

April 2006



WHO PAYS FOR FAULTY CONSTRUCTION?

How North Carolina Families Bear
The Burden Of Shoddy Building Practices

NCPIRG Education
Fund

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North Carolina Public Interest Research Group
Education Fund

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The views and opinions expressed here are those of the author and do not necessarily reflect the views of individuals who provided review and input for the report. The recommendations are those of the NCPIRG Education Fund. Any factual errors are strictly the responsibility of the author.

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Executive Summary

Owning a home is the most important investment many families will ever make, but it is one of the least protected products on the market.

When homeowners in North Carolina suffer because of mistakes made by builders, they face a variety of unfair and unnecessary obstacles, and have too few tools to hold builders accountable. This report examines five case studies in shoddy construction and makes recommendations for homeowners and policy makers to protect home investments. Below are summaries of two case studies:

The Gilberts

The Gilberts purchased a \$500,000, custom built home, which after completion had 31 building code violations. The builder refused to fix the problems, didn't have liability insurance, and filed for bankruptcy, which means that even if the Gilberts win a lawsuit, it's unlikely they'll receive any money from the contractor.

The Gilberts could apply for relief from the state's homeowner's recovery fund, but the application procedure first requires them to obtain a court judgment in their favor. Even then, there is an extensive waiting list and very little money in the fund. The

value of their property has dropped from \$500,000 to \$137,000 and the Gilberts have had to spend most of their savings on legal costs.

The Smiths

Looking for a place to retire, the Smiths purchased a new home built by a large tract builder in the state. After moving in, the walls cracked, the porch separated from the house, and the columns supporting the house began to shift. After years of band-aid fixes, the home is still unfit for habitation.

Unfortunately, the builder included clauses in the Smiths' contract that waive the homeowners' implied warranty and lock them into binding arbitration. This means that the Smiths must agree to the repairs deemed necessary by an arbitrator and have no legal recourse should the arbitrator rule against them.

Policy Recommendations – The Homeowners' Bill of Rights

The Homeowners' Bill of Rights is a set of policy solutions that will provide homebuyers and homeowners with the ability to protect their investments.

Hold Builders Accountable for Shoddy Work

- Builders and contractors should not be able to contract away a homebuyer's implied warranty.
- Homeowners should have the ability to hold builders accountable for latent defects for up to ten years.

Reform Licensing Requirements for General Contractors and the Licensing Board for General Contractors

- Contractors must have a license to perform any work that costs more than five thousand dollars. Current law allows anyone with a hammer and nails to do work that costs less than \$30,000, which leaves homeowners vulnerable to scams and incompetence.
- The Licensing Board for General Contractors should include at least three consumer representatives to serve as watchdogs for the public.

Provide Consumers with the Ability to Protect their Investments

- Builders should be required to purchase comprehensive liability insurance to cover construction defects.
- The eligibility requirements for the Homeowner's Recovery Fund should be changed to ensure that consumers deserving of relief are not precluded from seeking it.
- Homeowners should be able to hold accountable the manufacturers of building components in addition to general contractors. When specific parts (i.e. stucco or piping) malfunction and damage a home, homeowners should have the right to hold manufacturers accountable.

Advice for Consumers

Recommendations for Homebuyers

Too often buyers of new homes assume that their home is well built simply because it is new. Homebuyers can do a simple set of things to ensure that their new home is sound:

- Hire a private inspector or structural engineer to inspect the house;
- Research the builder through the local Better Business Bureau or General Contractors Licensing Board;
- Hire a real estate attorney to thoroughly examine the contract to ensure that all warranties and rights are protected.

Recommendations for Victims of Shoddy Homebuilding

- Be persistent and get correspondence in writing;
- Contact the Attorney General's office, the Better Business Bureau, and your state representative;
- Consult an attorney.

*For a more comprehensive list, visit www.ncpirg.org or see p. 19 of this report.



Introduction

Owning a home is an important part of life for North Carolina's families – nearly 70% of the state's residents live in a home that they own.¹ Furthermore, North Carolina's population is growing at the seventh fastest rate in the country² and we're building homes at the fifth fastest rate in the country to accommodate new residents.³ Yet, homeowners in North Carolina too often don't have the ability to protect their investments.

Owning a home provides a sense of security and stability that renting cannot match. Additionally, homeowners have control over their environment and the ability to change their surroundings to make them safer and more comfortable. Most importantly, homes are the nucleus of society; they are where North Carolinians raise their children and build their families.

Unfortunately, owning a home today is a perilous business. While most families who buy a new home are happy with their purchase, the facts show that some builders cause homeowners serious headaches.

- In 2004, complaints about home repair and home construction ranked 9th on the Attorney General's consumer complaint list.⁴
- In 2005, complaints about home builders and general contractors ranked in the top 10 in the Better Business Bureaus for Charlotte, Greensboro, and Eastern North Carolina (including the Triangle area).⁵
- In 2003, Criterium Engineers, a national inspection firm, surveyed their staff and found that 18% of homes built in the Southeast US have at least two serious defects.⁶

These statistics indicate that while shoddy construction is not widespread, neither is it isolated. But the larger and more important problem is that in the face of defective construction, homeowners have virtually no ability to hold builders accountable and to correct the problem. This report examines a series of case studies that illustrate serious deficiencies in a family's ability to protect their home.

The Gilbert Family⁷

Chris Gilbert moved his family to coastal North Carolina to raise his children in a quiet comfortable community. He bought a custom-designed, brand new home on Ocean Isle Beach for about \$500,000.

Mr. Gilbert was born in Wilmington, North Carolina. Prior to returning home, he was a communications engineer in California, when there was a shooting at his office in which an employee shot Mr. Gilbert numerous times. Mr. Gilbert is now disabled and unable to work because of the injuries he suffered; indeed, the doctors said it was a miracle that he lived. After marrying and having children – Savannah, 7, and Nathan, 8 – he wanted nothing more than to move back home to enjoy a quiet life. Unfortunately, Mr. Gilbert’s experience in North Carolina has been anything but quiet and relaxing.

Bad Building

As a responsible consumer, Mr. Gilbert was often on the building site overseeing the construction of his new home. He noticed what seemed to be a divergence from the original building plans and pointed them out to the superintendent. The builder, Ross-Markham, said Mr. Gilbert had purchased bad plans and that the company was going to do the best it could to make the plans work.

Later, Mr. Gilbert took the plans to an architect who informed him that the plans were sound and up to code, so long as they were followed. But during the inspector’s framing inspection and final inspection, the county inspector didn’t even have the plans with him and took just minutes to examine the entire house.

When Ross-Markham declared the home finished, the downstairs ceilings were two feet higher than the blue prints dictated, the roof wasn’t properly fastened to the rest of the house and the entire frame of the house was defective—the wall height

violated the building code by one foot and in one place by more than ten feet. Ross-Markham hadn’t even hired an engineer to approve the major changes made in roof construction.

Mr. Gilbert filed a complaint against the county inspector with the N.C. Code Officials Qualification Board, which then sent an investigator who found 31 code violations, including a set of temporary construction stairs that had been left attached to the back of the house.⁸ The estimated cost to repair the roof alone was \$365,000.

Mr. Gilbert then called on two separate engineering firms to look at his home. One of the engineers that surveyed the home was from Boise Cascade, whose building products were used in the construction of the roof. He states in his engineering report that “the Boise AJSTM roof joints as installed were grossly misused” and that “the residence is unsafe for occupancy.”⁹ Similarly, an engineer from Dudek Consulting, P.C., states that “it is the conclusion of this evaluation that the roof has been constructed in a manner that is structurally unacceptable” and that “this residence is unsafe for occupancy.”¹⁰

Both engineers were shocked at the horrible quality of construction and that he and his family were still even living in the home. They recommended the family evacuate the home if winds ever exceeded 60 mph. The value of the home has now dropped to \$137,000, not much more than the value of the property the house sits on.

The Rip-Off

No one has accepted responsibility for what has happened to the Gilbert family. The builder, Ross-Markham, refused to fix the extensive defects and is now bankrupt due to another faulty construction job in Raleigh in which the bonding company seized all of the company’s assets. After three years, the Licensing Board for General Contractors has refused to strip the builder of its license, despite obvious misconduct and negligence.

No one has accepted responsibility for what has happened to the Gilbert family

The county inspector, who missed 31 code violations, was suspended for two years for gross negligence and gross incompetence, but the county has refused to file a claim with their insurance to cover the repairs to the Gilberts' home. The county attorney, who originally assured Mr. Gilbert that the county's insurance would cover the defects if the inspector was found guilty, is now refusing to honor that commitment.

The Loophole

Left with no other options, Mr. Gilbert has taken the builder and Brunswick County to court. The county refuses to settle the case because it claims doing so would set a precedent for others to follow suit. In fact, they plan to file a motion for summary judgment because they claim governmental immunity.

Unfortunately, because the builder is bankrupt, it is unlikely that Ross-Markham would ever be able to pay the Gilberts back for their losses. The Gilberts have not applied for relief from the Homeowner's Recovery Fund as yet because they first have to obtain a judgment from the court. Even if the Gilberts are successful in court, they are stuck on a waiting list, the fund is low on money, and it is administered by the same Licensing Board for General Contractors that refuses to revoke the builder's license.



Improper Roof Construction: Two inspection firms, including one that produces the products used in the Gilbert's roof, concluded that the roof is so poorly attached to the rest of the house that it is unsafe to live in.

What does this mean for the Gilberts?

To pay for legal fees, Mr. Gilbert has had to spend nearly all of his savings. The dishonesty and incompetence of the builder and county have left the Gilbert family with a defective home, excessive stress, and stretched finances.

The Gilberts family and all North Carolina homeowners deserve better.

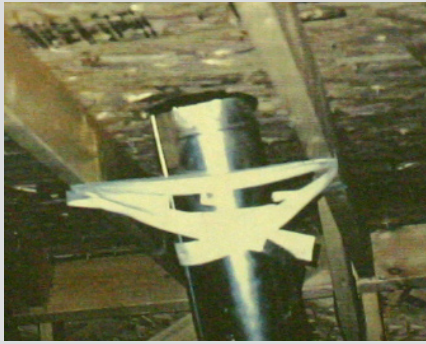
The Daniel Family¹¹

Lisa Daniel, born and raised in Wayne County, NC, near Goldsboro, wanted to build a home on land that her family has owned for over 100 years. She hired Jeff G. Moore to begin building her home on April 20, 1999 and on May 7th put down a \$20,000 down payment.

Bad Building

During the first week of August 1999, Lisa noticed that the vinyl flooring in the bathroom was crooked. At first, Lisa thought the flooring installers made mistakes, but then realized that the wall was actually built on an angle.

The next week, Lisa's husband, Paul, asked Moore, the contractor, about the lopsided wall. According to Paul, Moore explained: "I got off 5 inches on that front corner, 5 inches too big, and the framer worked it out in this bathroom." Neither Lisa nor her husband could make sense of this explanation, so they called the framer of the house. The framer stated "it's not 5 inches too big, it's 5 inches too small and that's not the only place that it's off. He miss-measured that whole house. Every-time I tried to square one room up it threw the next room off. I told him about every place in that house that was off." The framer stated that he told the contractor that he should tear down the foundation and start over on the first day of framing, but the contractor told him to "work it out." He called him again the second day of framing and Moore said, "I told you to just work it out."



Range hood vent pipe improperly secured to rafters and partially venting into attic space

After their conversations with the framer and the contractor, the Daniels decided to measure the rooms of their home to see the extent of the problem. They discovered that several of the rooms not only didn't match the blueprints, but were also at odd angles. Then, with the help of a private inspector, the Daniels discovered that a heavy, load-bearing wall was not positioned over a supporting pier – the first of what was to be over two dozen code violations.¹²

The Daniels then hired R.V. Buric Construction Consultants, Inc. from Wilmington to inspect the home. The news was not good. In the conclusion of the engineering report, the project consultant writes that “to perform the recommended repairs, the removal of walls, floors, and foundations will be required. In essence, the building must be completely demolished, foundation engineered, and structure rebuilt. The costs to perform this work will far exceed the costs for original construction of this residence.” In all, R.V. Buric discovered 27 code violations.

The Rip-off and the Cover-up

Lisa Daniel then filed a complaint with the Licensing Board for General Contractors against Jeff Moore. The investigator from the Licensing Board called Moore, who claimed that nothing was wrong with the home and that he has a certificate of occupancy (CO). However, the inspector found numerous code violations, all of which resulted from the foundation of the home being built out of square. The investigator then called the Wayne County

inspection department and asked how they had issued a certificate of occupancy for a house that was obviously not up to code.

The inspector, Joe Nassef, then claimed he had never done a final inspection or issued a certificate of occupancy. This claim seemed unlikely, because the builder claimed to have a CO and because the permanent power was turned on, which, according to Progress Energy, can't be done without proof of a CO. The investigator then went to the county inspection department to look at the records, but the sign-off sheet was missing as was the inspection box from the job site. Later, Moore claimed that he “misspoke” and that a CO was never issued. This instance of collusion between the county and the builder was the beginning of what turned into a troubling pattern over the course of several years.

During both the hearing before the Licensing Board of General Contractors and the following civil trial between the Daniels and Moore, Joe Nassef, the building inspector, and Steve Shroud, the chief inspector for Wayne County testified in defense of Moore. Shroud sat everyday behind the defendant and when asked why, he stated that the county asked him to be there. Additionally, before the trial, Wayne County, Moore, both and the Daniels agreed to hire an independent engineer to inspect the home again. Each party was to pay a third of the cost, but Wayne County's insurer, St. Paul Fire and Marine, paid for Moore's third.



Roof rafters improperly cut to allow full bearing

The first lawyer the Daniels consulted, a former county commissioner, refused to file suit against either the builder or the county, telling the Daniels: “there’s nothing you can do, move in your house.” The Daniels then hired another local attorney, who filed suit but then recommended that the Daniels let the bank foreclose on the house. After this recommendation, the Daniels fired this attorney, who, upon his departure did give the Daniels what turned out to be some good advice – “I hope you’re getting someone from out of town to handle your case.”

A Happy Ending?

In August of 2002, the Daniels settled with Wayne County for \$94,600, the amount of damage just to the foundation as it was estimated by the independent inspector. While this sum allowed the Daniels to pay off most of their mortgage, they still had a home with serious defects that would cost thou-

sands of dollars to fix and had to pay thousands more in legal costs, engineering reports, and rent for a house they could actually live in.

After firing their next lawyer, the Daniels finally found a lawyer from Winston-Salem, Randolph James, who would take the contractor to trial. On January 26, 2006, nearly seven years after the Daniels purchased their home, a jury found Mr. Moore guilty of breach of contract, negligence, and fraud. They awarded the Daniels nearly \$1 million dollars.¹³ Moore’s license was also revoked by the Licensing Board for General Contractors in April of 2001. What remains to be seen is whether or not Mr. Moore will be able to pay the Daniels the sum of the settlement. If he cannot, then the Daniels will likely turn to the Homeowner’s Recovery Fund, which has an extensive waiting list and insufficient funds.

The County Problem

The problems experienced by both the Gilberts and the Daniels were compounded by the negligence, incompetence, and apparent deception of Brunswick and Wayne counties respectively. In the case of the Gilberts, the Brunswick county inspector missed 31 code violations but still issued a certificate of occupancy for the home. The North Carolina Code Officials Qualifications Board revoked his inspector’s license for two years.

Despite the action taken by the Code Board, Brunswick County has refused to file a claim with their insurance company to cover the costs of the inspector’s “gross negligence and gross incompetence.” While the builder failed to put together a structurally sound home, the county also failed in its duty to ensure that the home was put together according to code. Brunswick County is now refusing to take responsibility for the costly incompetence of their inspector.

In the case of the Daniels, Wayne County appears to have worked with the builder to deny the Daniels recourse. When Mr. Moore conveniently “misspoke” about having obtained a CO, he made it much more difficult for the Daniels to pursue legal action against the county, because the code violations that the inspector missed could have been caught during the final inspection. At the same time, the inspection box from the job site went missing.

The problem of county collusion with builders is complex and not easy to solve. The county and its inspectors are protected by both the public duty doctrine¹⁴ and by governmental immunity. This problem is not the focus of this report, and our policy recommendations do not solve it. But clearly, counties should be accountable for the damages caused by irresponsible and incompetent inspectors.



Careless Construction: These construction stairs were left on the back of the Gilbert’s house after the home was completed. These stairs are one of 31 code violations missed by the county inspector.

The Smith Family¹⁵

The Smith family purchased a home from a large chain builder in March of 2004 in High Point, NC. The couple owns a business together and use their home as a point of reference for their clients. After searching for nearly three years, the Smiths finally thought they had found their dream home – a place to retire.

This home was to be everything they ever dreamed of: a home for their family, a show room for the furniture Mr. Smith makes and designs, and a place where customers could come to purchase furniture. Unfortunately this has never occurred.

Bad Building

The Smiths moved in one month after closing to find that their new home was already falling apart. Within three months the porch had separated from the rest of the house and the columns in the front of the house had begun to shift and warp. The roof leaked. After noticing these blatant and dangerous defects, the Smiths called an inspector who informed them that the retaining wall behind the porch was missing.

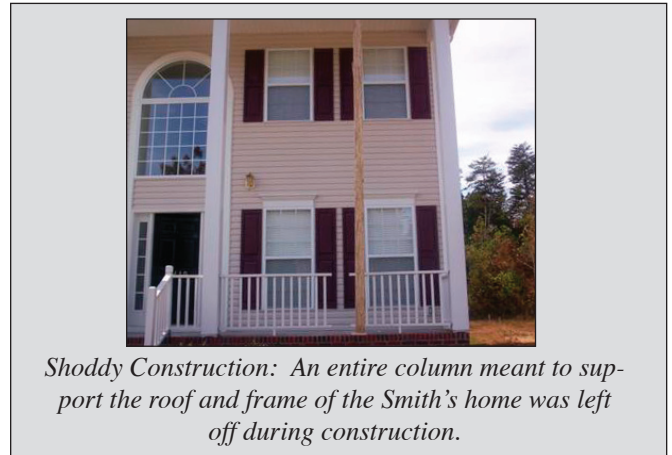
Cheap Fixes

The chain builder, working in 18 states and one of the largest tract builders in the country, performed band-aid repairs for 14-months, but fixed none of the underlying problems. After several meetings between the Smiths and hostile representatives from the chain builder, the builder finally tore out the porch and constructed a retaining wall. All the while, the builder maintained that nothing was structurally wrong with their home, and that what they were seeing was settlement due to the weather and climate changes.

Unfortunately for the Smiths, the problems didn't stop there. As the months went on, their walls began to crack, screws and nails started to dislodge from the ceiling, their ceilings wrinkled, and their floors popped loudly just walking through the house. One wall was so loose that it actually moved when

touched.

Once again, the Smiths contacted their builder, who sent a team to repair the cracks in the walls and the wrinkles in the ceiling.



But just months later, the cracks, the wrinkles, the problems all came back. Suspecting serious structural defects, the Smiths then hired an engineer to come take a look at their home. The engineer discovered that the piers were insufficient and that additional ones were needed. The engineer also stated that the girders were not properly aligned, the splices in the roof were unsupported, and that additional diagonal braces were needed - causing the house to come apart at the seams.

One wall was so loose that it actually moved when touched.

For months, the builder failed to take any action, despite the claim on their website to “unwavering attention to quality construction and unfailing pursuit of customer satisfaction”. On October 27, 2005, the builder finally moved the Smiths out of their home into an apartment to complete a six-page list of home repairs.

The Smiths were moved back in more than one month later, only to find that half of the items on the repair list had not been completed. Additionally, the roof had a new leak and the furnace in the attic was wet from the leak. The house was also filthy – dust from the dry walling was everywhere and the carpet was installed but not cleaned or vacuumed.

The work crew was still finishing much of the work while the Smiths were trying to move back in. In fact, the day after the president of the building company signed off on the repairs, the Smiths had to call police to have workers escorted off the property, because they had come back to the home to complete repairs without the Smiths' knowledge.

Two weeks later there was already a one-half inch gap between the walls and the ceiling, nails were still backing out of the walls, and the floors were still popping. These are the same problems the Smiths have been working to get fixed for the past year.

The Rip-Off and the Loophole

Even though their home was still clearly dysfunctional, the builder forced the Smiths to move back in or they would have to start paying for their apartment. The builder has refused to warranty any of the new work performed on the home.

To make matters worse, the Smiths are stuck in a binding arbitration contract. This means that their warranty has been stripped and that they can take no legal action against the builder for its shoddy workmanship. If they aren't satisfied with the builder's repairs, they have no other option than to enter into binding arbitration.

The Richardson Family¹⁶

Priscilla Richardson purchased a home in Indian Trail in September of 1994. Priscilla's employer had relocated her to Charlotte from Akron, Ohio. She was attracted to the quiet suburb and to the house, which was only five months old and appeared to be well built.

Bad Building

After enjoying the house for several years, Priscilla and her husband Ben noticed that in the guest bedroom and hallway, a space had appeared between the carpet and the toe molding at the base of the walls. Initially, they assumed that the carpet was shrinking, but as the space grew larger and larger,

the true problem began to reveal itself: the concrete slab foundation was sinking¹⁷ and the walls were separating from the floor, leaving a gap of nearly two inches between the floor and the walls.



The Richardsons discovered that their foundation was sinking when the floors began to separate from the walls. The small piece of wood in the photo was inserted by the builder, Marbet Homes, during construction, suggesting that they attempted to use band-aid fixes to mask the larger problem.

The Richardsons then invited the structural engineering and repair firm, Verna and Associates, Inc., to inspect their home and give them an estimate on repairs to the foundation. After Verna and Associates, Inc. confirmed their initial suspicions that the foundation was sinking, the Richardsons contacted the builder and asked them to fix the faulty foundation that was causing extensive damage to their home. The builder refused.

The Rip-Off and the Loophole

The builder, Marbet Homes, owned by the Mathisen Company, did not deny that the foundation was poorly built or that it was responsible for the faulty construction. The company did inform the Richardsons, however, that since they had lived in the house for over six years the builders could not be held liable for construction defects.

In North Carolina, the "statute of repose" for new homes is six years, one of the lowest in the country. This means that homeowners cannot sue their builders for damages unless the suit is filed within six years of the date the certificate of occupancy was issued. The Richardsons, who noticed this problem well in advance of this six year limit, communicated this problem orally with the vice

president of the Mathisen Group and his supervisor, who then told the Richardsons that “they would have to think about what was happening to the property.”

The Mathisen Group later refused to address this problem because it was not communicated to its employees “in writing” within the six year limitation. Now there is nothing the Richardsons can do.

What Does this Mean for the Richardsons?

The couple ended up paying approximately \$8,000 to repair their home. Additionally, Mr. Richardson spent countless hours redoing the bathroom, kitchen and hallway floors.

What’s most disturbing about this case is that it appears the builder knew the home was sinking even during construction. In fact, the builders inserted wood strips between the floor and molding because the house was already moving while it was under construction.

Consumers like the Richardsons shouldn’t bear the cost of poor workmanship and dishonest service.

A Bad Apple : Ronald Pierce & Pierce Construction, Inc.

Most builders and contractors take pride in their work and most consumers are happy with their new homes. However, some contractors perform shoddy work and refuse to correct the problems that they’ve created. Ron Pierce, President of Pierce Construction, Inc., is one of those builders. Unfortunately, due to North Carolina’s inadequate licensing requirements, he is still working on homes.

Between 2003 and 2005, the Better Business Bureau of Charlotte received five complaints about Pierce Construction. Two of those complaints were assumed resolved as the complainant never followed up with the Better Business Bureau, two are still unresolved, and Pierce has failed to respond to one complaint.¹⁸ He’s no longer a member of the

Better Business Bureau, though he claims to be on his website.¹⁹

Three of the complainants, Barbara Collins, Scott Poore, and the Burris family, had similarly painful experiences dealing with Mr. Pierce.

Barbara Collins

Barbara Collins’ son, Moe, hired Ron Pierce in 2001 to construct a new home for his mother. From the start, the house was riddled with defects: the mailbox was missing, the shower leaked, there was no insulation in Barbara’s bedroom, and the switch to turn on and off the gas fireplace was missing. Soon after, the walls began to crack and the doorways shifted due to three cracks in the foundation.²⁰

Pierce refused to correct these problems and stopped returning phone calls from Collins. She and her family now must pay thousands of dollars to repair the damages.

Scott Poore

Scott Poore bought a three-year old home from Ron Pierce in December of 2002. Soon after moving in, Scott began to notice blatant defects with the home: the grout was cracking, the counter tops weren’t sealed, the cable and telephone wires were never run out of the house, and there was the smell of sewage in the backyard. The new homeowner called Pierce to ask him to correct these defects. Pierce sent over a crew, which stayed for only a couple of hours and failed to fix the problems.

Soon after, Scott found out that Pierce had never received a Certificate of Occupancy from Iredell County, because of code violations. Scott continually attempted to contact Pierce, but his calls were never returned. Scott eventually spent \$40,000 to correct the problems with his home. He also filed a complaint with the Licensing Board for General Contractors, but they claimed there was no ground to revoke Pierce’s license.²¹

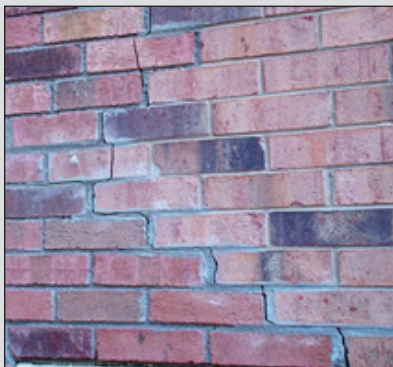
The Burris Family

The Burris family hired Pierce for \$8,000 to fix the foundation of their home, which was causing the bricks on the side of the home to crack. Pierce and his work crew dug trenches around the entire house and supposedly fixed the problem. However, as time passed, the bricks again began to crack, as did the walls in the interior of the house.

The Burrises had a five-year warranty in their contract with Pierce Construction, Inc., so they contacted Pierce to get the home repaired or to get a refund. After first claiming that the foundation was just “settling” (the problem Pierce was hired to fix), the contractor promised to come out to look at the house. On the scheduled date, he never showed. The Burrises haven’t heard from him and haven’t been able to get a hold of him since.²²

The Loophole

On November 18, 2004, the Licensing Board for General Contractors finally suspended Ron Pierce’s license for one year for incompetence unrelated to these stories.²³ He is currently under investigation for another complaint and thus has not had his license reinstated.



Cracked Walls: This picture of the Burris home shows a long crack that developed as a result of the foundation repairs done by Ron Pierce.

Even though his license has been suspended, Pierce can still work on homes just like the Burris family’s, because of a serious loophole in laws regulating general contractors.

The ruling of the Licensing Board reads that Ron Pierce is prohibited from taking jobs only “where the cost of the undertaking is thirty thousand dollars or more.”²⁴ That’s because North Carolina state law mandates that contractors need a license to work on projects only where the costs exceed thirty thousand dollars.²⁵

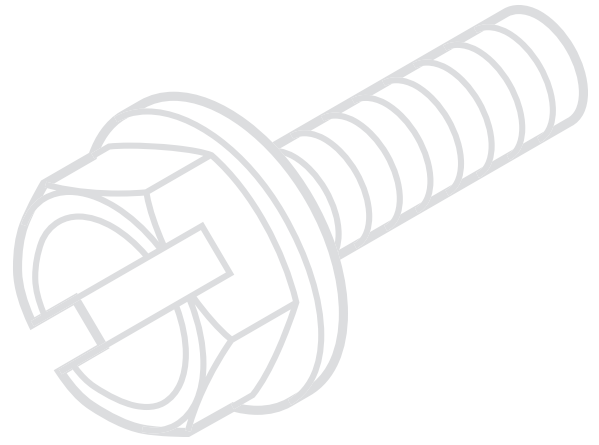
Scott eventually spent \$40,000 to correct the problems with his home. He also filed a complaint with the Licensing Board for General Contractors, but they claimed there was no ground to revoke Pierce’s license

This means that someone who has been judged incompetent and dishonest can still put a deck on a house, replace a driveway, or complete any number of significant construction and repair jobs. In fact, in

an interview with the Charlotte Observer, reporter Michelle Crouch makes it clear that that’s what he intends to do – “He said he still does small construction jobs, since the law allows him to work on projects under \$30,000.”²⁶

We need to reform licensing requirements for contractors to ensure that bad apples like Ron Pierce are not allowed to wreck homes, get away with it, and keep on doing it.

Policy Recommendations



A new home is a significant investment. Yet, as these case studies illustrate, homebuyers have shockingly few protections in the face of defective construction or repair. The stories about the Gilberts, the Daniels, the Smiths, and the Richardsons all illustrate a fundamental void in homeowners' rights. The following policy solutions will provide homeowners with greater ability to protect their investment and their home.

Hold Builders Accountable for Shoddy Work

- **Builders and contractors should not be able to waive a consumer's warranty in any contract with a homebuyer.** The implied warranty of habitability is the legal guarantee given by contractors of new homes to buyers that their home will be fit for habitation.²⁷ Too often, contractors insert a clause whereby the homeowner ostensibly gives up the implied warranty of habitability for a so-called "insurance warranty" or "express warranty."

These "insurance warranties" provide less coverage for consumers and are simply an escape clause for builders. The Smiths, for instance, have been unable to get their home fixed properly, largely because they have an insurance warranty. In addition, these "insurance warranties" often include binding arbitration clauses, which trap consumers in arbitration that favors the builder.

- **Homeowners should have the ability to hold builders accountable for latent defects for up to ten years.** Homeowners generally purchase property with a 30-year mortgage; they purchase homes that are expected to last a lifetime. Unfortunately, North Carolina law limits the statute of repose to only six years, which means that homeowners only have the ability to hold builders accountable for six years after the completion of construction.²⁸

Many defects are latent for several years and only appear after an extended period. The experience of the Richardsons is a case in point. Because the foundation for their home was laid improperly, it took years for the walls to pull away from the floors, so that by the time they needed to take legal action, they were no longer able.

North Carolina's six-year statute is among the shortest in the country – the statute in Florida, for instance, is 15 years.²⁹ A six-year statute is unreasonable when defects aren't expected to arise for at least six years.

Furthermore, the statute of repose should begin to run only when a home is purchased or occupied, not when the certificate of occupancy is issued. According to current case law, if one bought a home after the home sat unused for 3 years, then that consumer would have only three years remaining on his or her statute of repose.³⁰

Reform Licensing Requirements for General Contractors and the Licensing Board for General Contractors

- **Contractors must have a license to perform any work that costs more than five thousand dollars.** Unlicensed contractors are currently allowed to do jobs that cost less than thirty thousand dollars.³¹ The story of Ronald Pierce illustrates the need for this reform. North Carolina should protect consumers from dishonest and incompetent contractors.

- **The Licensing Board for General Contractors should include at least three consumer representatives.** Current law dictates that three citizens should sit on the board to represent the interests of consumers, yet these citizens are often no more than cronies of the homebuilding industry.³² It's hard to believe that it would have taken the board so many years to revoke Ron Pierce's license had they truly been looking out for consumers. The consumer representatives on the licensing board should not have any relationships with contractors.

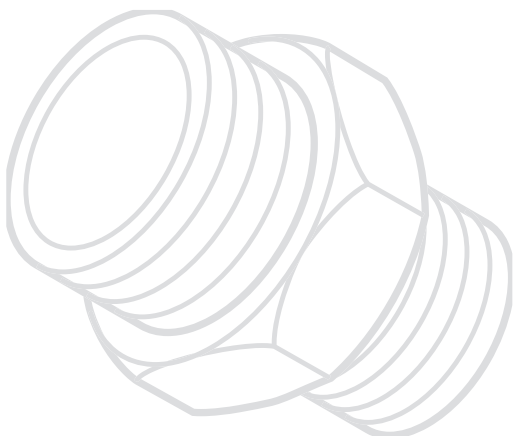
Provide Consumers with the Ability to Protect Their Investment

- **Builders should be required to purchase comprehensive liability insurance to cover construction defects.** This reform would help solve the problem of Chris Gilbert. Under current law, even if he wins his lawsuit against the builder of his home, he will receive no compensation because his builder is bankrupt and has no insurance.
- **The Homeowners Recovery Fund should be reformed.** The Homeowners Recovery Fund, created in 1991, was meant to provide a safety net for homeowners who have suffered financial loss as a result of a builder's incompetence or dishonesty.

However, eligibility requirements for relief are unreasonable: homeowners must have a court ruling documenting the builder's negligence and cannot have received any amount of compensation for damages. The Gilberts, for instance, will only be able to apply for the fund if they win a lawsuit against their bankrupt builder.³³ Additionally, the fund is administered by the same Licensing Board for General Contractors that protects the interests of builders. The fund should be administered by a neutral body to ensure that homeowners receive a fair hearing.

- **Homeowners should be able to hold accountable manufacturers of building components in addition to general contractors.** Many homeowners experience problems that are due to product failure rather than poor workmanship. However, due to a legal concept known as the "economic loss rule," homeowners in North Carolina cannot sue manufacturers for damage done to their home.³⁴

This means that if a defective pipe bursts and floods a home, the owner cannot hold accountable the manufacturer of the pipe for the damage done to the home. The economic loss rule should not apply to residential construction.



Advice for Consumers

Recommendations for Homebuyers

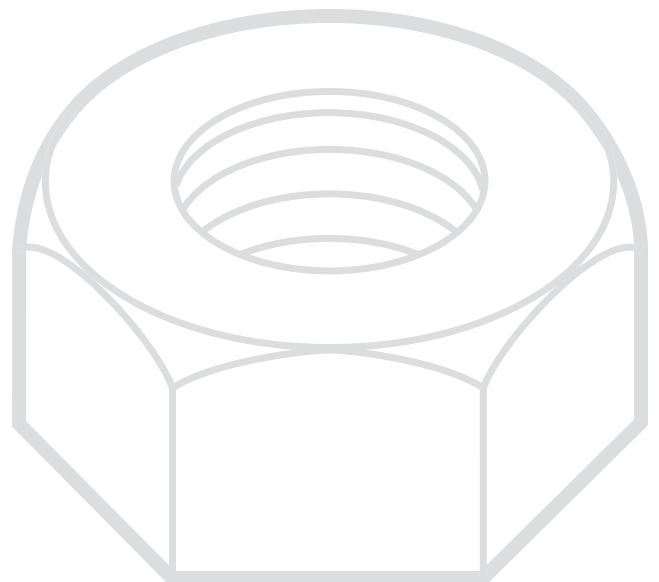
There are a few simple things that homebuyers can do to ensure that they buy a well-built home and are in a position to protect their investment.

- **Research the builder.** Homebuyers should check with the Licensing Board for General Contractors and the local Better Business Bureau for outstanding complaints or other problems. Consumers should also talk to friends, family, neighbors, and others that have had experiences with certain builders.
- **Be on the building site.** Consumers that have hired a builder to construct a custom home should be on site as much as possible to keep an eye out for potential problems.
- **Ask questions.** Homebuyers should feel free to ask questions if something does not look right.
- **Don't be an ATM.** If a contractor is constructing a new home or doing repairs on an existing home, consumers should be suspicious of unexpected or excessive requests for additional money or money that is not due until work is completed.
- **Consumers should have new homes inspected twice before closing.** Too often buyers of new homes assume that their home is free from serious defects simply because it is new and that the county has issued a certificate of occupancy, meaning that it is free from code violations. It's important to remember that building code is a minimum standard and that CO's are often issued despite the presence of code violations. Homebuyers should hire a licensed home inspector to have their new home inspected once before the builder fills in the walls with sheetrock, so that all plumbing, electrical, and framing issues are completed but visible. Consumers should have their home inspected again before closing while they still have leverage with the contractor.
- **Hire a real estate attorney.** Someone with legal expertise should go over all contracts with a fine tooth comb to ensure that no legal rights are waived. Two specific and common features consumers should avoid:
 - a. Binding arbitration
 - b. "Insurance warranties"
- **Consumers who are concerned about whether or not they can afford a home inspection and a real estate attorney should think twice about whether or not they can afford a new home.**

Recommendations for Victims of Defective Building

Every situation is different, and calls for a different solution. These principles should serve as a guide for consumers looking to fix their defective homes.

- **Get all correspondence in writing.** This will help to prevent builders and contractors from renegeing on previous commitments. It will also provide valuable evidence if legal action is necessary.
- **Be persistent.** Sometimes it takes consistent pressure to get results.
- **Consumers should hire their own inspectors and engineers.** Often contractors will send out their own engineers and inspectors to examine building defects; it's important to keep in mind that they are working to save the contractor money and time and are not looking out for the best interests of consumers.
- **Contact the Attorney General's Consumer Protection Division and the local Better Business Bureau.** They may be able to help resolve the complaint, and both can provide valuable information for future homebuyers.
- **Consumers should contact their state representative.** Legislators are often in a position to convince builders to correct their mistakes.
- **Contact an attorney.** Depending on the situation, the consumer may or may not have a legal case against the builder. By consulting an attorney, consumers can decide whether or not to take legal action.
- **Resist binding arbitration.** Binding arbitration invariably benefits the builder. Consumers should avoid it if at all possible.



Endnotes

- ¹ United States Census Bureau. Downloaded from <http://quickfacts.census.gov/qfd/states/37000.html>. 11/05.
- ² United States Census Bureau. Downloaded from <http://www.census.gov/popest/states/NST-pop-chg.html>. Based on population change estimates between 2004 and 2005. 11/05.
- ³ United States Census Bureau. Downloaded from <http://www.census.gov/const/C40/Table2/tb2u2004.txt> 11/05.
- ⁴ Office of the Attorney General of North Carolina. Downloaded from <http://www.ncdoj.com/DocumentStreamerClient?directory=CPTipAlert/&file=top%20ten%20consumer%20complaints%202004.pdf>. 10/05.
- ⁵ All information regarding consumer complaints to Better Business Bureaus was obtained through conversation and email with the Charlotte Better Business Bureau, the Greensboro Better Business Bureau, and the Eastern North Carolina Better Business Bureau during the time period of 9/05 – 1/06.
- ⁶ Criterium Engineers, 2003 Construction Quality Survey.
- ⁷ All references to the story of the Gilbert family are based on phone and email correspondence between 10/05 and 4/06, in addition to photographs and documents provided by the Gilbert family.
- ⁸ NC Code Officials Qualification Board. Docket No. 80. 8/24/2004.
- ⁹ Boise Building Solutions. “Gilbert Residence Roof Concerns.” Page 2-3. 2/9/04.
- ¹⁰ Dudek Consulting, P.C. “Structural Engineering Evaluation.” Page 4. 6/16/03.
- ¹¹ All references to the story of the Daniels family are based on phone and email correspondence between 2/06 and 4/06 , in addition to photographs and documents provided by the Daniels family.
- ¹² R.V. Buric Construction Consultants, Inc.
- ¹³ Daniel v. Moore, No. 00 CVS 2386, (Wayne County Sup. Ct. Jan. 26, 2006)
- ¹⁴ Braswell v. Braswell, 330 N.C. 363, 370, 410 S.E.2d 897, 901 (1991)
- ¹⁵ All references to the story of the Smith family are based on phone and email correspondence between 10/05 and 4/06, in addition to photographs and documents provided by the Smith family. Also the name of the builder and family have been changed due to pending legal action.
- ¹⁶ All references to the story of the Richardson family are based on phone and email correspondence between 10/05 and 4/06, in addition to photographs and documents provided by the Richardson family.
- ¹⁷ Verna and Associates, Inc. “Foundation / Slab Stabilization.” 4/4/2005.
- ¹⁸ Information courtesy of the Charlotte Better Business Bureau. Downloaded from <http://www.charlotte.bbb.org/commonreport.html?bid=104390>. 1/06.
- ¹⁹ <http://www.pierceconstruct.com/>. 1/06.
- ²⁰ All references to the story of the Collins family are based on phone and email correspondence between NCPIRG and the Collins between 9/05 and 4/06.
- ²¹ All references to the story of the Scott Poore are based on phone and email correspondence between NCPIRG and Mr. Poore between 9/05 and 4/06.
- ²² All references to the story of the Burris family are based on phone and email correspondence between NCPIRG and the Burris between 9/05 and 4/06, in addition to photographs and documents provided by the Burris family.
- ²³ NC Licensing Board for General Contractors. Complaint File No. 03-C-400.
- ²⁴ NC Licensing Board for General Contractors. Complaint File No. 03-C-400.
- ²⁵ North Carolina General Statutes §87-1.
- ²⁶ Crouch, Michele. The Charlotte Observer. “The Loophole that Toppled this Home Expansion Could Snare You.” March 8, 2005.
- ²⁷ Hartley v. Ballou, 286 N.C. 51, 209 S.E.2d 776 (1974).
- ²⁸ North Carolina General Statutes §1-50
- ²⁹ Florida Statutes §95-11
- ³⁰ Bryant v. Don Galloway Homes, Inc., 147 N.C. App. 655, 556 S.E.2d 597 (2001).
- ³¹ North Carolina General Statutes §87-1.
- ³² North Carolina General Statutes §87-2.
- ³³ North Carolina General Statutes §87-15.5
- ³⁴ Land v. Tall House Building Co., 165 N.C. App. 880, 602 S.E.2d 1 (2004).

