

LOBBY WATCH



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“Leaky Weekleys”

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Moldy ‘Lemon’ Homes Denied Day In Court

• Weekley Boys Privatize the ‘Justice’ System

A Texas House panel today will explore if consumers are being hurt by businesses’ increasing reliance on “binding arbitration.” Consumers will decry the privatized “justice” system that binding arbitration has created, while business interests that give millions of dollars to Texas politicians will rush to the defense of this plaintiff-hostile system.

Texas’ mushrooming toxic mold epidemic is a crash course in the perils of binding arbitration, clobbering consumers with a one-two punch. First, they learn that their new dream home is a moldy lemon. Then they discover that they unwittingly signed “binding arbitration” clauses that strip their constitutional right to a jury trial and force their claims before costly, secretive tribunals that favor the builders who create arbitration business and even serve as arbitrators in construction disputes.¹

The model “Residential Construction Contract” promoted by the Texas Association of Builders

contains binding arbitration clauses, which are used by virtually every major Texas homebuilder. Meanwhile, consumers are trying to find one example of an arbitrated construction case in which Texas homeowners have gained more than they spent on arbitration. Builders could not build a more favorable system.

A major developer of this privatized “justice” is David Weekley Homes, both in its own right and through brother Richard Weekley’s Texans for Lawsuit Reform (TLR). Since 1997, TLR’s huge PAC has spent \$2.6 million on all three branches of Texas government (see table).²

Two homebuilders that rank among TLR’s top donors also give heavily to Texas politicians directly. The family of Bob Perry of Perry Homes contributed \$2.2 million and the Weekleys doled out more than \$300,000 (see table below). Meanwhile, Texas homebuilder PACs gave Texas politicians \$1.8 million more since 1997.³

Texas Homebuilder-Related Political Spending (Since '97)

| | Gubernatorial Races | Other Statewide Races | Legislative Races | Appeals Court Races | Totals |
|---------------------------|------------------------|--------------------------|----------------------|------------------------|--------------------|
| Weekley Family | \$51,253 | \$170,600 | \$83,368 | \$12,400 | \$317,621 |
| Bob Perry Family | \$120,000 | \$1,137,500 | \$ 911,250 | \$72,000 | \$2,240,750 |
| Texans for Lawsuit Reform | \$27,500 | \$181,650 | \$2,290,134 | \$88,460 | \$2,587,744 |
| Totals: | \$198,753 | \$1,489,750 | \$3,284,752 | \$172,860 | \$5,146,115 |

Note: Contributions cover through the March 2002 primaries.

Unlike court records, arbitration records are not public so it is impossible to fully gauge Weekley Homes' financial stake in arbitration. Nonetheless, there is evidence that this homebuilder fends off a steady stream of disgruntled customers who seek compensation for "lemon homes."⁴ Now, spreading mold problems are bringing such lemon homeowners out of the woodwork.

The Richardsons of Austin

Two days after the Richardson family moved into their new \$300,000 home last year they discovered that a leaky air conditioning line had bred mold in their attic and spewed water down their walls and under their floors. Although they had ordered special home design features to accommodate Dawn Richardson's allergic sensitivities, the Richardsons say Weekley Homes fixed the leak but failed to dry or remove the wet building materials. Instead, they merely painted over the mold.

All four family members soon experienced a battery of health problems, including skin rashes, headaches, fatigue, nausea, bloody diarrhea, nose bleeds, dizziness and respiratory infections. The worst symptoms afflicted Dawn Richardson and one-year-old Erica (brain swelling, motor skill impairment and language-skills regression). Environmental health experts have diagnosed Dawn with permanent brain and neurological damage caused by exposure to molds and toxic chemicals.

These health problems drove the Richardsons out just five weeks after they moved into their new home. Construction defects resulted in elevated levels of toxic mold in all three bathrooms and other areas of the house. Indoor air tests detected high levels of volatile organic compounds and "outgassing" of toxic chemicals (including benzene, styrene, xylene and formaldehyde) from synthetic building materials. The Richardsons have filed suit in state district court in Austin to recover related damages from Weekley and some of its subcontractors and suppliers.⁵

Sitting as a visiting judge at a pretrial hearing on the case late last month, former Texas Supreme Court Justice Rose Spector ruled on Weekley's pretrial motion to force the case into arbitration. The plaintiffs countered that—even if they had understood the arbitration clause—they had little choice because virtually every major homebuilder in Central Texas uses these clauses.

At the hearing, Judge Spector (who took \$5,000 from Richard Weekley's TLR while on the high court) said she considered recusing herself because she works as a paid arbitrator for the American Arbitration Association where Weekley sends all of its disputes. Opting against recusal, Judge Spector ruled about as favorably for the plaintiffs as possible under the pro-arbitration precedents of the U.S. and Texas Supreme Courts.⁶ Judge Spector sent claims involving the contract signatories—Weekley and the adult Richardsons—to an arbitration panel. She kept the remaining claims (involving the Richardson children or Weekley's subcontractors and suppliers) in state court.

Other Texans who have yet to file suit over their moldy new homes are turning to the Richardsons to learn about how binding arbitration robs consumers of their day in court.

Aric Barto of Sugarland

Since sports stadium builder Aric Barto closed on a new \$268,000 David Weekley home in December 2000 he has been plagued by troubles of almost biblical proportions. Barto keeps a two-inch thick binder of repair work that he says Weekley has not fixed. Workers damaged a tree on his lot that later fell on his house. Weekley Homes came out three times to try to realign a tilting portion of his slab foundation. Half of his roof had to be replaced. Chronic leaks have caused repeated blooms of toxic *Strachybotrysatra* mold on the ceiling of his garage and study and on his bedroom, closet and bathroom walls. The mold then migrated through air ducts to his kitchen, dining room and living room.

Barto says his girlfriend contracted a leg rash, he has had allergic reactions and both of them have experienced chronic fatigue. He says he hired an attorney after Weekley Homes stopped paying for his temporary housing last month. Barto says his insurer is suing Weekley for mold remediation costs and he is suing the company to buy back his "lemon home" at a reasonable price.

The DeShazos of Missouri City

After the DeShazo family paid more than \$300,000 for a new Weekley Home in 2001, the builder came out three times to reseal the joint where the shower in their master bath meets the floor. When they later heard that Weekley discontinued that bathroom design, Dawn DeShazo

called to ask if it was defective. In what she now suspects was a lie, Weekley Homes said it simply phased out the design; there was no defect.

Dawn called the builder again last December after a family with bathroom plumbing problems around the corner suddenly moved out. Weekley Homes assured her that it was an isolated leak problem unrelated to any design defect. In the Sienna Plantation development outside Houston, Dawn says Weekley bought out one family's house under a confidential deal. It relocated another family for nine months during mold remediation. And it temporarily relocated yet another family into a vacant Weekley Home—only to encounter yet another mold infestation.

When Weekley came for a one-year inspection of the DeShazo home in February, Dawn complained about bad odors coming from the drain of her master bath. The smell went away when she poured bleach down the drain, as the inspector suggested. A couple of weeks ago Dawn called the builder when the smell returned with a vengeance. This time Weekley sent a member of its "Special Projects" team, which Dawn says is a euphemism for Weekley's mold squad. The builder is negotiating over where to relocate the DeShazos during

mold remediation but has not said who will pay their mortgage in the interim.

Meanwhile, Dawn wonders if mold caused recent health problems in herself and her youngest child. Suffering from insomnia, morning headaches and repeated voice loss throughout 2002, Dawn was diagnosed with walking pneumonia 10 days ago. On May 5th she rushed her three-year-old son to the emergency room with severe abdominal pains and a fever spike. The hospital had trouble getting his blood-oxygen level up and was unable to diagnose the problem, which passed after several days. Dawn says she is particularly concerned about this son because a premature birth left him susceptible to respiratory problems and because he has spent more time in her infected bedroom than her older children. Furious with Weekley for misleading her about a spate of mold problems in Sienna Plantation, Dawn is shopping for an attorney.

Across Texas, toxic mold is breeding colonies of angry homeowners. Thanks to the powerful grip that the Weekleys and other homebuilders have on all three branches of government, these Texans are first driven out of their homes and then driven out of the courts. •

**The House Committee on Business & Industry
Subcommittee on Binding Arbitration
Holds a hearing today at 10 a.m.
In Capitol Room E2.010**

¹ For more on the hazards of binding arbitration, see: *The Consumer Pitfalls of Binding Arbitration*, Texas Watch Foundation, Austin, Texas, 2002; and *The Costs of Arbitration*, Public Citizen, Washington, D.C., April 2002.

² In a 2001 lobbying coup, TLR successfully urged Governor Rick Perry to veto a "prompt pay" bill that would have barred HMOs from imposing binding arbitration on doctors.

³ The biggest share of this money (\$856,400) came from the Texas Manufactured Housing Association, whose members aggressively promote binding arbitration.

⁴ "Slab O' Trouble," *Houston Press*, June 27, 1996.

⁵ *Richardson v. Weekley Homes*, Case No. GN200790, 53rd District Court of Travis County.

⁶ *Cone Memorial Hosp. v. Mercury Const.*, 460 U.S. 1, 42 (1983); *Capital Income Properties v. Blackmon*, 843 S.W.2d 22, 23 (Tex. 1992).