

HOME INSPECTIONS QUANDARY

By Israel G. Torres, Director
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The mission of the Arizona Registrar of Contractors is to promote quality construction through a regulatory system designed to protect the health, safety, and welfare of the public. To that end, our office has established several advisory councils to create dialogue and interaction with our statewide consumer and industry stakeholders. One of those councils is the *ROC Consumer Advisory Network*.

This advisory body consists of various statewide consumer advocacy group representatives. Due to their roles in addressing consumer concerns, they have a tremendous working knowledge of the important issues that impact the construction industry. Recently, there has been emerging chatter about statewide homebuilders that create barriers or outright deny access to home inspectors who are employed by homebuyers to inspect the property during the course of construction.

At this point, there are more questions than answers when addressing this issue. In fact, there are several state agencies including the Arizona Department of Real Estate, Arizona Board of Technical Registration, Arizona Attorney General, and the ROC that provide different aspects of regulation related to this issue.

Although some might argue that this is a contractual issue to be negotiated by the parties at the time the initial construction and purchase contracts are agreed to, this view does not account for the practical realities—especially the difference in leverage the parties may have. Put another way, consider the minimal leverage of an average tract homebuyer who is dealing with a large, maybe multi-state, builder/developer who owns the property and sets many of the terms. Contrast with the substantial leverage of a wealthy homebuyer who owns property and sets many of the terms for a custom home.

This gives rise to many questions: may the developer who owns the property simply deny access to a properly registered home inspector? May the homebuilder require that the home inspector obtain a prohibitively high insurance policy as a condition to access the job site? May the owner of the property claim to the purchaser that certain warranties may be voided by the presence of the inspector on the property?

These questions are only a few raised by this issue. From the standpoint of the ROC, it would appear there are at least two regulatory statutes in play. The first would be A.R.S. § 32-1154(A)(1) that makes it a violation for a licensed contractor to abandon a contract or refuse to perform without legal excuse. An “abandonment” might be deemed to have occurred where, for instance, a contractor refuses to continue a project in some way because of an inspection access dispute. Should a complaint be filed against a contractor’s license, the matter would be subject to factual and legal determination by an administrative law judge, but if that judge found an inappropriate abandonment, that licensee would be subject to sanctions. The second would be A.R.S. § 32-1154(A)(7), which makes it a contracting violation for a contractor to commit a wrongful or fraudulent act that substantially injures a person. This broad language may lend

itself to any number of factual and legal determinations that an administrative law judge finds applicable.

While this issue becomes more prevalent, I look forward to substantial dialogue with statewide stakeholders including government, industry, and consumers. A constructive balance between good quality workmanship without onerous infringement will ultimately serve the mission to promote quality construction and leave a legacy in the construction and homebuilding industry we can all be proud of.

Israel Torres was appointed Director of the Registrar of Contractors by Governor Janet Napolitano at the beginning of her term in 2003. This article was originally published in the *Arizona Journal of Real Estate and Business* in September of 2004.