

## Soiled Hands

It's no surprise that builders take shortcuts to make money. What might shock you: Government officials -- from regulators to legislators -- do little to stop them

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Article Published Mar 23, 2006 NewTimes

[phoenixnewtimes.com](http://phoenixnewtimes.com)

**House of cards.** Since homebuilding is the state's main economic engine -- and since a home is the biggest investment that most local families will make -- you might assume Arizona government officials take great pains to make sure construction here is done right.

You'd be wrong. The state Legislature has repeatedly conceded to the wishes of the big developers that fill its members' campaign coffers with fat checks. They've been focused on making it harder for homeowners to get the relief they need from bad builders.

And while the agency that's supposed to protect consumers from shoddy construction does a decent job of resolving homeowner complaints, it really doesn't do anything to discipline or educate the big builders who just keep making the same mistakes.

Fact is, thousands of Valley homeowners have been affected by bad soils here. And, as we reported in "[Cracked Houses](#)" last week, most of the problems that result from the soils in question are highly preventable. Instead, builders are taking shortcuts that save them a few grand per house, at the most. While those shortcuts won't affect everyone, they do doom a percentage of homeowners to major problems.

The state has pretty tough policies in place to regulate architects, home inspectors, and engineers. But builders have learned that if they screw up a new home, the only discipline they have to face is, eventually, fixing it.

And that's only if the homeowner decides to take on a fight.

Melinda Westcott might have been okay with the cracks, even though they ran along almost every seam in her home, even though they were multiplying every week.

But then the front door wouldn't open. And insulation started falling from the walls.

And then came the crickets, streaming from the ceiling like Biblical locusts.

Melinda Westcott was not okay with the crickets.

Westcott, who is director of nurses at an assisted living center, purchased the home on St. Exupery Drive in 2004 to be near her grandkids. Her son and his wife had moved their young family to Anthem, northwest of Phoenix on I-17, and Westcott thought it would be nice to buy a small second home in the neighborhood, in addition to her place in Prescott.

Anthem was booming. The once wild desert had become suburbia, almost overnight, with row after row of orderly houses. Every one seemed to sell in minutes.

Worst case scenario, Westcott thought, it was a good investment.

She had no idea how bad the worst case scenario could actually be.

She didn't know that her \$191,000 home had been built on soil that swells when wet, and that the swelling would be powerful enough to make the edges of her foundation curl.

Literally.

Which pushed up the walls, which pushed up the roof. Which cracked the walls. And jarred the door frames.

And let crickets creep out of the wall cracks -- coming with such frequency that Westcott, a fastidious housekeeper, finally gave up and, after spraying them with Raid, let their little cricket carcasses accumulate in piles along the baseboards.

"I killed two of them this morning," Westcott explains, showing off the most recent additions with a grim smile.

Even worse?

Though her house was clearly falling apart, and doing so within the two-year warranty, Westcott was on her own.

Her builder denied that the problems were serious.

And while state regulators disagreed, their job was to remain more or less neutral in the dispute.

Make a complaint against an architect or a home inspector in Arizona, and state regulators will investigate. Complain about a lawyer, and the bar association will do the work.

Complain about a builder? You're fighting on your own.

That's true even though Westcott's builder, Del Webb, knew that soils in Anthem were causing problems just like the ones she was experiencing.

And even though the builders' own engineers had allegedly recommended ways to keep foundations from curling, to keep walls from cracking, and to keep houses like Westcott's from falling apart -- the builder chose not to make the fixes.

Not just on Westcott's house, but on as many as hundreds of her neighbors'.

It's some pretty serious stuff, the sort of action that cries out for government attention.

But no one in power appears to be taking the problem seriously.

Not the state Legislature, which has been busy making it harder for home owners to sue their builders -- and keeping complaints about builders off the Internet and closed to the public.

Not the Arizona Registrar of Contractors, which has focused on rooting out unlicensed contractors, the fly-by-night repairmen who do \$1,000 jobs and have a tendency to disappear before the work is done. At the same time, the agency is giving a free pass to the licensed guys, even though they're at the root of what are often more serious complaints.

And certainly not the Arizona Department of Real Estate. That agency's task force is at work on a roster of recommendations for Governor Janet Napolitano, recommendations that may be designed to *ease* quality control on new developments.

That's right, ease it.

At a time when customer satisfaction with Valley builders is dropping precipitously.

The reason: To Arizona politicians, customer satisfaction is clearly not the issue. Homebuilders have juiced the state's political system with so much money and influence that the idea of protecting buyers hardly seems to register.

And so it's no wonder that even though her 2-year-old house is cracking and splitting and shedding insulation like dry skin in an Arizona winter, Melinda Westcott was completely on her own.

Arizona's economy, so the story goes, used to be dependent on the Five C's: Copper, cattle, climate, cotton, and citrus.

But most of those industries have been crippled by the facts of modern life in the West.

Water is expensive. Land is even worse. Raising cattle is no longer economical, and any smart orange farmer surely knows he can make much more dough selling out to a developer. Even the clean, dry air that used to be so good for tuberculosis patients and asthmatics is no good anymore.

A sixth "C," construction, is now the main engine driving the state's growth.

Arizona is enjoying the biggest boom in its history. The census bureau reports that greater Phoenix has a net gain of 546 people every day. Across Maricopa and Pinal counties, builders took out permits for 63,570 new homes last year alone, according to RL Brown Housing Reports.

Not surprisingly, the homebuilders' agenda has become, in many ways, the agenda of the Legislature.

"By far, developers are the most powerful entity in the state," says Sandy Bahr, a lobbyist for the Grand Canyon chapter of the Sierra Club who has frequently clashed with them. "They raise a lot of money.

"And their power comes both from the fact of this enormous amount of money -- and also because in Arizona we have so focused on not just growth and development, but on rapid growth and development."

Indeed, builders have an important job, one that all but the most annoying not-in-my-backyard whiners can get behind.

Who doesn't want a big new house, and want it cheap? For that matter, how could anyone root against the state's biggest economic engine?

The builders also have the manpower.

"They're very well organized," says Israel Torres, who until recently was Arizona's Registrar of Contractors and made a point of trying to work with the homebuilders. "They put tremendous pressure at the Legislature on several bills."

When the builders care about an issue, they can show up in force. They know how to frame their issues: In legislative meetings, they deftly play the "small business owner" card.

But while many contractors do, indeed, own small businesses, they're also part of a well-financed army.

In the last six years, they've contributed at least \$155,304 to legislative candidates and their campaigns, according to a *New Times* analysis of state elections records.

Since 2000, the trade associations representing homebuilders in Tucson and Phoenix have donated \$21,000 to the Arizona Democratic Party, and even more to the Republicans: \$33,750.

They've generously anted up for individual members of both parties, too. Builders, their political action committees, and their lobbyists have donated another \$58,954 to state legislative campaigns since 2000, according to a *New Times* analysis of state finance reports.

They've also formed their own committee to campaign directly for candidates, paying for yard signs and door hangers that politicians might not be able to afford on their own.

It adds up, especially when you consider the cost of a campaign in Arizona. A legislative incumbent can win by spending as little as \$20,000, and that's for primary and general elections combined.

The builders, too, have connections.

The list of powerful lobbyists who've been affiliated with the building industry here is a long one.

After all, it's not just the homebuilders associations that hire lobbying firms; some builders hire their own lobbyists as well. (Del Webb alone has nine lobbyists pressing its interests at the capitol, according to records, plus three big law firms.)

Working for builders has kick-started many a political career. And that means a number of politicos now hold positions where they could easily do a former employer a favor.

State Representative Jonathan Paton (R-Tucson) got his start lobbying for the Southern Arizona Home Builders Association. The House Majority Whip, Representative Gary Pierce (R-Mesa), used to lobby for the Valley equivalent, the Home Builders Association of Central Arizona.

The Valley association has friends everywhere: Its former lobbyists include Maricopa County Supervisor Andy Kunasek, Phoenix City Councilman Tom Simplot, and Mayor Phil Gordon's press secretary, Sarah Cowgill.

The homebuilders are connected enough to ensure that their reputation precedes. While Janet Napolitano, for example, has received no more than a pittance from builders, she's surely savvy enough to avoid picking a fight with them.

Look what happened when "smart growth" types pushed a statewide initiative in 2000 to control development here. The builders quickly raised \$4.7 million, according to records.

The initiative, not surprisingly, was defeated.

The central Arizona association's longtime director, Connie Wilhelm, is widely admired as one of the toughest players at the Legislature. "She's really fair, honest, and tough," says one former associate. "Some people are a little afraid of her -- but she wants to do things right. And she gets things done."

(Wilhelm initially consented to an interview, then canceled 30 minutes before it was set to begin. She then didn't respond to repeated messages attempting to reschedule.)

To builders, the Legislature matters. More than the federal government, and at times, more than its counterparts on the municipal level.

Ultimately, cities have power over the details of new construction: How many homes can go on any given acreage, and which set of standards they must follow. (See ["Through the Cracks."](#))

But the bigger picture is drawn by state decision-makers.

Highways must be built, and then expanded, to open new areas to construction. State regulators must bless all new developments, too, deeming that enough water's on tap to serve them for 100 years.

The state, too, sets the rules governing consumer protection. The Arizona Department of Real Estate supervises the soil reports that developers must commission before building new homes.

And the Arizona Registrar of Contractors licenses both builders and the subcontractors who work beneath them. The agency also enforces workmanship standards: Build a bad enough house, and your company can lose its state license.

The builders pay close attention to both agencies. (More on that later.)

In the last decade, they've also been consumed with another effort: Getting special protection that makes it harder for homeowners to sue them.

On this front, they haven't needed to work through agencies. They've been able to get exactly what they want from their pals in the Legislature -- sometimes the same people who've directly benefited from their donations.

Consider:

- In the '90s, the legislature passed a bill requiring homeowners to get testimony from experts before they could sue "licensed professionals," like builders and architects.
- The Arizona Supreme Court struck down the law in 1997, but the Legislature passed a new, less restrictive version two years later. It has withstood court scrutiny. (The 1999 law specifically did not apply to physicians. A bill giving them similar protections went down to defeat.)
- In 2002, Governor Janet Napolitano signed into a law a bill requiring homeowners to notify their builders in writing before filing suit. The bill gives the builder nearly three months to fix everything before the homeowner can file -- no matter how long they've already been in negotiations.

States like California and Nevada have well-organized lobbies to protect consumer interests. Those groups almost certainly would have opposed new laws like the ones in Arizona.

But no groups in Arizona are focused on lobbying for homebuyers here.

Homeowners Against Deficient Dwellings, the national group known as HADD, has representatives in Arizona. But while members in Texas, for example, fight loudly for consumers at the state level, and a few are even plugged into party politics, that's not true in Arizona.

Most HADD members seem to join the group after their own battles. At least two local HADD representatives have lost houses to foreclosure. They say that the exhaustion of their own battles left them too beleaguered to take on state government.

And so for the most part, the restrictions on lawsuits sailed through quietly, without organized opposition.

Take, for example, a key legislative hearing in March 2002. The Arizona House's committee on commerce and economic development was considering the bill that would force homeowners to wait, and give builders a final chance to make repairs, before suing.

A dozen homeowners spoke against the bill, according to committee minutes. They told of their experiences, their battles with builders, the fact that waiting three more months would only make things harder for homeowners who are already outmatched and running out of cash.

But more than twice that number -- builders, lobbyists, and their allies -- spoke in favor of it.

And the second group had much closer connections to the representatives on the committee.

In the two years before the meeting, the lobbyists and builders at the meeting alone had donated \$4,681 to committee members.

In the next four years, they'd shell out another \$5,563 to those same committee members -- with \$2,587 going to the coffers of now State Senator Barbara Leff (R-Paradise Valley), who chaired the meeting.

Those numbers don't include the \$49,750 that the builders' lobby gave to the state political parties during that period. Nor do they include the \$3,940 that builders have donated since 2000 to John Nelson (R-Glendale), the bill's sponsor.

As for those dozen homeowners who opposed the bill? None of them had donated a buck.

The sole professional lobbyist who opposed the bill, who was there representing a homeowners association, had donated money to various pols, but not to anyone at the meeting, according to records.

"It was like going to a trial where the jury had already made up its mind," says Mike Schofield, a Gilbert resident and HADD member who attended the meeting.

"It was just worthless for us to even be there."

The problems in Melinda Westcott's house began with the soil. Specifically, they began with expansive soils, which swell when they get wet.

The swelling can cause terrible damage to the slab of concrete and house on top of it. As the soil expands, it pushes its way up, cracking the concrete. And then, as the concrete settles and shifts, the walls crack.

Sometimes, as in the case of Melinda Westcott's home, the foundation is tough enough to stay together -- but the pressure forces it to curl up at the edges.

That can be just as bad: The walls, lifted by the curling, jar the roof. Cracks still develop. Leaks, too, are common, which can lead to mold.

Expansive soils are common in some of the hottest spots for new construction (see "[Cracked Houses," March 16](#)). Construction defect lawyers have filed class action suits in Mesa, Gilbert, Surprise, and, of course, Anthem, which has been rocked by soil problems. (To see a complete map of areas affected by bad soils, go to <http://www.az.nrcs.usda.gov/technical/soils/shrinkswell.html>.)

Indeed, according to the man whose company poured most of the foundations in Anthem, Jim Bebout, Del Webb was fully aware of bad soil there years before building Westcott's house.

Bebout, who owns Bebout Concrete, detailed the timeline in a letter to Del Webb dated last November.

By 2001, Bebout wrote, his staff had noticed that "inordinate repair requests" were coming from Anthem. The repairs were focused on "cracking flatwork and slabs, beyond what is considered normal, and necessitating significant repairs or replacement."

In his letter, Bebout alleged that Del Webb's engineers recommended using thicker slabs to prevent problems in the future.

But, he wrote, Del Webb wouldn't listen.

"Webb rejected proposals to increase the thickness of the flatwork, citing cost concerns," Bebout wrote.

According to Bebout, it wasn't until lawsuits were filed that Del Webb finally began implementing better-designed slabs.

Jacque Petroulakis, a Del Webb spokeswoman, notes that Bebout's letter only came to light because of litigation -- suggesting that the circumstances may make his claims suspect.

After Del Webb was sued in an expansive soils case in Sun City Grand, the builder turned around and sued its subcontractors, including Bebout. It was at that time that Bebout filed the letter in court, along with an affidavit detailing similar concerns.

"We dispute these allegations," Petroulakis wrote in an e-mail to *New Times*. "We work with professional geotechnical and construction engineers in designing our homes. The structural integrity of our homes is beyond question and is well documented."

But regardless of what happened with Westcott's foundation, several things are clear: Del Webb knew it had a problem in Anthem.

And rather than address Westcott's complaints, Del Webb chose to downplay them.

This is what happened:

Since Westcott had only been living in the house for a few months when she noticed the cracking, her two-year warranty was still in effect.

And so on January 14, 2005, five months after she'd moved in, Del Webb sent two consultants to St. Exupery Drive to take a look.

Ten days later, Anthem's general manager, Diane Brennan, sent Westcott a letter, summarizing the consultants' findings.

There was some soil movement, Brennan wrote, but "long term movement evident in your home should be minimal."

Brennan noted that one of the men who examined Westcott's home, Ken Mulder, "a structural engineer," had found cracking due to the foundation lifting.

But, Mulder had added an important caveat. Brennan reported: "[T]he structure of the home appears to be performing satisfactorily and within design parameters."

Mulder, Brennan added, felt that some of the cracks were unrelated to the soil. They were "more likely related to normal material shrinkage common with new construction in our region."

Brennan concluded with an offer: The company would repair the drywall. And, "as a gesture of goodwill," Brennan wrote, it would install gutters on the home.

Westcott was livid.

"Gesture of goodwill!" she scoffs.

The letter made her angry, but she was positively livid after doing some online research. As it turned out, Ken Mulder wasn't a structural engineer.

He wasn't an engineer at all.

As a company staffer later admitted to her, she says, they'd "misstated" Mulder's credentials.

(Petroulakis, the Del Webb spokeswoman, notes that Mulder has been an executive at an engineering company for 20 years. Also, she says, the other man who inspected the home for the company is, actually, an engineer.)

By that point, Westcott had concluded that accepting the company's offer of gutters would not be enough to fix her house.

She'd consulted a lawyer or two.

They had told her that she needed more than a few patches. If she didn't replace the soil under the house, they said, or treat it so that it stopped swelling, there was no point in making repairs.

But Del Webb -- as evidenced by its "gesture of goodwill" -- was hardly volunteering to make that happen.

And while a major class-action lawsuit was pending over the soil problems in Anthem, Westcott discovered her problems too late to get her home included in it.

The lawsuit, filed in 2003, is still ongoing. But it involves houses built in the first phase of Anthem construction, in 2001. Westcott didn't even purchase her home until 2004.

By that point, as is required by law, the judge had already closed the case to additional homeowners.

(Doug Lusson, the attorney handling the case for the homeowners, did not return calls for comment. Del Webb's attorney, Roger W. Strassburg, referred calls to the company's spokeswoman, Petroulakis.)

The attorneys who met with Westcott both suggested she organize her neighbors into another class-action case. The builders would fight any suit tooth and nail, so it simply wouldn't be cost-effective to represent one woman alone.

In class-action cases, it's the lawyers who generally cover the litigation costs, which makes them a much more affordable option.

But that seemed like a lot of work for an uncertain payoff -- and Westcott didn't really want to file a lawsuit anyway.

Her best option, she decided, was the Arizona Registrar of Contractors.

That agency, which licenses homebuilders across the state, also accepts complaints about their work.

If a builder fails to fix a house to minimum standards, the state can suspend its license or even issue a fine.

In April, Westcott filed her complaint.

A few days later, the state inspector issued his report. He found cracking, settling, and bad drainage. He confirmed that Westcott's windows and doors were out of kilter and that insulation was falling from the attic into the rooms and closets, according to his report.

And, he wrote, "the foundation is moving or warping."

He gave Del Webb 15 days to fix the problems, the required time under the state's policy. If the company didn't fix them, it could lose its license.

It sounded good, from Westcott's perspective. But it was really just the first step in what would prove a very difficult process.

Had Melinda Westcott been pursuing a case against, say, her landscape architect, she could have rested easy. A state agency would have done the work for her.

It's different for the builders.

The Arizona Board of Technical Registration licenses professionals like home inspectors, architects, and engineers. And like the Registrar of Contractors, the agency takes complaints from the public.

But from that point, everything is different.

Kathryn Fuller, the board of technical registration's investigations manager, explains that if Westcott made a complaint against an architect, her agency's staff would investigate.

If the staff determined that the architect's work was deficient, they'd bring him before an "enforcement advisory committee" of his peers.

The peers ask questions and probe the case; Westcott would simply be one of the witnesses.

From there, the committee could recommend discipline. It could be as much as \$2,000 per violation -- and, Fuller notes, a single case can involve multiple violations.

Frequently, the committee also demands that licensees get continuing education in the area where they screwed up. They can also be ordered to pay restitution and cover the cost of the agency's investigation.

And even if Westcott decided that she wasn't interested, or if the architect offered her cash to close the matter, that wouldn't be the end of it.

"The state becomes the complainant," Fuller explains. "Just because they have a settlement doesn't mean that they don't need peer review, or education."

It couldn't be more different from the situation at the Registrar of Contractors, which governs homebuilders.

Take the case of Todd Seifert. The 38-year-old dispatcher moved with his wife and daughter to a new house in an unincorporated area just outside Litchfield Park, west of Phoenix, in 2003.

In just a few months, he was noticing the telltale signs of expansive soil: The doors wouldn't open, the walls were cracking, and some walls had shifted away from the foundation.

After getting no satisfaction from his builder, Ryland Homes, Seifert filed a complaint with the Registrar.

An agency inspector looked at Seifert's home. But while the inspector confirmed there were problems, and that those problems were caused by expansive soil, he was sympathetic when Ryland said it would need nine months to fix them, Seifert says.

Seifert was skeptical, but agreed to the plan.

No one from the Registrar ordered the company to pay a fine. No one threatened its license.

Nine months later, when Seifert contacted the Registrar to complain that his house still wasn't fixed, he says that they told him that the agency had dropped the complaint.

He'd have to refile.

So he filed his complaint, again, and again the inspector found problems caused by expansive soil.

Indeed, the builder's own pre-construction report notes the presence of expansive soils on site. It had called for the soil to be compacted and the roof runoff to be directed "away from the structures . . . during construction as well as throughout their life."

That meant gutters.

But Seifert had no gutters.

Again, no one from the Registrar's office offered to investigate the case further, to see if the builder had used the wrong type of foundation, or even to "educate" him about why gutters were important.

If Seifert wanted to pursue a claim, he had to do the investigating himself.

And that's how it works, as a matter of course, at the Arizona Registrar of Contractors.

Inspectors are supposed to determine whether there's a problem, but they're not supposed to develop a case against a builder.

Instead, they tell the builder to fix it. They don't specify *how*, just that it needs to be done to minimum state standards.

And if the homeowner isn't happy, or if the builder doesn't come through, it's the homeowner's job to take action.

It's the homeowner who has to go before the judge and argue that the builder screwed up. It's the homeowner who has to make the case that the state's standards were violated.

In front of the judge, inspectors are not supposed to advocate that the builder be punished. They're supposed to answer questions, but keep it neutral.

And though a builder's contract is typically many times bigger than a landscape architect's, the maximum civil penalty a builder a judge can recommend for a builder is just \$500.

That's one-fourth of what an architect can get slapped with.

It's also significantly smaller than the maximum penalty in other states: In California, the maximum penalty is \$5,000. In Nevada, it's \$20,000. (Also, while Arizona only accepts complaints for two years after construction, both California and Nevada take them for four.)

Ultimately, the Registrar can choose to suspend or revoke a builder's license, but that's a fairly extreme step. It doesn't typically happen because of a homeowner's workmanship complaint.

Perhaps no one better understands why than the state inspectors.

Clarke Booth recently resigned after two years as an inspector with the Registrar, to pursue a career in the private sector.

He explains, "If the builder makes even a halfhearted attempt to solve the problem -- if there's any evidence they've lifted a finger -- the chances are, the judge won't recommend revoking the license."

Booth and other people familiar with the system say it's designed to get houses fixed, not to discipline builders.

At every step of the process, there are opportunities to go back to the table, to give the builder more time to fix the problems, to work things out.

That's not a bad thing, necessarily. Most homeowners don't want a builder's license yanked; they want their houses fixed.

The problem is that builders seem to have little incentive to hustle. As long as they stay involved, they know they're not likely to lose their license. Fines are incredibly rare.

Even for homeowners who understand that construction fixes aren't easy, it seems to take forever.

That's where Todd Seifert is today. More than two years after he filed his initial complaint, the builder has acknowledged that there's a serious problem with the soils beneath his foundation.

According to their settlement agreement, which avoided a formal hearing, Ryland will move the Seiferts and all their belongings into an apartment for three weeks, remove their home's foundation, and fix the soil underneath.

But while the parties signed the agreement last August, it hasn't happened yet. The soil is still moving; the engineers thought it best to hold off on the work until it stabilizes.

Blake Reheis, director of operations for Ryland's western region, says the company has offered to do cosmetic patching in the meantime, even if it has to be done again after the soil fix.

"The Seiferts are a wonderful family," he says. "I think, eventually, they'll be able to say they were happy that they bought a Ryland home. We'll get there."

He notes that the company has also installed gutters and downspouts, at its expense. It didn't install them initially, he says, because it's just not "standard practice" in this area.

Reheis insists that the company does follow the recommendations of its engineers. He adds that Ryland would have done all the remediation it's doing now, even if Seifert hadn't gone to the state registrar: "I'm confident the end result would be the same, whether the Registrar was involved or not."

With expansive soils, Reheis says, you can do everything right and still have problems. "Even going above and beyond what's called for, there may be still be a handful of houses that have problems. With Mother Nature and these soils, it's a challenging thing."

Todd Seifert is trying to roll with the process. He can understand why the engineer has suggested waiting -- but he's incredibly frustrated.

He'd planned to sell his house, to upgrade to a custom home after just two years. But he can't sell. He's stuck.

And he's convinced that if he doesn't stay on the matter, and keep nagging his builder, nothing will ever happen.

"It's just emotionally and physically draining to go through this," he says. "My wife and I have been on this roller coaster three years."

The agency has never asked for a civil penalty against the builder. It has never moved to suspend its license.

And, if you check the Registrar's Web site, it lists no open complaints against Ryland, only 10 that have been "resolved/settled/withdrawn" -- one of them being Todd Seifert's.

In almost every regard, Todd Seifert's case is not unusual.

According to statistics from the Registrar, the agency received 9,903 formal complaints against builders in 2005.

It ordered fines in 119 cases -- just one out of every 83.

State inspectors say that isn't because the complaints are spurious. They may joke about "getting the ROC discount," because there is a percentage of homeowners who want to use the process to get money from their builder. But they believe that's less than 10 percent of the cases, at most.

For the most part, Registrar employees believe, the problems are real.

The reason that most never end in discipline? Few ever make it to a hearing. Roughly four of every five complaints are dropped by homeowners before they get that far.

Sometimes they just give up. The process isn't easy, and it relies on homeowners who are willing to push, and to keep pushing.

Often, though, just the threat of a hearing can bring a builder around. Hearings always start with the judge asking if both parties are willing to negotiate privately, one more time. It's a rare builder who isn't.

Bill Albright, who runs the Registrar's legal department, believes that's a good thing. "We try to help resolve complaints," he says, adding that it's in the best interest of the homeowner to solve things quickly.

But there's a bigger picture beyond resolving things for the homeowner, as the Arizona auditor general has concluded.

After all, the auditor wrote, there should be two parts to the Registrar's job: Helping the homeowner, *and* disciplining the builders.

That finding comes from a 2003 performance audit of the Registrar. The auditor general's chief complaint in that report: The Registrar did too little to help consumers.

The auditor noted that the Registrar closes complaints once the homeowner is satisfied. But that system ignores contractors who do terrible work, or make the same mistakes repeatedly, so long as they eventually make corrections.

"This process allows contractors to commit multiple violations but never receive discipline," the report concludes. "While the complainant may be satisfied, this process fails to protect future consumers who may hire such a contractor."

The audit was released during a time of transition at the Registrar's office. Michael Goldwater -- son of Barry and appointee of Governor Fife Symington, himself a developer -- had recently resigned. Governor Napolitano had appointed a young lawyer named Israel Torres, previously a hearing officer for the city of Phoenix planning department, to take his place.

Torres, a personable, articulate guy who calls himself a "pro-business Democrat," promised to act on the auditor's findings.

In particular, he responded by outlining a plan to discipline problem contractors.

But the plan didn't fit the problem.

In his response to the audit, Torres wrote that his legal staff would monitor cases due for a hearing. If a builder settled more than six cases just before a hearing in any one year, the agency would look at the cases and decide whether to cite the builder.

But, as Torres' staff now admits, the program never really got off the ground.

As head of the legal division, Albright says he monitored incoming cases for "several months."

He only spotted one contractor who seemed to fit the profile.

"I never found a contractor who in my understanding was just using the system that fashion, other than that guy," Albright says. He now concedes that the idea of pursuing claims, either with a complaining homeowner or on its own, isn't an agency priority.

So why not develop a system that actually catches problem builders? Albright acknowledges that the agency could monitor every complaint that's filed, not just the one-third that make it to the hearing stage.

If the goal was to bust people, he admits, they'd probably find people to bust.

But that would strain the office's resources to the point of breaking.

The Registrar's legal staff, he notes, has "one lawyer, one gentleman who serves as a paralegal, an office manager, and two ladies who process the 3,000 cases that come in for a hearing."

It's no wonder the agency relies on consumers to act as their own attorneys. Monitoring all 10,000 complaints, Albright says dryly, "would be very difficult."

Booth, the former inspector, blames finances: "It has to be a complaint-driven process. If they started seeking out cases, they would quickly be broke. There's no budget for it."

But that's not the agency's attitude toward unlicensed builders. There, the agency is only too willing to "seek out" cases.

As Albright explains, agency investigators regularly operate stings against unlicensed contractors. For example, they search the billboards at home improvement stores for ads from guys without a license. They'll actually call the guy and offer him work; if he shows up and agrees to take a job worth more than \$750, he gets arrested.

Investigators also "sweep" every job site in a given area, checking that the guys on the job have the right paperwork.

Albright believes such activity has a chilling effect: A builder will think twice about using unlicensed workers if he knows the agency is on the case.

"Our sweeps have not necessarily got a whole lot of unlicensed contractors," Albright explains. "We looked at 298 sites in Casa Grande, and we got six unlicensed violations. But we get the word out."

Rooting out unlicensed contractors, even without a homeowner's complaint, takes up a good chunk of the agency's resources: It employs 26 "investigators" to bust unlicensed contractors -- and just 28 inspectors to examine the 9,000 complaints against licensed builders.

Torres, who recently resigned from the Registrar's office to challenge Jan Brewer for secretary of state, says he believes the agency does a good job of protecting consumers.

It's also important, he says, to work with builders.

"We never wanted to be for the consumers, and say to the building industry, 'We're here, deal with us.' We wanted to be a partner."

Torres was popular with his staff. Even inspectors like Booth, who had a reputation for being tough on builders, say he was a good man to work for, and a big improvement over Goldwater.

But the agency could definitely do more to help consumers -- as the auditor general's report makes clear.

The report suggested two ways that the agency could get information to consumers who want it: Better Web disclosure, and eliminating its "informal" complaint process.

For years, the agency has offered a special program that lets homeowners make "informal" complaints against their builders. The inspectors take a look, as with formal complaints, but the complaints never become part of the builder's record.

Nothing in the law, the auditor noted, allowed the Registrar to investigate such complaints. Furthermore, the process concealed information that ought to be available to consumers.

"[B]ecause the results were not publicly reported, other consumers could not use the information in choosing a contractor," the auditor's report concluded.

The builders, though, were intent on keeping the program.

Even before the auditor's report was released publicly, before Goldwater resigned, the House began considering legislation that would allow the agency to keep taking informal complaints.

The final bill officially authorizing the program was signed by Governor Napolitano in May 2003, two months after the auditor's report was released, according to records.

And two years later, despite the auditor's concerns, the Legislature quietly agreed to expand the program. Previously, informal complaints could only cover up to five "construction issues." The new law allowed "an unlimited number," according to the House Bill Summary.

Naturally, the "informal" complaints were only useful if they could be kept from the public. The bill included a special secrecy provision, barring the Registrar from releasing information about informal complaints on its Web site.

Governor Napolitano signed the bill into law that spring.

There is no record that the Registrar opposed the secrecy amendment. In an interview, Torres says he believes the agency fought the provision, but when his spokeswoman was asked to provide details, she never called back. (Audio tapes from one legislative committee meeting record the provision being discussed, with no argument from the Registrar's lobbyist, who was present.)

And though the auditor's report also suggested that the Registrar put formal complaints online, that never happened either.

It wasn't wholly the Registrar's fault.

In 2004, the Registrar submitted a \$412,000 proposal to put complaints online, says D.J. Harper, a spokesman for the state's Government Information Technology Agency, which supervises new technology projects.

The Legislature chose not to fund it.

Six months later, though, when the Registrar proposed a \$600,000 Web project, funding was approved immediately, according to records.

That difference?

The first project was against the wishes of the homebuilders.

The second project, the one that got funded, was not: It allowed builders to renew their licenses online.

The online registration system went live last August, Harper says.

As for the online complaints, well, no one's said a word about them since.

Like many homeowners, Melinda Westcott showed up for her hearing over her housing complaints seriously outmatched.

She brought a boyfriend. Del Webb sent a lawyer and two engineers.

(This time, they were both actually engineers.)

After state inspectors had confirmed that Westcott's problems were serious, the company made a much better offer than its previous "goodwill gesture" to patch her cracks and give her gutters. They wanted to inject the soil under her home with chemicals to stabilize it.

Del Webb has used the technique in at least 100 homes in Anthem, according to a filing from its lawyer in an unrelated court case.

But it remains somewhat controversial among construction defect lawyers: Some of them say the only real remedy is to replace the soils beneath the foundation with ones that won't swell. The chemical injections, they say, may not work over time.

Westcott was unsure, and more than that, her annoyance had hardened her.

She hadn't been able to enjoy her home for a full year. She'd also been cited by her homeowners' association for failing to put in landscaping. (Builders frequently blame soil problems on the landscaping, and she wanted to make sure Del Webb had no out.) She'd missed numerous days of work -- 33, by her count -- to let the builders into her home to make repairs.

"They were out here for the door alone six times," she says.

She wanted the builder to feel the hit. It seemed wrong that the only question was whether Del Webb fixed the house, and not whether it messed up in the first place.

But when the administrative law judge, Sondra Vanella, asked if Westcott would be willing to negotiate with the builder in private, she consented. She knew she had little chance of the builder's license being yanked.

They met for more than two hours that day, and this month, Del Webb's lawyer asked for the case to be continued so they can continue talking. The next hearing is now set for May; Del Webb spokeswoman Petroulakis says the company is hopeful for an agreement.

By May, almost a year will have passed since Westcott filed her complaint. She's still got the crickets. She's still got the cracks and, ostensibly, the curling foundation.

But she knows she doesn't really have a choice other than to keep negotiating.

It's not like she can sell the place.

"I talked to some real estate people, and none of them would list it," she explains. "They said, 'It's not sellable. Even if you went with a reduced price, you'd have to disclose it. And once it starts cracking more, they're going to sue you.'"

She sighs.

"This is the first brand-new home I've ever had, and it's been a nightmare."

She thinks she's close to an agreement, and her goal is to take it, get the house fixed, and get out. She thinks she'll move back to Prescott.

"I want to sell the house and get out of here," she says.

For years, lawyer Jim Eckley has been fighting with the Registrar of Contractors. Because he fights for homeowners -- and because he's a true believer when it comes to that cause -- he's long believed that the agency has been co-opted by builders.

He blames political pressure. The builders are pals with the Legislature, he says, so Governor Napolitano has no interest in picking a fight with the builders.

And she's got the power to fire the Registrar.

After awhile, he says, the Registrar's interests become the builders' interests.

"This is like *Animal Farm*," he says. "The pig starts to look like the farmer before long."

Last month, Eckley got some information that made him shift his original focus. He learned that the Arizona Department of Real Estate had quietly established a special task force.

The focus was on subdivision reports, which builders must file before construction. Since they must include a soil report, the subdivision reports are often key in expansive soils cases. (The report checks for expansive soils and tells the builder how to deal with them: gutters, or a stronger foundation, or excavating the soil entirely.)

Real estate staffers make sure the report is thorough and professional, says Cindy Ferrin, deputy director of the agency's subdivisions division.

But even though builders hire the engineers who write the reports, construction defect attorneys say that, time and again, the engineers' recommendations are not followed.

It seldom becomes a governmental matter. Ferrin says that only "once in a blue moon" does her office refer a case to the attorney general because the report hasn't been followed.

Lawyers like Eckley would like to see that change. They'd like to see consequences if the report is ignored.

That would be a good topic for a task force. But that's not what the "Subdivision Stakeholders Task Force" had in mind, not at all.

The task force's goal, admits its chairman, Gary Brasher, is *speeding up* the reporting process. As Ferrin has acknowledged, report review can take up to 100 days -- something the builders haven't been crazy about.

The task force chairman, Brasher, says it will be two weeks before the task force's own report is ready. Until then, he won't talk specifics.

(Nor will the department's spokeswoman, Mary Utley, who says she doesn't even have access to the membership roster.)

But the title makes one thing clear enough: It's the "stakeholders" who are running the show.

And by stakeholders, the real estate department doesn't mean consumers, who have to deal with what happens when builders don't follow the reports.

Or construction defect attorneys, who litigate these matters every day.

Or even the Registrar of Contractors, who's had to handle thousands of cases after soil reports are ignored.

Instead, according to the membership roster, which *New Times* obtained, it's got one real estate analyst and a representative from the Arizona Association of Realtors. It's got one title company executive, one real estate broker, and one broker/developer.

And it has no fewer than three representatives from the homebuilders' trade associations.

There's one from Flagstaff. One from Tucson. And one from Phoenix.

"The Department is handing developer regulation over to the developers," Eckley says.

He's most aghast that the real estate department refers to the homebuilders as its "stakeholders."

"Nothing whatsoever is owed them. It is they who owe the public a sound project, with full and accurate disclosure of any shortcomings in it, and the real estate department is there . . . without mercy for anyone other than the consumer, to see that this happens."

But Brasher cautions that no one should worry. The task force report will hardly become law overnight. The group's focus is on speeding the process; the real estate department, he says, surely has a different goal.

"The Real Estate Department must, above all, protect the public," he says. "I'm sure there will be some tweaking done so we accomplish both goals."