 months, OSHA is expected to publish new rules dealing with roof fall protection, scaffolds, and the use of seat belts during work-related driving. Keeping informed of these issues could save you problems down the line.

For a copy of *How to Survive an OSHA Inspection*, contact the NAHB at 1201 15th St., NW, Washington, DC 20005; 800/368-5242, ext. 493. □

## One House, Two Awards



Meriden, N.H., home designer and energy consultant Marc Rosenbaum recently won home-design competition awards from both the Energy Efficient Building Association (EEBA) and Northeast Sustainable Energy Association (NESEA). Rosenbaum's house, in which he lives, was cited for its combination of energy-efficiency and affordability. Mike Nuess, last year's EEBA award winner, called it "a good step toward a truly 'green' house." The house uses superinsulation and passive solar heating to keep heating requirements very low, despite New Hampshire's 6,000 heating degree days. Passive solar and woodfired heating systems provide both heat and hot water at an annual cost of less than \$350. Careful material choices and a heat recovery ventilation system assure healthy air quality. The house also uses energy-efficient lighting and appliances, uses low water-use features, and has space for recycling and compost. For more information, write Marc Rosenbaum, P.O. Box 194, Meriden, NH 03770. □

**Warranty**, continued  
in Tennessee."

The agency also said HOW delayed claims settlements and "acted unfairly in the handling of claims settlements and used practices that are within the meaning of Tennessee's Unfair Trade Practice Act."

Terry Cooke, senior vice-president of HOW, says these allegations represent the exception. "Way, way less than one percent of our policies result in lawsuits," says Cooke. He says the company screens its builders as carefully as is practical and answers claims reasonably.

Nevertheless, in 1991, the company, with 10,000 enrolled builders building approximately 125,000 housing units, paid out a total of \$34 million to settle 13,000 claims — spending over \$3,000 per enrolled builder, or \$2,615 per claim. These payments, along with declining warranty sales because of the recession, contributed to a 1991 loss of approximately \$5 million, according to the company's annual report.

**Good intentions.** HOW, the first nationwide home warranty program, was established in 1973 by the National Association of Home Builders to alleviate growing pressure for federally required home warranties. The program spun off into an independently owned and operated private corporation in 1981. Other national programs, including HBW and Residential Warranty Corporation, as well as some smaller statewide programs, have been established in the meantime, most following the same basic model.

In most programs, a builder joins by supplying consumer

and business references, paying a modest registration fee, and agreeing to enroll every new home in the program. The programs charge a premium averaging around \$300 per enrolled home, which is included in the purchase price. This is based on a rate per \$1,000 of the sale price, and may therefore vary. Some companies adjust the premium according to the builder's volume and perceived risk. The programs provide marketing materials and warranty documentation, which are the builder's responsibility to convey to the potential homeowner.

In return, the programs generally insure all workmanship and materials for the first year, electrical and mechanicals for the first two years, and structural defects up to ten years. During the first two years, the builder usually bears the expense and responsibility for backing the warranty by repairing any covered problems. The consumer can go to the warranty company if unsatisfied with the builder's response; if the work is covered and the warranty company pays for it, the company then seeks reimbursement from the builder. After the second year, the owner goes directly to the warranty company for the remaining covered areas, which are generally limited to structural problems. With some programs, the builder has the option of buying just the first two years.

**So what went wrong?** In theory, it's a good system: The homeowner pays a modest fee for coverage (which applies regardless of how long the builder is around), while the builder gets the marketing and

financial benefits of being backed by a large organization.

The problem, say builders and homeowners unhappy with the program, is that the system is compromised by two major flaws.

First, member builders aren't always screened tightly enough, resulting in some shoddily built houses that produce a substantial number of legitimate complaints.

Second, the system allows consumers to be led to believe they're getting "bumper-to-bumper" coverage instead of the limited coverage they're actually receiving. This results in claims that are technically not covered, but which the clients feel should be.

The resulting overload of claims, along with reduced home-enrollment fees because of the recession, has placed a financial strain on the insurers. Some critics feel the companies are trying to alleviate this strain by being tight-fisted with claims payments.

For instance, one Seattle area builder, Burke DeBrier, quit participating in the HOW program after he felt HOW responded too aggressively to a claim from one of his clients, causing bad feelings and forcing the dispute to arbitration when "the whole thing could have been diffused" through better mediation. DeBrier also said he didn't feel he could fairly ask homeowners to pay for insurance when it really didn't provide them the protection they were looking for.

The solution, critics say, is better screening of builders, better consumer education to prevent misconceptions about what is covered, and better, faster processing of legitimate claims.

Some of the companies appear to be moving in this direction. Smaller warranty companies in particular, because they have smaller casualty funds to draw from to pay claims, have a keen interest in carefully screening builders to reduce claims. And at least one of the major companies, HBW, claims to be responding to the need for greater consumer education. It is launching what director Gary Mabry calls a "comprehensive consumer education program" that will provide detailed information about what is and isn't covered and how claims are processed. A new 20-page booklet given to the homebuyer at the time of closing and explaining what the warranty does and doesn't cover is the first step toward what Mabry suggests will be an expanding program. And HOW, say company spokespeople, will continue to review its enrolled builder records in an attempt to weed out problem builders.

Whether these improvements will reduce unresolved complaints remains to be seen. As HOW's Terry Cooke points out, "Things happen and builders have problems, or there would be no need for the program. Any insurance company is occasionally sued by claimants."

But attorney DiMuro, for one, feels that if the industry's problems are not corrected, "it will backfire on builders" by reducing public faith in the warranties and in the home building industry in general. One possible outcome, says DiMuro, might be increased governmental regulation of builders.

— Kathleen O'Brien

## Poly for the Long Haul

Several months ago, researchers in Sweden discovered some possible problems with polyethylene in vapor barriers. Some types of polyethylene, specifically those containing recycled materials, are not as durable as other formulations, the research suggests. It seems the recycled material can create patches that are more likely to crack with age or with the stresses that come with temperature changes. The material may also degrade when exposed to sunlight during construction.

As a result, the American Society for Testing and Materials (ASTM) is developing new performance standards that manufacturers may use to make vapor barriers more consistently reliable, says Mark Bomberg, a senior research officer with the National Research Council of Canada and a member of the ASTM.

"Builders go to all kinds of trouble to wrap their houses with plastic," he says. "A few cracks or pinholes are not a problem. But the material should be expected to do its job. And there's some concern that perhaps it is not."

The goal of the standards is not to eliminate the recycled material, Bomberg says, but to identify which formulations work best for particular applications. The standards may also change the way builders are instructed to handle the material during construction. Specifically, they may be required to limit exposure to the elements. □