

## **ARIZONA HOME CONSTRUCTION: 91 MILLION DAYS...AND COUNTING**

By J. Robert Eckley

As far as the anthropologists can figure, mankind has been building homes (be it a humble pile of leaves and overhead branches heaped in the brush around some anonymous wash in the Kalahari Desert or a gilded, high-rise luxury condo perched imperiously at the crossroads of the local Fashion Center) for just a tad over 250,000 years. In South America where man was a latecomer, the Incas and their predecessors pretty much had architecture down about 25,000 years ago and in southwestern portions of North America, where man came almost last, the Anasazis and their grandparents were engineering effective homes well over 10,000 years ago. Many of those ancient structures amazingly stand and would be habitable to this very day! So I guess that's why it's so astounding to me that in this century and this place, after a quarter million prior years of technical progress in the construction of habitats, the larger builders in Arizona are still for the most part scientifically somewhere between living in trees or nesting on that Kalahari wash!

Leaking roofs, cracking stucco, sinking and heaving slabs, twisting superstructure, even a high incidence of reverse-flashed windows being installed upside down and backwards (no kidding), mis-calculated, mis-applied HVAC that actually sickens the home, subslab plumbing failures, all resulting in indoor growths of mold and bacteria: It's all here, it's in epidemic proportions and it's not just a matter of passing interest. Bad construction--knowingly seeding defects into what should be a sound 40-year home investment and thus poisoning it into a 10 year-old pot hole--works quickly to socioeconomically decompose Arizona neighborhoods into tomorrow's preemptive slums. This has massive consequent effect on property tax revenues and social service overheads (especially when Arizona faces a billion-dollar public operations shortfall, already..and growing).

Lasting homes in good neighborhoods--sustained, quality growth--IS the "state product" of Arizona. What is done today to turn around this significant threat to Arizona's otherwise bright future will be profound either in its wisdom or in its stupidity within less than a decade of today's date. I predict that ten years from this day, the heads and heritage of today's leaders will be crowned in glory or they will roll in infamy on the basis of what they do this afternoon.

And so this is the current "Arizona Construction Scene." It's a mess that puts Arizona among the states with the highest number of residential construction defects per capita in the country. The other states (per capita) are currently Nevada and Texas, but, interestingly, California--once in these top three--has dropped out of them to start joining the better-built mainstream after tougher state and local regulation and waves of class action litigation against builders wiped out the dimmer-witted of the Golden State neanderthals. Not having gotten the message and done the same, Arizona now clicks into first position. The challenge to all of us pends.

If we want the world to continue to come--and to stay--we need to build a new construction future. Here are some ideas about what can be done to get the philosophical hammer to the economic nail.

**THE LAW:** It has to start with the law and lawmakers as without legal support the entire mission collapses--and the construction lobbies know that, hence why they rush to the legislature for

immunity from their construction sins as opposed to repenting by mandating higher standards and better work.

My suggestions for the following aspects of the legal system:

**The Public:** It needs to know which of its elected representatives have for years been undermining construction standards and accountability for the builder lobby. For example, just within the last few years, the legislature has mandated (with no public vote on the issue and on very shaky constitutional grounds) that new homes can utterly collapse in as little as 2 to 6 years with impunity to the builder. Before that, they had to last for 20 years or so. Think of that when you sign your next 30-year mortgage. Black bags of one sort or another are passing between legislator and lobby and the delivery of them has to be made a legislator's death-knell. Find out how your representative has voted on the last 3 or 4 bills backed by the builder lobby, all of which cut back your rights considerably. If they backed them or if they accepted those little bags, can 'em.

**The Legislature:** Legislators need to realize that there is a direct connection between low building standards, crumbling, destabilizing neighborhoods and the resulting higher taxes revenues then needed for increasing welfare, police and school costs. They need to understand that no homeowner who fully understands what their rights are and what the legislature is doing will support any bill that reduces the standards for their home or their recourse rights for bad work. The only thing that has protected those legislators who consort with that lobby has been that the bags I spoke of have changed hands in the cloakroom and not in the glare of public light. Ask your legislator what he receives from the home construction lobby and make it clear that you will vote against him or her if he accepts anything. If he still does, can 'em.

**The Bench and Bar:** The judges and lawyers who handle construction defect cases ought to get wiser on the technology they are applying and by that I do not mean the art of lawyering. They attend far too many law classes and almost none of them attend construction technology classes. As a result, they come to many preposterous technological conclusions that, in the end, damage both the corpus of the law, the quality of construction in this state and, ultimately, the people and state. I don't want my judge or lawyer conducting my brain surgery...unless they are an M.D.. Likewise, that judge or lawyer has no foundation to tell litigants about the construction technology of a home unless he or she knows it well enough to take a pretty good shot at building a sound one, himself or herself. But instead of simply biting the education bullet and externally learning the technical trade they judge or instead of applying themselves to the science of it with the same fervor they did the law, the bench and bar have come to rely rather ridiculously on the shamelessly adversarial "experts" hired by opposing sides, forfeiting the responsibility to know the truth to the rhetorical din of the "best debater." If there is no time to learn the trade, then the bench and bar ought to consider regularly appointing expert special masters--beholding to the Court--to review the technological debate, do the master's own homework, and advise the court of the scientific and remedial realities. If the bench and bar is trying to move from the confusion and artifice of a legal system dominated by mindless, baseless advocacy, it has to learn, know and apply the architectural and engineering verities that 250,000 years of habitat experience have shown to be immutable scientific fact.

CONSTRUCTION REGULATION: The regulators, themselves, have to get behind the mop-up. As to each:

The Registrar: Arizona suffered for many years with a Registrar of Contractors popularly advertised (by the lobby) as owned by the construction lobby. It now has a new Registrar of Contractors with no such debt, Mr. Torres, and he seems bent to correcting the past quality drift for the protection of both the consumers and the contingent of truly quality builders. Stay tuned and give him a chance. My only comment to him: I know it is hard in this environment, but we do need some merited, strong busts against the repeat offenses of some powerful bad guys out there. Sort of like how the IRS does it with big, well-publicized, surgical tax fraud busts right around March of every year. I suspect it knows that by that one hit, the millions upon millions of other unaudited tax return revenues for the country go up about 20% in April!

Local Building Officials: The local building officials--where provincial cronyism has been the real name of the game--also need finally to get out of the contractor's back pocket. They need to update their Codes (many are still using the 1994 UBC, UMC, UFC), they need to stop watering down their applications of the adopted Code, they need to inspect for what the Code says and not "the 'standard [mean average stupid] practice' out there" which is uniformly abysmal, they need to read some modern materials ICBOs and they need to question the merit of even some stamped plans (registered professionals will fudge for money, too). Most of all, the top (political) brass needs to encourage and support the unbiased, unvarnished findings of the (on the scene and frustrated) field inspectors.

Real Estate Licensees and the Rest of Us: We need to check out who and what our builder is and by that I do not mean reading the builders' own press. We can exercise the "power of the pocketbook" with this crowd by refusing to buy their product. Here is what to look for or do to try to protect yourselves:

-- The Contract: Look over the builder's contract and "warranty booklet" before you (as licensee) recommend the property or (as customer) buy. If it is onerous (calling for waivers of good workmanship, short, limited or no warranties for work or materials, mandatory arbitration, warnings about soils and drainage, limitation of awards and other legal skullduggery), go somewhere else and ask for better. If all of the big players insist on using the law against you in this way, maybe it truly is time to get this home built by someone like a three-generation mom and pop builder who has no such contract and truly wants repeat business. Licensees: See if you can get the builder to use the middle-of-the-road AAR New Home Contract form (the biggest orphan in the AAR forms file). It's fairly even-handed. If the builder can't live with it: Consider that an omen and act accordingly.

-- Defect Litigation History: Look up the builder on the local superior court system. See how many times he has sued and has been sued. Check the websites under the builder's name for big litigation against the builder in other states. There are also some huge class actions in Arizona against repeat offenders. Keep this in mind: Whether the builder has won or not isn't relevant, since many times that only means the Megabuilder had the most money or the case is not yet over. The big point is: Everyone is suing him. There is usually a reason. In Maricopa County Superior Court, log on [www.superiorcourt.maricopa.gov](http://www.superiorcourt.maricopa.gov).

-- Licensure History: Look up the builder with the Registrar and see if he even has a license (that's what I said!) and, if so, how many times he has changed, expired, been dinged with complaints or operated as a myriad of another companies--all suggesting "issues." Log on: [www.rc.state.az.us](http://www.rc.state.az.us). Again, consider this statistical fact: Win, lose or draw and aside from what the builders will insist, not every consumer claim out there is bogus and not every company change was because he just wanted to "change to a snappier name."

-- Past Construction: Look at the homes the builder has built five to ten years ago. Not just the 30-day-old-Wonders down the street that still smell of fresh paint. You want the ones that have had the test of time. You might even want to talk to some of the occupants about the quality and service follow-up. In addition, the local building department must give you access to the inspection records of any home as they are public record. Check them on a few homes to see if there are many inspector write-ups for this builder.

-- Follow-Up: Stay on the Public Inspector: As the home is being built, insist that the public inspector meet with you and tell you how things are going, what has been written up and to show you the inspection reports and to answer your questions. Do not just assume that "everything is okay" because "you have not heard anything" and the "builder is still building" it. That means nothing. Check it out. Your presence alone will raise the integrity level of the inspection. Take a lot of photos as the home is built. The lot, the foundation, what was under the slab before the concrete was poured, the framing, the stacks of materials. Later, if there are problems, an expert will need these "early bird x-rays" to tell you what went wrong.

-- "Course-of-Construction" Home Inspection: Consider engaging your own (or your client's own) registered Home Inspector to watch this home for you from the day ground is broken to assure that you are getting the quality, compliance and features you bargained for (and lots of those photos I noted, above). Most inspectors will be glad to do this but note that, aside from this being the best expenditure of money one ever invested into a new home, this is not one of those \$250.00 used home inspections the licensee world wants to see. It will be more and worth every nickel. Oh, yes: Insist on getting the pre-build soils tests, read closely the soils and drainage disclosures of the Public Report, obtain a copy of the drainage plans and full building plans for your permanent records. The builders tend to "lose" these very telling documents over time--especially when a suit shows up. And many building departments will not keep them for long. Last: If the builder will not permit the inspector to effect this kind of inspection or insists that the inspector sign some kind of contract holding the inspector in some kind of relationship to HIM, get the message right off and simply don't do business with that builder.

-- Complain and Consult: When you find a bad builder or a bad job, blow the whistle on it. Do not accept the builder's version of what is wrong or what is needed to remediate. They often talk "builderese," a combination of "the plausible" mixed with a dialect of "pure B.S.." Despite that they say it with the most sincere face and the grandest of logic, no new-build component or materials frailty or failure should be accepted as "normal." Hire your own expert to evaluate, recommend and deal with the builder. If it goes beyond that, hire a lawyer who truly knows the trades.

These are but a few things that can do done to protect yourself, your client, your career and the public from the construction crises. And when you are spending this kind of money on your home, spending it remaining vital in your profession and spending it on taxes paid to your government, can you afford NOT to monitor and protect the investment?

250,000 years of perfecting the art of construction to get here. 250,000. It's no longer theoretical. So is it too much to ask, then, that the product we get for that long, hard experience ought to reflect every minute of the technological wisdom and craftsmanship the human race has gained by that 91 million-day journey? More to the point, are we getting it?

' Nuff said!

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