



WASHINGTON STATE DEPARTMENT OF
LICENSING

Sunrise Review of Residential Contractors

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SUNRISE REVIEW OF RESIDENTIAL CONTRACTORS

Department of Licensing

Final Report

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SUNRISE REVIEW OF RESIDENTIAL CONTRACTORS

Final Report

1.0 EXECUTIVE SUMMARY

The objective of this study is to conduct a review of the regulatory environment for general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010 and as generally described in Second Substitute House Bill 3349 regarding residential contractors.

The current regulatory model endeavors to protect the public through the registration, bonding and insurance of contractors. Ideally, registration ensures that the consumer is dealing with a legitimate and financially responsible contractor and the surety bond filed with the State is available to protect the consumer from what may be an unreliable or incompetent contractor. However, this study documents a number of weaknesses within the current system.

- ▶ Registration requirements do not include background information necessary to provide the consumer with contractor work history and do not ensure that contractors have sufficient understanding of business principles, construction processes, and building codes.
- ▶ Current registration efforts have missed unscrupulous contractors who dissolve failing businesses and resurrect the business under another name.
- ▶ Opportunities for mediation are limited and arbitration may appear to favor the contractor when there is a dispute.
- ▶ Current ceilings on contractor bonds are inadequate to cover major losses.
- ▶ Access to bonds by disadvantaged consumers is discouraged through threats of bankruptcy, potential attorney fees necessary to pursue judgments, and the use of contractual language which may prevent an unknowing consumer from having access to review of disputes by the courts.
- ▶ Consumers have little access to complaint history.
- ▶ Consumers may not be adequately informed about State oversight and credentialing of contractors.

Findings and recommendations stem from research conducted by Management Engineering Associates, LLC (MEA) in conjunction with the Department of Licensing (DOL) during this assignment.

Recommendations are itemized:

1. Strengthen registration requirements by authorizing the Department of Labor and Industries (L&I) to suspend registration for cause. Establish mechanisms for monitoring industry performance.
2. Ensure that enforcement resources, including staff and investigative tools, are adequate to establish compliance by contractors.
3. Strengthen registration by requiring disclosure of prior business names and/or bankruptcy, two years experience in the construction industry, and evidence of training in regulations and business practices in the construction industry. Consider higher bonding limits.
4. Consider creating a recovery fund to improve consumer protection by backing up bond capacity.
5. Create a central complaint repository within State government. Establish database and encourage state agencies and local authorities to share information in a uniform format.
6. Develop and require the use of model construction documents and specify prohibited provisions. Documents should include contracts, warranties, bid sheets and lien explanation. Consider elective escrow provisions to avoid problems resulting from advance payments.
7. Enhance L&I's current efforts to increase consumer skills and awareness of issues, resources and strategies that are important in the area of residential contracting. Connect this effort to the issues identified as critical in this study. Set goals and targets and define metrics for consumer awareness.

Encourage an integrated/coordinated consumer education program. Involve the Attorney General's Office (AGO), L&I, DOL, industry associations, the Better Business Bureau, consumer advocates and other stakeholders sharing common values.

Most of the problems with residential construction uncovered by this study can be addressed through enhancements to the existing regulatory framework rather than the enactment of a new regulatory scheme.

While these improvements should have an immediate positive impact on consumer welfare, we further recommend that the regulatory structure be re-examined after there has been time for the impact of those improvements to be felt. Time is also needed for the State to implement systems to effectively measure and report resulting trends in the quality and value of residential construction services.

2.0 SCOPE OF STUDY

2.1 OBJECTIVE

The objective of this study is to conduct a review of the regulatory environment for general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010 and as generally described in Second Substitute House Bill 3349 regarding residential contractors.

2.2 SUNRISE REVIEW LEGISLATION

The regulation of businesses and professions is authorized under RCW (Revised Code of Washington) 18.118. The *Intent* as stated in RCW 18.118.05 is:

The legislature recognizes the value of an analytical review, removed from the political process, of proposals for increased regulation of real estate and other business professions which the legislature already regulates, as well as of proposals for regulation of professions not currently regulated. The legislature further finds that policies and standards set out for regulation of the health professions in chapter 18.120 RCW have equal applicability to other professions. To further the goal of governmental regulation only as necessary to protect the public interest and to promote economic development through employment, the legislature expands the scope of chapter 18.120 RCW to apply to business professions. The legislature intends that the reviews of proposed business profession regulation be conducted by the department of licensing's policy and research rather than regulatory staff and that the reviews be conducted and recommendations made in an impartial manner. Further, the legislature intends that the department of licensing provide sufficient staffing to conduct the reviews.

The *Purpose* as stated in RCW 18.118.10 reads:

(1) The purpose of this chapter is to establish guidelines for the regulation of the real estate profession and other business professions which may seek legislation to substantially increase their scope of practice or the level of regulation of the profession, and for the regulation of business professions not licensed or regulated on July 26, 1987: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: [a] Apply to any regulatory entity created prior to July 26, 1987, except as provided in this chapter; [b] affect the powers and responsibilities of the superintendent of public instruction or Washington professional educator standards board under RCW 28A.410.210 and 28A.410.010; [c] apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; [d] apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 26, 1987; and [e] apply to proposals relating solely to continuing education. The legislature believes that all individuals should be permitted to enter into a business profession unless there is an

*overwhelming need for the state to protect the interests of the public by restricting entry into the profession. **Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected** (emphasis added).*

(2) It is the intent of this chapter that no regulation shall be imposed upon any business profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a business profession for the first time should be reviewed according to the following criteria. A business profession should be regulated by the state only when:

[a] Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

[b] The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

[c] The public cannot be effectively protected by other means in a more cost-beneficial manner.

*(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, **if the legislature finds that it is necessary to regulate a business profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:***

[a] Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

[b] Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

[c] Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the business profession, the regulation should implement a system of registration;

[d] Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

[e] Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing.

Emphasis has been added to reinforce the mandate for “the least restrictive level consistent with the public interest” and to highlight alternatives that must be considered.

2.3 REGULATORY OPTIONS

In increasing rigor of oversight, the levels of regulation available are *Registration*, *Certification* and *Licensing*. The *Registration* level is currently used by L&I to regulate residential contractors. *Certification* and *Licensing* are used by L&I in the further regulation of two trades, plumbing and electrical. Meaningful definitions of these levels are found in Department of Licensing (DOL) documentation.¹

Registration: This level generally has the least burdensome requirements. Registration provides a formal process whereby the applicant can register, pay a fee and submit specific information to the regulatory authority such as:

- Names and address of applicant
- Location
- Nature and operation of the business
- Activity to be engaged in
- Description of services to be provided

Registration does not normally evaluate minimum competency through a qualifying examination or other means. Generally, the process provides a minimum level of public protection.

Certification: Certification is a process through which a regulatory agency grants recognition to an individual who has met certain prerequisite qualifications – verified by examination, academic credentials or other criteria. Once these prerequisites are satisfied the individual may use “certified” in their title or professional designation. An example is Certification of Librarians issued by the Washington State Librarian (RCW 27.04.055)

Licensing: This level has the most rigorous requirements among the three types of regulation. The term “Licensing” can have multiple interpretations. For the purpose of this discussion it denotes that applicants meet significant education, experience and examination requirements before being licensed. In addition to fees, requirements may include:

- Examination to assess minimum competencies
- Basic educational requirements
- Codified professional and performance standards

Practice is limited to those holding a valid license in a given business or profession. Unlicensed practice is illegal and is generally considered a criminal violation with significant penalties through administrative law or court action. These programs generally have a legislative mandate to administer the program with the primary objective of insuring and maintaining public health, safety and welfare.

¹ DOL/BPD (Department of Licensing/Business and Professions Division) Briefing Book, November, 2006

2.4 CURRENT REGULATORY ENVIRONMENT

At present, single family home construction firms are generally not regulated much differently than the broader residential and commercial construction industry. It is not currently possible to identify with certainty which construction firms perform work exclusively, principally, or intermittently on single family dwellings. This limitation is characteristic of Washington State government data taxonomies, Better Business Bureau (BBB) data dictionaries, and within the standardized codes developed by the U.S. government for crafts, trades, and professions (the North American Industry Classification System – NAICS and the Standard Industrial Codes – SIC). Consequently, the statutes identified below must be applicable to both residential and commercial construction work.

2.4.1 Master Business Application

As with all Washington State businesses, the contractor may begin business life by filling out the Master Business Application. The application can be filled out at one of the Master License Service locations of the DOL or online. Comprehensive instructions for forming a business, filling out the application, and satisfying the requirements of State and local government are on the DOL master business application web portal (<http://www.dol.wa.gov/business/file.html>). Although there are exceptions, completing the master business application satisfies many of the requirements of State agencies regarding starting a business. These requirements are identified within the attached matrix (pages 16-17) by the applicable Revised Code of Washington (RCW).

The master business application process satisfies multiple State government requirements. These include the assignment of a unique Unified Business Identifier code (UBI); validation and registration of an assumed business name, if one is chosen by the contractor; assignment of a tax account for payments to the Department of Revenue (<http://www.dor.wa.gov>); registration with the Employment Security Department (<http://www.esd.wa.gov>) for unemployment compensation contributions (RCW 50.24); and with the L&I (<http://www.lni.wa.gov>) for industrial insurance contributions. The primary exception to this centralized master business application process is for firms choosing the corporate or limited liability form of business. Those contractors must also visit the Office of the Secretary of State (<http://www.secstate.wa.gov/corps>) to satisfy its requirements (RCW 43.07.030). Moreover, contractors must apply for registration (and for two trades, certification or licensing) with the L&I.

2.4.2 Department of Labor and Industries (L&I)

The discussion that follows makes a distinction among the terms *registration*, *certification*, and *licensing*. Although the DOL statutes include these terms and others within the definition of *licensing*, L&I statutes assign distinctive definitions to the three italicized terms.

Reduced to basic terms, *registration* (RCW 18.27) signifies primarily that a contractor has made application to the L&I, has satisfied the requirements described under the Master Business License section above, and has purchased a surety bond and liability insurance in the appropriate amounts. The term signifies little else of direct interest to the consumer. *Certification* is a validation of a contractor's knowledge through examination. The certification is for the knowledge of a person, not of a business entity. This designation is used for that purpose for the plumber and electrician trades (RCW 18.106, RCW 19.28). *Licensing* is a term used only for the electrical construction

industry (RCW 19.28). An electrical contractor must be certified through examination of his or her knowledge in one of several skill levels to qualify for licensing and meet all requirements of RCW 19.28 for the licensing process. These terms are discussed more fully below.

2.4.2.1 Contractor Registration

All contractors are required to register as general and/or specialty contractors with the L&I (RCW Chapter 18.27). RCW Chapter 18.27 establishes numerous requirements that contractors must adhere to throughout the life of their business operations. However, the statute provides limited mechanisms for the L&I to help protect the interests of the residential homeowner (or any other consumer of construction services) with respect to the stated objective of registration.

The stated underlying objective of contractor registration is to help prevent the perceived threat to the general public and a substantial loss of revenue to the State (RCW 18.27.140). The perceived threat to the general public is broad and includes contractors who may be:

- Unreliable;
- Fraudulent;
- Financially irresponsible; or
- Incompetent.

RCW 18.27 mandates contractor registration, bonding and insurance to protect the consumer from unreliable, fraudulent, financially irresponsible or incompetent contractors. However, based on our research, this protection is not adequate.

When applying for registration and continuing thereafter, all contractors must show evidence of bonding or other security in the amounts of \$12,000 for general contracting and \$6,000 for specialty contracting (RCW 18.27.040). In addition, contractors are required to show evidence of and maintain insurance or other financial resources in the amount of \$50,000 for injury or damage to property, \$100,000 for injury or damage including death of one party, and \$200,000 for injury or damage including death of more than one person (RCW 18.27.050).

The L&I, the Department of Employment Security and the Department of Revenue are required to communicate and coordinate their efforts to identify unregistered contractors (RCW 18.27.020, 18.27.390). Substantial penalties are prescribed for persons performing contracting work without a certificate of registration (RCW 18.27.020) and for other prohibited activities. Note that none of these prohibited activities include the four conditions listed above that are identified as a “perceived threat to the general public”.

These penalties include requiring the termination of ongoing work (RCW 18.27.225), issuance of a notice of infraction that may be heard by an administrative law judge (RCW 18.27.250, 18.27.270, 18.27.310), prosecution by the county of jurisdiction as a criminal act (RCW 18.27.020), imposition of a monetary fine (RCW 18.27.340), and close oversight by the L&I for two years (RCW 18.27.020). On an annual basis, the L&I is required to report to the Legislature the following information (RCW 18.27.342):

- The number of contractors found to have committed an infraction for failure to register;

- the number of contractors who were assessed a monetary penalty and the amount of the penalties assessed;
- The amount of the penalties collected; and
- The amount of the penalties waived.

Alleged or apparent violations of RCW 18.27 are investigated and evidence is collected by L&I compliance inspectors. The mechanism typically used by L&I for notifying a contractor of a violation is a notice of infraction specifying the nature of the violation and requiring correction of the infraction. This notice may also be referred to as a citation.

The provisions of RCW 18.27 with respect to contractor registration are implemented by the rules adopted within Washington Administrative Code (WAC) 296-200A. WAC 296-200A-300 lists three circumstances under which a contractor *must* be issued one or more notices of infraction and seven under which the Department *can* issue one or more. The “*must issue*” circumstances are:

- Advertising, offering to work, submitting a bid, or performing any contracting work without being registered or when the contractor’s registration is suspended or revoked;
- Transferring a valid contractor registration to an unregistered contractor; or
- Allowing an unregistered contractor to work under a registration issued to another contractor.

The “*can issue*” circumstances are:

- Using an unregistered name while advertising as a contractor;
- Using an unregistered name and address in advertising, correspondence, signs, documents, etc.;
- Using a false or expired registration number in advertisements where a contractor’s registration number is required;
- Using the bond and insurance requirements of Chapter 18.27 RCW to advertise as a bonded and insured contractor;
- Using a false registration number to either solicit business or pose as a contractor;
- Failing to include the contractor’s current registration number in all advertising that shows the contractor’s name or address. This registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number; or,
- Failing to provide a residential or commercial customer with a proper disclosure statement before beginning a repair, alterations or construction project. RCW 18.27.114 contains the project dollar cost limits affecting this requirement and a sample disclosure statement. (We found that lien disclosure requirements are prescribed to be in terms that tend to confuse or intimidate the consumer.)

One of the sanctions that can be imposed against a contractor is the suspension of registration (WAC 296-200A-040). Ten circumstances are cited in this section of the WAC as cause for suspension:

- A surety bond or other security has an unsatisfied final judgment against it or becomes otherwise impaired;

- A surety bond is cancelled;
- An insurance policy is expired, cancelled, revoked or the insurer is withdrawn from the insurance policy;
- The contractor has an unsatisfied final judgment against it under chapter 18.27 RCW and this chapter;
- The department has notice that the contractor is a sole proprietor or a principal or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of chapter 18.27 RCW and this chapter;
- The department is notified that the contractor has been certified by the department of social and health services as a person who is not in compliance with a support order as provided in RCW 74.20A.320;
- The department finds that the contractor has provided false information or has otherwise been registered in error;
- The contractor fails to comply with a penalty payment plan agreement;
- The contractor has been . . . reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service conditional scholarship; and,
- The contractor does not maintain a valid unified business identifier number, if required by the department of revenue.

As noted above, violations of RCW 18.27 may result in monetary penalties and suspension of registration. The monetary penalties associated with specific violations of RCW 18.27 are listed in WAC 296-200A-400. The Director of Labor and Industries is also authorized to issue a restraining order requiring that no further work occur at a site. The Director of L&I may also call for an administrative hearing or, should a contractor wish to appeal an infraction or a restraining order, an administrative hearing would be requested by the Director. In either case, the hearing would be presided over, normally in the county where the infraction occurred, by an administrative law judge from the Office of Administrative Hearings. Contractors may represent themselves or retain an attorney qualified to practice in Washington State. The L&I shall be represented by the Office of the Attorney General. Any further appeals would be to the Superior Court. Should a contractor choose to disregard a restraining order, the Director may petition Superior Court for an injunctive or other relief.

Furthermore, RCW 18.27.350 provides: *The consumers of this state have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under this chapter shall be deemed to affect the public interest and shall constitute a violation of chapter 19.86 RCW. The surety bond shall not be liable for monetary penalties or violations of chapter 19.86 RCW.* This gives an individual the right to sue under the Consumer Protection Act which would allow the injured consumer to receive up to 3 times the actual damages plus reasonable attorney fees.

An unregistered contractor could incur substantial monetary loss in a manner other than explicitly stated in the RCW. Unless registered, contractors may not bring action in any court of Washington State to recover compensation or damages for breach of contract. Another stipulation of the law is that the contractor will not be considered in substantial compliance with the registration statute unless they have satisfied the bonding and insurance levels and are otherwise in good standing with respect to registration requirements (RCW 18.27.080).

Another provision of the statute (RCW 18.27.114) also has the potential for impacting the contractor's financial circumstances. No contractor may bring action of a lien claim unless he or she can demonstrate that they have provided the customer with a copy of a disclosure statement prior to beginning work. There are some exclusions to this requirement. A sample disclosure statement is contained in this section of the RCW.

None of these described circumstances, several potentially resulting in registration suspension, elicits the contractor's promise to perform work or requires the actual performance of work that subsequently is alleged by a consumer to reflect unresponsiveness, fraud, incompetence, or financial irresponsibility. Hundreds of homeowners have complained over a period of years about contractors, by telephone or in writing, to the BBB, the L&I, or the Office of the Attorney General. Some, a relatively few, have received some form of advice from one of these organizations. Fewer yet have access to alternate dispute resolution help in the form of mediation.

The primary method for resolving contractor disputes by the homeowner has been litigation to place a lien against the contractor's bond. This process can be lengthy and expensive. In many instances the cost of litigation has exceeded the uncommitted bond amount. Moreover, the required contractor bond amounts frequently would not cover the alleged damages even if the full amounts were otherwise uncommitted.

For the types of complaints registered by homeowners, we have concluded that the registration statute, as currently crafted, does not contain appropriate enforcement authority for the State and provisions for protecting consumer interests in a proactive manner. Furthermore, the homeowner does not have adequate recourse when a construction contractual relationship goes bad.

Although the L&I engages in a substantial outreach and education/training program for both contractors and consumers, they have no statutory authority for establishing more proactive means of dealing with the particularly troublesome contractor. The forms of registration enforcement currently available to the L&I are for the most part punitive and provide little direct consumer protection. A more effective means of protection would be via some of the provisions currently available under electrical industry regulations (Sections 2.4.2.2.2, 2.4.2.3). Another option would involve a board of contractor peers that could mediate disputes or discipline contractors without resorting to the lengthy, expensive, and potentially business-damaging civil or criminal judicial processes.

2.4.2.2 Certification of Building Trades

In addition to contractor registration, two of the construction trades, electrical and plumbing, are more closely regulated by the L&I than are general contractors. These two trades are regulated and administered under different statutes. The plumbing trade is regulated under RCW 18.106 and the electrical trade under RCW 19.28.

Upon satisfactory completion of the plumber or electrician certification examination, an *individual* is issued the appropriate certification from one of those noted above. The emphasis here is on the necessary training, experience, and satisfactory test completion of an *individual*, as distinguished from a firm, corporation, partnership, or other legal business entity.

2.4.2.2.1 Certification of Plumbers: RCW 18.106 provides for qualifying plumbers based on training, experience, and examination. No person is authorized to engage in the plumbing trade without a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. Persons wishing to qualify for one of these certificates or the temporary permit must provide the L&I with written evidence of their eligibility for taking the applicable examination or for issuance of a specialty certificate or a temporary permit based on experience.

The specialty certificate is a more limited certification than is the journeyman certificate. For example, one specialty certification is for “Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories.” (RCW 18.106.010). Other specialties are for domestic water pumping systems and for backflow prevention assemblies.

A person who is engaged in an approved apprenticeship program under RCW 49.04 or who is learning the plumbing trade on the job may work in the plumbing construction trade if, after award of a training certificate, they work under direct supervision by an appropriately qualified journeyman or specialty plumber. Those who are enrolled in an approved apprenticeship or technical school program and who have been awarded a training certificate may work without direct supervision during the last six months of their practical experience requirements. The L&I determines the classroom training subject matter and course length for award of a plumber certificate to a trainee (RCW 18.106.070) subject to statutory minimums.

A temporary plumbing permit may be issued to a person on an interim basis while awaiting approval of a certificate of competency if they have entered Washington State from another state and apply for the permit as a journeyman or specialty plumber (RCW 18.106.090).

As with the contractor registration process, the plumbing certification may be revoked for cause and penalties imposed. However, the plumbing statute contains provisions not currently within the registration statute. The reasons cited in the statute for revocation of a plumbing certification are obtaining a certificate by error or fraud, incompetency in the plumbing trade, and violation of the provisions of the statute or of adopted administrative rules. The provisions for notifying a plumber of an infraction and for hearings, appeals, and imposition of penalties are quite similar to those of the contractor registration statute.

2.4.2.2.2 Certification of Electricians: RCW 19.28 provides not only for the regulation of electricians but also the minimum electrical rules, regulations, and standards to help promote the safety of life and property. The statute separately regulates the issuance of certificates of competency to individuals and the licensing of individuals, firms, partnerships, corporations, or other legal entities. This distinction between certification of individuals and the licensing of a legal business entity may be made more clear from the following paragraphs.

The statute identifies the minimum training and experience required to qualify for taking the relevant examination for the various competency certificates. The certificates are identified as:

- Master journeyman electrician,
- Journeyman electrician,
- Master specialty electrician and
- Specialty electrician.

As with the plumbing trade, there are multiple electrical specialties, including residential (RCW 19.28.161).

A person who is enrolled in an apprenticeship program may be issued an electrical training certificate. The holder of this certificate is authorized to learn the electrical construction trade under the supervision of an appropriately qualified and certified electrician. Persons who have completed apprenticeship program or an approved training program are permitted to work unsupervised during the final six months of their practical experience requirements (RCW 19.28.161).

2.4.2.3 Electrical Contractor Licensing

RCW 19.28.041 opens the requirement for the licensing of electrical contractors in the following way (emphasis added):

“It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing, or maintaining wires or equipment to convey electrical current, or installing or maintaining equipment to be operated by electrical current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contracting license, issued by the department in accordance with this chapter.” (Emphasis added.)

The legal entity (the business) may be issued a general or specialty electrical contracting business license when the requirements of this section of the statute are satisfied. These include the applicant providing specified identifying information; securing a surety bond, depositing cash, or depositing a negotiable security acceptable to the department in the amount of \$4,000; and designating an individual to provide oversight of electrical work, certified as a master electrician, general electrical administrator, or one of several specialty electrical administrators (RCW 19.28.051). The master electrician or administrator must be certified in the general or specialty electrical contracting competency for which the licensing application has been made and is not permitted to concurrently serve in this capacity for more than one contractor.

Local jurisdictions are prohibited from issuing a permit for electrical work to any person or firm not suitably licensed (RCW 19.28.081). Moreover, the statute requires that the L&I inspect the electrical work of new construction or alteration. The electrical work cannot be concealed until it has been approved by the inspector. The inspector has the right “during reasonable hours” to enter any building or premises to inspect electrical work for any new construction or alteration (RCW 19.28.101). One exception to the requirement that the L&I perform these inspections is in those incorporated cities and towns or in unincorporated areas where cities or towns provide electrical service that have adopted and enforce equal or higher standards than those required by the statute (RCW 19.28.141).

Any person or legal entity sustaining damage or injury as a result of a licensed electrical contractor’s work is entitled to bring action against the contractor’s bond within the superior court of jurisdiction. The statute stipulates the order or priority in which claims are paid. The liability of the bond surety cannot exceed \$4,000 (RCW 19.28.071).

Various remedies and sanctions are prescribed by the statute for electrical work not conforming to approved standards and for any electrical contractor violating its provisions. These include suspension or revocation of a certificate of competency, denial of the renewal of a certificate, and monetary fines.

2.4.3 Attorney General's Office (AGO)

The AGO has the authority under the Consumer Protection Act to bring civil or criminal suit against contractors violating that act (RCW 19.86.80). The essential features of this statute are: The Attorney General may restrain any unlawful or prohibited act and the court may restore to a resident money or property acquired unlawfully.

To date, the Attorney General's Office has found few consumer complaints about contractors that rise to this threshold. Their office does accept consumer complaints of all types, and they attempt to mediate those complaints when the consumer so desires.

The AGO provided the following comments in response to MEA's inquiry regarding consumer protection mechanisms administered by the AGO for single family housing construction.²

The primary function of the Consumer Protection Division is to enforce Washington State's Unfair Business Practices- Consumer Protection Act, RCW 19.86 ("CPA"). The Division also enforces various other trade and consumer protection laws which include authorization to enforce under the CPA - referred to as "per se" violations since a violation of the authorizing statute implicates the CPA by direct reference. The Division has authority to file lawsuits to enforce the CPA on behalf of the state of Washington but not as the attorney for individual consumers.

The vast majority of complaints filed with the AGO do not indicate a violation of the CPA or involve businesses which, individually, have generated many complaints. Accordingly, the Division endeavors to assist in the resolution of each complaint by way of informal mediation. This is done for two reasons: to assist complainants in the resolution of their dispute and to make firms aware of complaints filed against them with our office.

Frequently, it is through complaints that we learn of the existence of problems in the marketplace. Also, complaints are one source of information that we use to determine whether a business's practices may violate the CPA. While "numerosity" of complaints is not a necessary requirement to show that a business's practices violate the law, a number of complaints filed against a particular firm is often invaluable to demonstrate a "pattern of practice" which helps substantiate that the business activities in question do, in fact, violate the CPA.

On receipt, complaints are logged into our complaint tracking system and evaluated for processing. No matter how the complaint is ultimately processed, relevant pieces of information are recoded in our complaint tracking system that will assist in the

²

Source: Mr. Sean Beary, Data Analyst, AGO

informal mediation process as well as to identify patterns of practice that may be actionable under the office's scope of authority.

Certain violations of RCW 18.27 are criminal misdemeanors that we can't act upon nor can the Department of Labor and Industries. This means that prosecution of these violations falls to county prosecutors, which because they must exercise prosecutorial discretion in selecting cases they pursue often don't want those cases because they frequently don't meet a monetary loss threshold.

We are given to understand that the Consumer Protection Division of the Washington State Attorney General's Office engages in outreach and education generally on a variety of consumer issues. This is prominent on the AGO web site. Included in these efforts is consumer education on the topic of hiring contractors.

2.4.4 Permitting and Inspection by Local Governments

Local governments can play a significant role in reviewing and approving contractor permit requests and inspecting on-site work for compliance with national and local standards (RCW 19.27.095). We have no knowledge of how effectively or consistently these standards are currently enforced.

Building officials are legally mandated to insure that only registered contractors are issued building permits. However, the building inspector's role is to insure code compliance, not police unregistered contractors.

There is reported to be some misunderstanding by homeowners of the inspector's role. It is not to inspect workmanship – only to insure codes are followed. Codes represent minimum standards. The consumer must specify a higher grade if desired.

The significant number of inexperienced general contractors was commented on by the Washington Association of Building Officials (WABO) representatives contacted.³ There were strong feelings that the registration requirements are too lax. It would be helpful to have a central clearinghouse for registering complaints about contractors – allowing “bad apples” to be identified.

We are advised by both the Building Industry Association of Washington (BIAW) and local building officials that in their opinion enforcement of existing contractor registration rules is weak. They believe there is little oversight by L & I of what is happening in the field. Local building departments are required by law to confirm that a contractor is registered before issuing a building permit for the contractor's work. However, in many cases permits are never taken out (“pulled”). In other cases, an owner may secure the permit. The owner claims, “I'm going to do the work myself” and then proceeds to contract for its performance.

Notwithstanding the current level of inspection, information was developed in late 2006 by the Washington State Office of Financial Management and the Department of Community, Trade, and Economic Development indicating the financial fragility of 23 counties and 121 to 145 cities throughout Washington State (of a total of 320 cities and counties). This circumstance could prompt supposition that the enforcement of codes through the permitting and development process may

³ Julie Draft (WABO), John Neff (City of Lacey), Cindy Meyer (City of Vancouver)

have weakened even prior to the current revenue downturn. This raises concern that community expectations for basic levels of consumer safety and health in the construction and remodeling of homes may be jeopardized in fierce competition for resources at the local level.

2.5 OBSERVATIONS REGARDING THE REGULATORY ENVIRONMENT

The statutes governing contractors are a very complex collection of requirements, administered by various State departments and local governments as discussed within this report and illustrated by the attached matrix.

Some of these departments have superb documentation on their web sites for the new business owner and, for the consumer, information about how to select and manage a contractor. Elsewhere within this report it is observed that both the contractor and the consumer need to be aware that these information sources are available.

Consumer awareness may be hampered by the intricacies of the regulatory framework existing in Washington State. By legislative intent, L & I requires registration of residential contractors, certification and licensing of electrical contractors (RCW 19.28) and certification of plumbing contractors. Each specialty has different procedures and policies. Registrants must pay a fee and submit proof of carrying prescribed limits of insurance and surety bond.

Most businesses, including contractors, register their businesses through DOL's Master License Service. This service allows a contractor to register with all of the state agencies and some local governments required to operate their business. However, this one-time registration is not a license to do business, does not require annual renewal with DOL, and does not protect consumers through regulation or enforcement actions. This "one-stop" service was authorized by the legislature to ease the burden on businesses. Some unscrupulous companies may claim that they are "licensed" when their master business application is processed; however, they may not have completed their registration requirements with L&I.

Throughout our interactions with homeowners a common theme found was that consumers did not understand the regulatory structure surrounding contractors.

The legal requirements of Washington State that apply to residential construction contractors are charted according to the State agency of jurisdiction to depict the *CONTRACTING REGULATORY ENVIRONMENT* on the following pages. This matrix was constructed by reviewing the relevant statutes and attempting to identify the issues for which each agency (or local government; or the private sector) is responsible for under the law or in practice. These issues were then winnowed to what are named "contractor requirements" in the far left-hand column. Finally, the RCW citations were entered under the column for which that entity has the primary interest.

This represents a complicated set of laws that the consumer is ill-equipped to understand. The matrix provides a tool for examining relevant RCW provisions in an organized manner.

Contractor Requirements	Department of Licensing	Secretary of State	Department of Revenue	Department of Employment Security	Department of Labor & Industries	Office of the Attorney General	Local Government	Private Sector
Surety Bond				RCW 18.27.080 19.28.051	RCW 18.27.080	RCW 18.27.080	RCW 18.27.080	RCW 18.27.040
Liability Insurance				RCW 18.27.080	RCW 18.27.080	RCW 18.27.080	RCW 18.27.080	RCW 18.27.050
Business License Corporate & Limited Liability Forms of Business		RCW 09.24.040 43.07.030						
Business License Non-Corporate Forms of Business	RCW 43.05.100 43.05.110 43.20.020 43.20.030 43.20.080 43.20.115							
State Tax Registration Payment Contributions								
Contractor Registration								
Certification & Licensing Plumbing								
Certification & Licensing Electrical								

Contractor Requirements	Department of Licensing	Secretary of State	Department of Revenue	Department of Employment Security	Office of the Attorney General	Local Government	Private Sector
Industrial Insurance Contributions				RCW 50.24			
Unemployment Insurance Contributions			RCW Title 50				
Site Inspection Electrical				RCW 19.28.101			
Licensing Cities & Counties					RCW 18.27.130		
Site Permitting Cities & Counties					RCW 19.27.095 19.28.081 19.28.141		
Site Inspection Cities & Counties					RCW 19.28.141		
Registration & Specialty Licensing Enforcement	RCW 18.27.020 18.27.390	RCW 18.27.020 18.27.390	RCW 18.27.020 18.27.390	RCW 18.27.020 18.27.225 18.27.250 18.27.340 18.27.342 18.27.390 19.28.241	RCW 18.27.020	RCW 18.27.020	
Complaint Processing							BBB
Complaint Prosecution			RCW 19.28.071	RCW 19.86.80	RCW 19.28.071	RCW 19.28.071	

3.0 STUDY FINDINGS

3.1 EXAMINATION OF AVAILABLE DATA

No unified source of data regarding problems experienced with residential construction could be found. We were forced to rely on isolated parcels of information from a variety of sources.

3.1.1 Claims Against Bonds

Data relevant to problems encountered in residential construction contracting were not immediately available from the L&I. On request, L&I compiled hard data regarding the claims made against contractor bonds during calendar year 2007:

FILED BY:	NO. OF FILINGS	VALUE OF FILINGS	PERCENT OF TOTAL VALUE	NO. OF JUDGEMENTS	VALUE OF JUDGEMENTS	PER-CENT OF TOTAL JUDGEMENT VALUE	NO. OF PAYMENTS	VALUE OF PAYMENTS	PERCENT OF PAYMENT TOTAL	NO. DIS-MISSED	PERCENT OF TOTAL DIS-MISSED
Consumer	631	\$ 6,908,016	20.98%	61	\$ 1,313,890	15.88%	201	\$ 1,661,632	25.30%	144	18.05%
Government	878	\$ 4,790,090	14.55%	371	\$ 2,924,942	35.35%	398	\$ 1,312,426	19.98%	144	18.05%
Labor	219	\$ 4,478,980	13.60%	20	\$ 490,970	5.93%	48	\$ 280,943	4.28%	50	6.27%
Other	373	\$ 2,301,604	6.99%	104	\$ 522,212	6.31%	114	\$ 536,903	8.18%	60	7.52%
Supplier	1186	\$ 14,444,217	43.87%	261	\$ 3,022,868	36.53%	514	\$ 2,775,468	42.26%	400	50.13%
TOTAL	3287	\$ 32,922,907	100.00%	817	\$ 8,274,882	100.00%	1275	\$ 6,567,371	100.00%	798	100.00%

Factors examined included:

- ▶ The sector initiating the actions filed against contractors' bonds (*Filed By*). These sectors are:
 - Consumer: The party contracting for new residential construction or remodeling
 - Government: This encompasses all state agencies – L&I is reported to file the most actions. These relate primarily to unpaid workers compensation insurance premiums.
 - Labor: Individuals who have worked as employees of the contractor against whom action is being pursued.
 - Other: Parties whose identity is unknown.
 - Supplier: Entities supplying goods and services incorporated in construction by the contractor. This is believed to include sub-contractors.
- ▶ The number of filings by that sector during the year (*No. of Filings*).
- ▶ The dollar amount claimed in those filings (*Value of Filings*).
- ▶ The proportion of the dollar amount filed by each sector (*Percent of Total Value*).
- ▶ The number of court judgements against bonds for each sector (*No. of Judgements*). These represent resolved court cases.
- ▶ The proportion of the dollar judgement value for each sector (*Percent of Total Judgement Value*).
- ▶ The dollar amount of payments received by each sector (*Value of Payments*).

- ▶ The proportion of the dollar value of payments for each sector (*Percent of Payment Total*).
- ▶ The number of claims dismissed (*No. Dismissed*). Many of these claims are settled.
- ▶ The proportion of the dismissed claims for each sector (*Percent of Total Dismissed*).

The preponderance of the value of the filings (44% of Total Value) were made by suppliers. We deduce that non-payment of material suppliers and sub-contractors is a major problem.

There is no coding of L&I records that would allow causes for filings to be extracted. Hence, the information provided has limited value in identifying what changes in regulation might produce improved outcomes.

3.1.2 Lien Laws

Residential contractors are reported to use the threat of a property lien to encourage / force payment from consumers who may be unhappy with outcomes. Material suppliers can place a lien on a residence if the contractor defaults on payment, forcing the consumer to pay twice in extreme cases.

The claims against bonds evidenced by the aforementioned incidence of non-payment to suppliers draws attention to the leverage on consumers posed by RCW 60.04.021 authorizing liens on homeowners by third parties. It states:

Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.

RCW 60.04.031 requires suppliers and subcontractors to notify the homeowner of the right of suppliers and subcontractors to place liens on a property if they are not paid by the contractor (*Notice of Intent to Lien*). Liens are limited to the value of the contract not yet paid. The prescribed notification process appears complex to understand. Requirements for the number of days that must elapse between notification, installation of materials and placement of liens seem unnecessarily complicated. Only a lawyer or other experienced party would easily understand this *Notice*. We sense that many homeowners may simply ignore the notification as a result.

A study of this subject was conducted by L&I in 2003 with the assistance of an outside third-party contractor – Gilmore Research Group.⁴ The Gilmore Group observed that the Washington State Department of Labor & Industries (L&I) has broad authority to oversee contractor registration and compliance. The purpose of this survey was to gain an understanding of the hardship that may have been encountered by homeowners when liens were placed against their properties. Material liens may be filed for a variety of reasons. In particular, this study attempted to isolate material liens placed by subcontractors, suppliers or laborers when the homeowner paid the contractor in full and the contractor failed to make required payments.

The specific objectives of the study were to:

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The Impact of Material Liens: A Survey of Homeowners with Material and Other Liens, the Gilmore Research Group, October 17, 2003.

- Obtain information about the frequency of this type of lien in Washington;
- Understand the monetary impact on affected property owners; and
- Determine what, if any, hardships were encountered by affected property owners.

The Gilmore Group stated that as Washington State laws stand, if a contractor fails to pay subcontractors, suppliers or laborers, or neglects to make other legally required payments, those who are owed money have the right to make a claim for payment from the property, even if the property owner has paid the contractor in full. This claim is known as a material lien. The laws surrounding this issue are defined under RCW 60.04.

Gilmore searched the files of eight Washington counties for records of liens filed under RCW 60.04. Of the 1,418 records identified as potentially applicable, 536 could be matched with valid addresses and working telephone numbers. Surveys were completed with 160 property owners, only 51 of whom qualified under the narrow target for this survey as being homeowners who have paid the contractor in full and had liens filed against their property as a result of the contractor failing to make required payments. L&I decided to end calling and review the data with these 51 qualified homeowners. Key findings from perusal of the 51 material liens are itemized:

- ▶ It proved difficult to obtain a true estimate of how often material liens occur in Washington. If the total 160 homeowners in this survey are representative of all liens filed under RCW 60.04, then about one-third of those liens would be expected to be material liens.
- ▶ The contractor in these lien situations generally came to a homeowner's attention through a referral and about half of the time, respondents did get more than one bid for their project. Three in four homeowners had a personal interview with their chosen contractor, but only half received references and only a portion of them actually checked the references. The homeowners with material liens appeared to be more thorough in their selection than those with other liens; they were more likely to have had a personal interview and to have received and checked references.
- ▶ Few of the homeowners checked the contractor on the L&I registration web site. About 30% said they knew about the registration program, and about half of them said they thought their contractor was registered, but only 6% actually checked.
- ▶ For the most part, material lien homeowners knew that the filing was done by a supplier that had not been paid by the contractor. Homeowners with other types of liens knew it was the contractor who had done the filing, generally over pay, timing or work quality dispute.
- ▶ The more frequent outcome among homeowners with material liens was that a settlement had been negotiated with the supplier. In some, but fewer cases, the contractor or homeowner paid the lien. About half of these homeowners felt they had paid twice for their materials in order to settle a lien.
- ▶ The average cost of the material lien was \$6,200, with a majority of the cases falling under \$5,000. Total project cost came in higher on 39% of the cases; the average difference was \$42,110. including the cost of the lien. Total cost came in lower on only 6% of the cases, the average difference being \$6,667.

- ▶ About one material lien homeowner in five took legal action against the contractor, resulting in either a settlement or cases that are still pending. Only three (about one in 20) filed with L&I, one of whom was awarded money, one had the contractor settle, and one was still pending (apparently with little hope of settlement).
- ▶ Homeowners with other types of liens were also likely to have negotiated a settlement, although unlike the material lien respondents very few felt they had paid twice for services.
- ▶ The average cost of the non-material lien was \$9,070. Total project cost came in higher on 30% of the cases, with an average difference of \$104,720, including the cost of the lien. Total cost came in lower on 14% of the cases, the average difference being \$23,560.
- ▶ As with the material lien homeowners, about one of these other lien homeowners in five took legal action against the contractor. Four (about one in 25) of these other lien respondents filed with L&I; three of these cases ended positively for the homeowner and on the fourth, the respondent did not know the outcome.
- ▶ Overall, about half of the material lien and more than half of the other lien homeowners said they were hurt or inconvenienced through the time it took for the project, the stress, and dealing with what they perceived to be poor quality workmanship.

Lien laws seem to disadvantage the consumer.

3.1.3 Washington Research Council (WRC) Report

We reviewed a report prepared by the Washington Research Council (WRC) to the Master Builders Association (MBA) of King and Snohomish Counties.⁵ This MBA is a local association of the BIAW. The WRC extracted 359 lawsuits against contractor bonds reported to L&I between January 1, 2005 and May 10, 2007. Lawsuits were grouped within one of seven project types: New Home Construction, Remodeling, Roofing, Garages/Decks/Additions, Siding, Landscaping, Other, and “Unknown” – the category was not specified in the lawsuit.

The WRC then classified the problems into 13 groups in four broad categories corresponding to the nature of the problem. Due to the fact that claims often cited multiple problems, the sample of 359 claims represented 637 problems.

⁵ *Report to the Master Builders Association of King and Snohomish Counties on Construction Complaints on File with the Department of Labor and Industries, Washington Research Council; July 12, 2007, Used by permission*

Lawsuits Against Contractor Bonds (Jan/2005 to May/2007)											
Problem Type		Project Type								Total	Percent
		Remodel	Roofing	Garage/ Deck/ Addition	Siding	Land- scape	New Home	Other	Unknown		
Category 1	Faulty/Defective	28	14	16	4	5	40	20	9	136	21.4%
	Sub-Standard	19	3	11	1	5	13	18	5	75	11.8%
	Permits	6	2	7	0	2	3	1	2	23	3.6%
	Not to Code	4	4	4	0	3	7	2	0	24	3.8%
	Not to Specs	16	4	4	0	1	11	7	1	44	6.9%
Category 2	Never Started	6	5	10	0	1	0	3	6	31	4.9%
	Incomplete	24	4	13	1	4	14	14	7	81	12.7%
	Untimely	17	2	7	0	6	10	4	0	46	7.2%
	Abandoned	13	4	8	1	7	9	3	7	52	8.2%
Category 3	Overbilled/Invoices	5	0	3	1	2	5	3	3	22	3.5%
	Unpaid Sub-Contractor	10	0	7	3	4	11	9	7	51	8.0%
Category 4	Damage to Property	6	7	4	1	5	11	8	2	44	6.9%
	Other	0	0	0	0	1	2	5	0	8	1.3%
Total		154	49	94	12	46	136	97	49	637	100.0%
Percent		24.2%	7.7%	14.8%	1.9%	7.2%	21.4%	15.2%	7.7%	100.0%	
Average Claim		\$28,363	\$7,948	\$17,232	\$10,504	\$41,951	\$50,534	\$30,020	\$11,368	\$29,473	

The parameters used in the WRC study are discussed:

PROBLEM TYPE

Cat. 1: *Problems with the quality of the actual construction work performed* (302 incidents, 47.4%):

Faulty/defective - includes work that did not serve or function according to its specified purpose, i.e. leaking roofs or windows, use of inappropriate materials, cracked or broken materials, etc.

Sub-Standard- includes work that the complaint listed as below industry standards, or not to the manufacture’s specifications, or generally shoddy work (i.e. uneven, not matching, etc.).

Permits – includes complaints that specified the contractor failed to obtain the appropriate permits.

Not to Code- includes work that upon inspection did not meet city or industry building codes.

Not to Specs- includes work that was not completed to the specifications laid out by the owners. The work was either not within the scope of the contract or the contract was altered by the contractor without consent of the plaintiff or was simply not done in a manner consistent with the plaintiff’s wishes.

Cat. 2: *Problems with completeness or timeliness of work* (210 incidents, 32.97%):

Never Started- includes mainly cases where a contractor collected a deposit and never returned to begin work.

Incomplete- includes work that was never finished by the contractor.

Untimely –includes complaints in which the contractor took an unreasonable amount of time to start or complete the job or did not complete it in time allotted by the contract.

Abandoned- includes work that was intentionally and knowingly left unfinished and abandoned by the contractor and/or crew.

Cat. 3: *Financial problems* (73 incidents, 11.46%):

Overbilled/Invoices –includes complaints in which the contractor, allegedly, intentionally inflated costs or refused to provide accurate accounting and invoices for work and /or materials.

Unpaid Sub-Contractor – includes both complaints from the subcontractors for payment, as well as complaints from customers who had liens filed on their property due to a failure of the primary contractor to pay subcontractors.

Cat. 4: *Other problems* (52 incidents, 8.16%):

Damage to Property – includes complaints where the actions of the contractors caused damage to property outside of their immediate work areas.

Other- includes complaints that could not easily or accurately be placed in one or the other categories.

Most complaints list multiple problems.

PROJECT TYPE

1. *Remodeling*

This category includes projects such as kitchen remodeling, redoing cabinets, bathrooms, laundry rooms etc. The most common complaint with remodeling projects was that the work was faulty or defective, followed closely by projects that were left incomplete. The average amount of damages sought in a remodeling claim was \$28,363.

The largest remodeling claim examined was for \$385,137. In this case the contractor was hired to do remodeling work (painting, doors, cabinets, etc.) and landscaping on a residence. The complaint states that the work was abandoned and that the contractor failed to protect the work that has been completed from rain and water damage.

2. *Roofing*

This category includes re-roofing, repairs due to weather/snow damage, metal roof installation, fixing leaks etc. The most common complaint was that the work was faulty or defective. The average amount of the claim was \$7,948. This is the lowest average amount of any project type. The largest claim on a roofing project was for \$28,000. In this case a contractor was hired to replace the roof on a family residence. The contractor replaced the approved staples with cheaper, incompatible staples, which damaged the roof.

3. *Garages/Decks/Additions*

This category includes all major residential construction projects that are not included as remodels. These include decks, garages, and additions such as sunrooms or sheds. This category also includes repaving driveways, building or fixing outdoor stairs, and other concrete work.

The most common complaint was faulty/defective work followed by incomplete work. The average claim amount was \$17,232. The largest claim in this category was \$167,000. In this case the contractor was hired to build a garage for a family residence. The suit alleges the garage construction was defective, was not built to the owners specifications, was not built to code, the contractor failed to obtain the proper permits, the work was untimely and the contractor failed to provide proper invoices.

4. *Siding*

This category involves outdoor siding projects. Again, the most common complaint was that the installation was faulty or defective, with unpaid sub-contractors being the second most common problem. The average amount under dispute was for \$10,504. The largest claim in this category was for \$21,600. In this case a contractor was hired to apply siding, trim, and flashing to a home. The complaint alleges the siding was not properly applied and the contractor was fired by the plaintiff. The plaintiff was then billed for twice the amount of the contract and a lien was filed against the plaintiff's property.

5. *Landscaping*

This category includes all traditional landscaping such as plants, rocks, lawns and also includes septic systems and other outdoor plumbing, retaining walls and well drilling. The most common complaint in this category was that the work was abandoned. The average claim amount was \$41,951 making it the second highest average claim amount. The largest landscaping claim (that was not also a remodeling claim, see above) was filed for \$200,000. The claim alleges the storm system and sewer lines were not installed properly, and sub-contractors were not paid resulting in a lien on the property.

6. *New Home Construction*

The new home construction category includes all projects where the complaint is directed at the general contractor in charge of the construction of the house and lists multiple or very general defects with the house as a whole.

This was the second most common project type. Allowing for the fact that the sample included one-quarter of the lawsuits reported to L&I over the period, it is estimated that the overall rate of such suits to be 10 per month. Over the same period, single family residence building permits averaged 3,000 per month.

By far the most common complaint was that the work was faulty or defective. The average claim amount was \$50,534 making it the highest average claim amount. The largest suit filed in the home construction category was for \$687,459. This suit, involving the construction of a log home, alleged improper accounting, failure to construct the home to contract specifications, hiring unlicensed subcontractors, and failure to complete the job in a timely manner.

7. *Other Specified Types*

This category includes projects that do not fall into one of the previous categories. Examples include construction of sports courts and swimming pools, sprinkler winterization, a horse arena addition, plumbing and electrical wiring.

The average amount in question was \$30,020, while the largest was \$524,000. In this case, the contractor installed a wood furnace in a family residence, which was subsequently destroyed in a catastrophic fire. The suit alleges that the fire resulted from the contractor's failure to properly install insulation in the attic.

8. *Unknown*

The average claim amount for these cases was \$11,368, while the largest claim was \$75,000.

Summary of Damage Claims

Of the 359 complaints examined, 307 specified an amount for damages. (In some cases the amount specified was just equal to the amount of the bond, leaving open the possibility that damages suffered were something greater.) The remaining 52 cases listed the amount as "to be determined at trial" or indicated that the amount was either to exceed or not to exceed the amount of the bond. New home construction had the largest average amount of money in dispute (\$50,534). Of the 54 home construction cases that specified dollar amounts, only 12 cases involved amounts over \$50,000. The average of these 12 cases was \$171,562. For the 42 cases with amounts below \$50,000 the average was \$15,954. The average is pulled up significantly by these few large cases.

Landscaping, which had the second highest average amount (\$41,951), had only four cases with amounts larger than \$40,000. For the 16 cases with amounts below \$40,000, the average was \$9,382. Thus the overall average for landscaping cases is also exaggerated by a few very large claims.

Roofing projects had the lowest average claim amount (\$7,948).

Observations About WRC Report

Toward fulfilling MEA's objective of identifying the regulatory structure appropriate to optimal consumer protection, we are interested in the nature of the problem – to allow alternative corrective actions to be conceived. The WRC concluded that, "By far the most common complaint was that the work was faulty or defective" (136 complaints – 21.4%). We believe that this type of problem should be viewed in a broader context of *quality of construction*. In this framework, we would include:

- ▶ Faulty/Defective
- ▶ Sub-Standard
- ▶ Permits
- ▶ Not to Code
- ▶ Not to Specs
- ▶ Damage to Property

This totals 346 complaints or just over 54% of all complaints. This is a large issue from the consumers standpoint.

Another class of complaints is that of *unacceptable business practices*. In this class, we lump *Problems with completeness or timeliness of work* together with *Financial problems*. The problems associated with these two conditions are:

- ▶ Never started
- ▶ Incomplete
- ▶ Untimely
- ▶ Abandoned
- ▶ Overbilled/invoices
- ▶ Unpaid subcontractors

A total of 283 lawsuits/complaints are attributable to unacceptable business practices. This represents 44.4% of all lawsuits.

Although the WRC tracked the dollar value of each claim, this information was not reported by problem group.

3.1.4 Supplementary Information

In 2005, an informal survey was conducted by L&I of 99 homeowners that had been adversely impacted by contractors. The intent was to better understand homeowner issues and help address areas that do not provide adequate protection.

We were able to extract answers to two of the questions on the survey:

1. *Before you hired the contractor in question, had you heard of the Dept. of Labor & Industries Contractor Registration Program?*

There were 55 “No” and 40 “Yes” (4 did not answer). It must be concluded that consumers are generally unaware of the State’s mechanism for contractor regulation.

2. *Prior to hiring your contractor, did you verify that they were registered with the Department of Labor & Industries Contractor Registration program?*

Not surprisingly, there were 60 “No” and 35 “Yes”

3.1.5 Information Compiled During July, 2008

In the midst of this study (July 30, 2008) we received a tabulation of complaints reported to L&I field investigators (n = 311) and telephone complaints phoned to L&I (n = 87) during that month. These were combined into a complaint population of 398.

In contrast to other research sources, this report noted that a high proportion of the complaints were attributed to unregistered contractors; 55% involved unregistered contractors. Noting that there are more than 60,000 registered contractors in the state, this finding is significant.

The full results are tabulated:

COMPLAINT TYPE	CONTRACTOR TYPE													PERCENT OF TOTAL
	Elec-trical	Garage s/ Decks/ Addi-tions	Gen-eral	Land-scap-ing	New Home Con-struction	Other Spe-cified Types	Paint-ing	Plumb./ Heating	Remod-eling	Roof-ing/ Gutters	Siding	Un-known	Total	
Abandoned	0	1	0	2	2	1	0	1	7	1	3	3	21	5.28%
Damage to Property	0	1	0	0	2	6	0	0	5	1	0	0	15	3.77%
Faulty/Defective	2	0	3	2	9	16	3	4	17	5	1	1	63	15.83%
Incomplete	1	1	0	5	5	8	0	2	10	2	2	3	39	9.80%
Never Started	1	2	0	2	1	7	2	0	5	4	0	1	25	6.28%
Not to Code	1	1	0	1	2	2	0	2	0	0	0	0	9	2.26%
Other	2	0	4	5	11	30	11	8	15	10	2	16	114	28.64%
Over billed/Invoices	0	0	1	2	1	2	0	2	1	1	0	1	11	2.76%
Permits	2	0	0	0	3	0	0	2	3	0	1	1	12	3.02%
Sub-Standard	2	2	1	5	7	14	4	4	18	7	1	2	67	16.83%
Unpaid Sub-Contractor	0	0	0	0	5	5	0	1	5	0	0	2	18	4.52%
Untimely	0	0	0	0	0	0	1	0	0	0	0	1	2	0.50%
Warranty	0	0	0	0	1	0	0	0	0	0	0	1	2	0.50%
Total	11	8	9	24	49	91	21	26	86	31	10	32	398	100.00%
Percent of Total	2.76%	2.01%	2.26%	6.03%	12.31%	22.86%	5.28%	6.53%	21.61%	7.79%	2.51%	8.04%	100.00%	

Complaint Types are similar to the classifications used elsewhere. The large number of complaints classified as “Other” (114) make it difficult to interpret the results. “Workmanship” problems seem to prevail although “Business Practice” issues are also reflected.

3.1.6 Attorney General's Office

The Consumer Protection Division of the Attorney General's Office (AGO) has the responsibility of enforcing Washington State's Unfair Business Practices -- the Consumer Protection Act (CPA) -- under the authority of Revised Code of Washington (RCW) 19.86. It also enforces approximately 72 other trade and consumer protection laws which include language authorizing them under the CPA. We were informed that only under these laws is the AGO authorized to prosecute businesses and that the AGO has no authority otherwise for prosecuting a businesses on behalf of a consumer.

Under the authorization of the CPA, the Consumer Protection Division welcomes complaints from consumers that could conceivably violate the CPA. The AGO has found that the vast majority of complaints filed with them do not violate the CPA or identify businesses that individually have generated many complaints. One would expect this pattern to follow with the residential housing construction and remodeling industry.

The AGO is perhaps the most frequently used repository of complaints against residential contractors. The AGO reported on 105 complaints resulting from “**new home construction issues**” in 2007. ⁶ From these 170 issues were extracted and grouped into 17 problem categories:

ISSUE	OCCURRENCES	PERCENT OF TOTAL	ISSUE RELATED TO BUSINESS PRACTICES
Failure to honor warranty *	33	19.41%	19.41%
Poor workmanship	26	15.29%	
Inferior / defective materials	17	10.00%	
Significant construction deficiency	15	8.82%	
Completion delay *	14	8.24%	8.24%
Work not performed as specified *	13	7.65%	7.65%
Building code deficiency	11	6.47%	
Failure to refund initil deposit *	11	6.47%	6.47%
Failure to pay sub / supplier *	8	4.71%	4.71%
Cost overrun *	5	2.94%	2.94%
Unlicensed activity *	4	2.35%	2.35%
Home owner association issue	3	1.76%	
Warranty Exclusion	3	1.76%	
Delay returning documents	2	1.18%	
Financing issue *	2	1.18%	1.18%
Potential conversion of funds *	2	1.18%	1.18%
False advertising *	1	0.59%	0.59%
TOTAL	170	100.00%	54.71%

The issues we deem “Related to Business Practices” are indicated (*). These constitute 54.71 % of the total. Consumers may be particularly prone to reporting “business” problems to the AGO.

Construction related complaints do not rank among the “Top Consumer Complaints” tallied on the AGO web page.

⁶ *New home construction complaint analysis*; memo from Sean Beary, AG Research Analyst

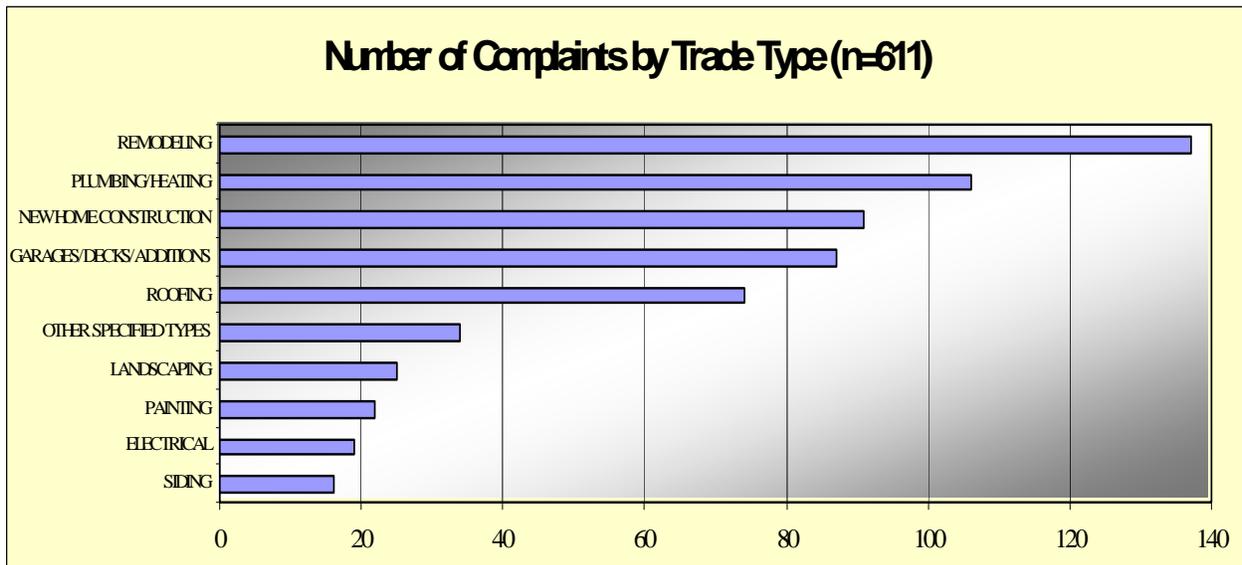
Another analysis of 611 complaints out of 953 provided by the Attorney General was performed by the DOL in support of this study.⁷ From AGO paper complaint documentation, the DOL selected 611 cases by taking about 50 cases from each month of the calendar year 2007 AGO complaints. In some cases, this comprised all or almost all of the month's complaints, and in the busier months (June-Sept) it was the majority, but not all of the complaints. The complaints were selected in this manner to ensure a strong sampling of each month of the year to capture work covering seasonality patterns.

These 611 complaints were then classified by type of work and by type of complaint using classification codes as used earlier for the WRC data. *Failure to honor warranty* is an additional "Problem Type". Additional information that was thought to be of interest was also compiled, such as the gender and age of the complainant and the dollar amount successfully mediated or arbitrated by the AGO. The complaints were screened to include only single family residential work, but there could well be commercial work inadvertently included in the sample.

PROBLEM TYPE	PROJECT TYPE										TOTAL PROB- LEMS	Percent of Total
	Electrical	Garage/ Deck/ Addition	Land- scape	New Home	Other Type	Painting	Plumb/ Heating	Remodel	Roofing	Siding		
Faulty/Defective	0	5	1	3	1	3	10	11	6	2	42	6.87%
Sub-Standard	3	24	3	8	4	6	12	29	15	3	107	17.51%
Permits	3	0	1	2	0	0	1	1	1	0	9	1.47%
Not to Code	0	2	0	2	0	0	1	1	1	0	7	1.15%
Not to Specs	0	9	2	5	3	0	2	9	0	0	30	4.91%
Never Started *	0	16	1	2	6	2	11	22	10	2	72	11.78%
Incomplete *	2	7	6	4	4	1	3	16	6	1	50	8.18%
Untimely *	0	2	0	3	2	0	0	5	0	0	12	1.96%
Abandoned *	0	5	1	1	1	1	1	8	3	1	22	3.60%
Overbilled / Invoices *	11	10	3	10	7	1	50	22	9	1	124	20.29%
Unpaid Sub-contractor *	0	1	1	11	0	5	0	4	0	1	23	3.76%
Damage to Property	0	3	6	3	4	1	5	5	1	3	31	5.07%
Other	0	1	0	5	1	1	2	0	4	1	15	2.45%
Warranty	0	2	0	32	1	1	8	4	18	1	67	10.97%
TOTAL	19	87	25	91	34	22	106	137	74	16	611	100.00%

Problems attributable to "business practices" (*) comprise about half of the total.

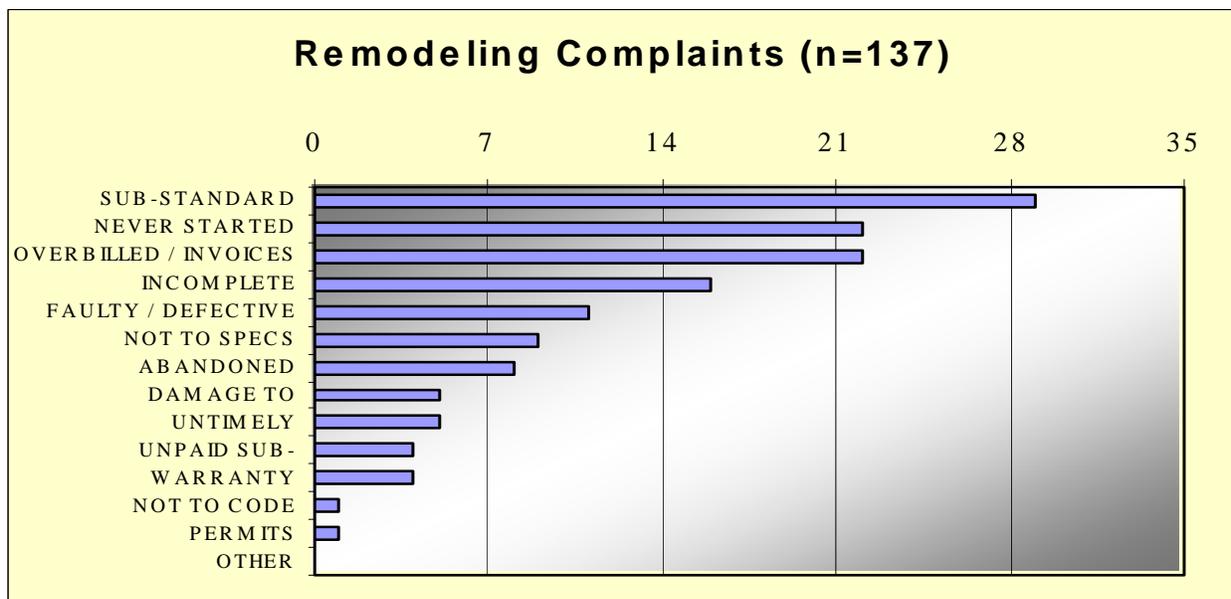
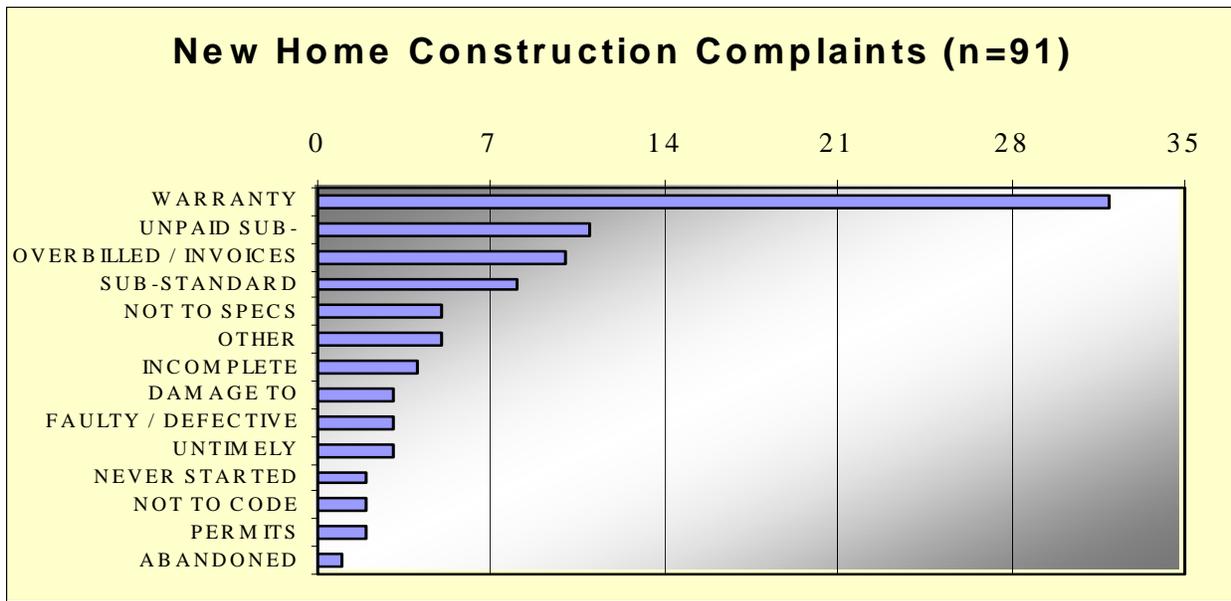
The coding system created by the DOL was sufficiently detailed to permit breaking the types of complaints into project categories such as craft or trade, new construction, and remodeling. One potential source of confusion is that there often is more than one plausible category in which to place a complaint. For example, an electrician installing the wiring of a new home could be placed in either the electrical trade or the new home construction category. The three exhibits provide a general sense of the complaint frequencies by labor trade, type of new home construction problem, and remodeling problem:



The top three most prevalent Trade Types are clearly remodeling (n=137), plumbing/heating (n=106), and new home construction (n=91). The fact that remodeling appears at the top of the complaints should come as no surprise; remodeling work is very often undertaken with no formal plans and specifications and is therefore likely to result in more frequent consumer surprises and unmet expectations than is new construction.

Remodeling work likewise often presents surprises for the contractor in the form of unanticipated conditions such as obstructions behind walls, under floors, and within crawl-spaces – or finding utility lines in unexpected locations. These discoveries can delay work and substantially increase the cost of the project. Moreover, there are more remodeling projects than new home construction projects, also increasing the likelihood of higher numbers of complaints. Further contributing to the likelihood of remodeling complaints, the consumer is likely residing in and may be observing the ongoing work; during new home construction the consumer is very likely residing elsewhere and sees only the finished product or, at best, sees the ongoing construction infrequently.

As suggested by the title, plumbing/heating work is two distinct trades. However, the designation plumbing/heating is common usage. These are plumbers and the heating, ventilating, and air conditioning (HVAC) tradesmen. Both are in high demand for new construction, remodeling, and repair work. The HVAC workers also do a significant amount of preventive maintenance on systems. For these reasons it is difficult to determine a unique reason for the higher number of complaints without consulting the specific complaints. The large number of plumbers and HVAC trades workers and a skilled labor shortage are very likely major contributors to the number of complaints.



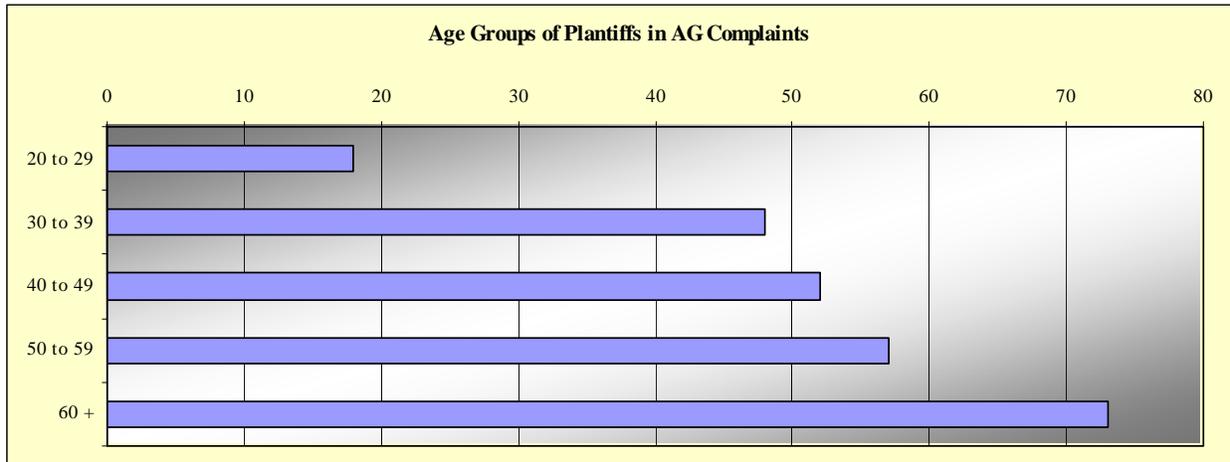
Because new home construction and remodeling projects receive a high number of consumer complaints and action to mitigate complaints is the nexus of this study, we have focused particular attention on complaints. The two charts immediately preceding and the subsequent table are intended to shed additional light on these complaints. The 611 complaint sample discussed above includes the complaints to be presented below, as well as those of the various specialty contractors.

The top three complaints for new housing construction were, first, warranty issues; second, unpaid sub-contractors; third, overbilled or invoice issues. For remodeling work the top three were first, substandard work; second, contractor never started work; and third, overbilled or invoice issues. The ranking of the complaints shown in the three exhibits presented above for all construction, new homes, and remodeling are contrasted in the following table:

Ranking of Complaint Types

	All Construction Work	New Homes	Home Remodeling
Over-billed/Invoices	1	3	3
Substandard	2	4	1
Never Started	3	11	2
Warranty	4	1	11
Incomplete	5	7	4
Faulty/Defective	6	9	5
Property Damage	7	8	8
Not to Specs	8	5	6
Unpaid Sub-contractors	9	2	10
Abandoned	10	14	7
Other	11	6	14
Untimely	12	10	9
Permits	13	13	13
Not to Code	14	12	12

With a few notable exceptions, the table shows general agreement in **ranking** of the complaint types. Contrasting the top new homes construction complaints against home remodeling complaints, work “never started” is significantly more of a problem for the home remodeling consumer than for the new home construction work consumer. Shifting to new home construction complaints, “warranty” is a significantly higher consumer concern than for the remodeling consumer.



Another factor of interest in the analysis of complaints to the AGO was the high proportion of complaints made by older consumers. As may be observed from the preceding chart, the numbers of complaints increase with age. There is, in fact, evidence in the original complaint documentation of contractors targeting the elderly. The AGO does maintain a page on its web site cautioning the older consumer about the “fly-by-night” scam artists who do seem to prey more frequently on these individuals.

Clearly, there are other factors that could be contributing to this steady increase in complaints with age. One possible factor is increasing numbers of persons owning homes as they age, having more disposable income, therefore resulting in more construction projects for the older consumer than for younger ones and consequently more complaints. The data suggest how consumer education efforts should be targeted.

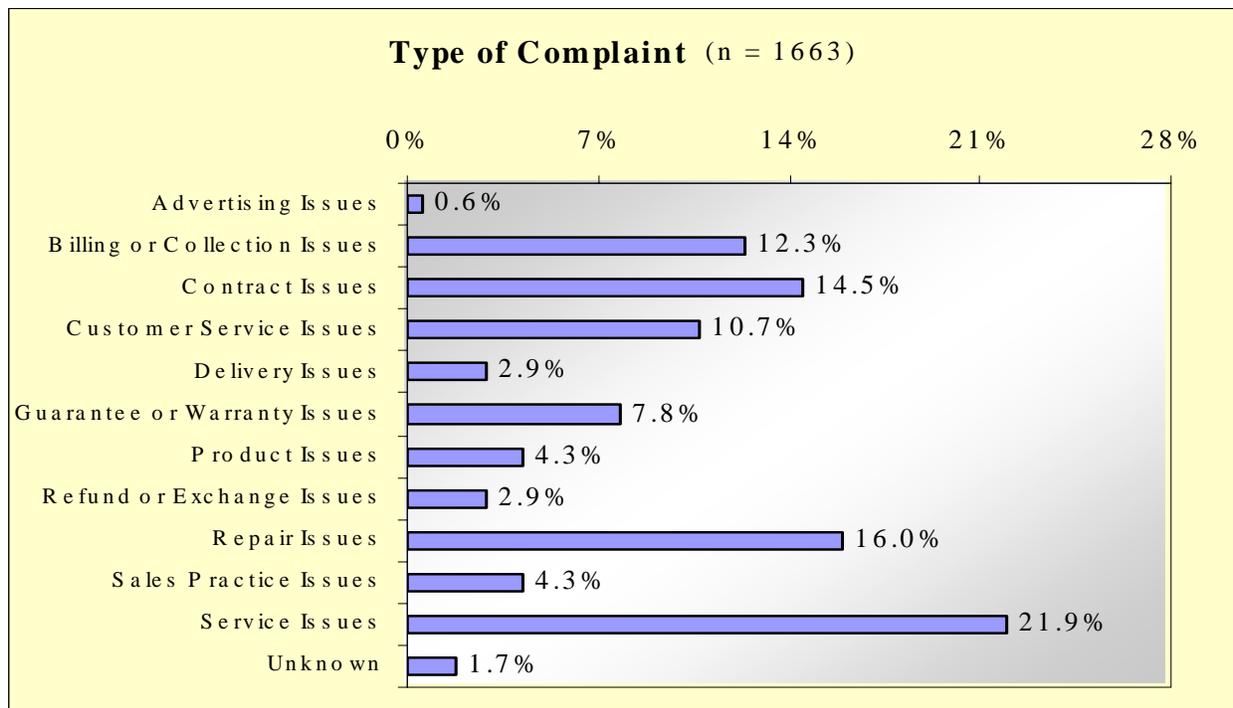
As the foregoing exhibits indicate, the AGO complaint documentation can provide a wealth of data attributable to the single family housing construction industry. However, because the data are in paper documents, data collection and tabulation is a laborious and expensive process. Electronic capture of information would be beneficial.

3.1.7 Better Business Bureau (BBB)

The Better Business Bureau (BBB) receives and compiles complaints about virtually every business the consumer is likely to encounter, whether product-oriented or in the delivery of services. Although detailed information about specific complaints is not publicly released by the BBB, they were helpful in providing summary statistics about construction industry complaints.⁸

The point of contact for the BBB was at office in Dupont, WA covering Western Washington and parts of Alaska and Oregon and the office in Spokane with responsibility for Eastern Washington and parts of Idaho and Montana. It was not possible to segregate the Washington State data from that of the remaining areas of responsibility for these BBB offices and the summary statistics discussed below therefore also include complaints from parts of Alaska, Oregon, Idaho, and Montana. Western Washington population centers comprise the predominant numbers of complaint sources.

During 2007 the Dupont and Spokane BBB offices documented a total of 1,663 complaints against the construction industry within their regions. Just over 85 percent of these complaints (1,416) were recorded by the Dupont office for Western Washington and parts of the other states within their region; the remaining 15 percent (247 complaints) were recorded for Eastern Washington and the other states within the region. The percentage of complaints falling within the complaint categories tracked by the BBB are shown immediately following:



⁸ The BBB makes no distinction in handling complaints between those businesses engaged in the residential construction and remodeling industry and those performing commercial construction and remodeling.

As indicated, the most frequently occurring complaint categories were, first, Service Issues (365 complaints at 21.9 percent), second, Repair Issues (266 complaints at 16.0 percent), third, Contract Issues (241 complaints at 14.5 percent), fourth, Billing or Collection Issues (205 complaints at 12.3 percent), and fifth, Customer Service Issues (178 complaints at 10.7 percent). The remaining complaints comprised less than 25 percent of the total.

Under the definitions used by the BBB for each category of complaint, four of the 12 categories shown in the above chart are primarily related to the quality or timeliness of delivered materials and services. Those four represent 751 complaints or 45.2 percent of the total:

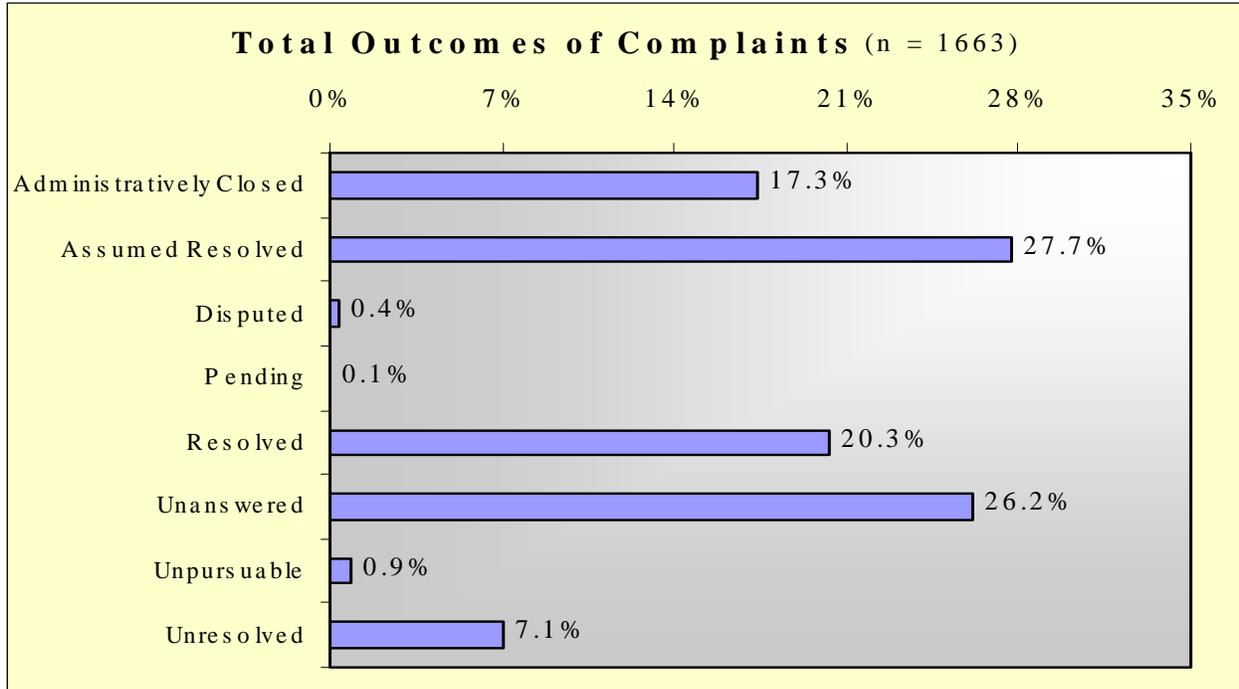
- Service Issues: Claims of alleged delay in completing service, failure to provide promised service, inferior quality of provided service, or damaged merchandise as a result of delivery service.
- Repair Issues: Claims of alleged incorrect diagnosis of a problem, delay in completion of repair, inferior workmanship.
- Product Issues: Claims alleging a product does not meet the expectations of the complainant, including defective merchandise.
- Delivery Issues: Claims of alleged delay or non-delivery of ordered merchandise or materials.

The remaining eight categories concern alleged misrepresentation or other questionable contractor practices not primarily involving quality or timeliness of delivered materials and services. Note that the word “alleged” is an element of each category definition. This seems a reasonable precaution since few of the complaints have been mediated, arbitrated, or litigated.

The distinctions among the above 12 categories sometimes require considerable interpretation. Many complaints involve multiple causes, and the primary complaint may not be easily identified or categorized.

In addition to tracking the numbers of complaints received by type and industry, the BBB also follows each complaint until it has been closed or it has been found infeasible to reach closure. The BBB assigns each complaint a “resolution status” code that changes to reflect actions initiated by the consumer, the BBB, or the company against which a complaint is lodged.

Of the 1,663 complaints registered during 2007, 461 claims were placed in the “assumed resolved” status, followed in magnitude by 435 “unanswered,” 337 “resolved,” 288 administratively closed, 118 “unresolved,” 15 “unpursuable,” 7 “disputed,” and 2 “pending.”



Because of the BBB self-imposed tracking and closure limitations, only the 337 “resolved” claims, or just over 20 percent, would seem to be affirmatively closed with certainty. The remainder were in a status of awaiting action by the consumer or business, were considered inactionable by the BBB, or the status was unknown to the BBB and the claims were subsequently closed. It should be recognized that the BBB is not separately funded for receiving, tracking, and helping to resolve the many public complaints not involving the BBB business membership; they handle these complaints as a public service. The BBB funding source is the business membership accredited by the BBB.

Observations: The central issue of interest to the Washington State Legislature, and the reason for this research, is to answer the question of whether there is a need for additional consumer protection related to single family housing construction or remodeling. To address that issue, one could ask if the services provided by the BBB could be used in lieu of some form of further State government regulation. We are convinced the answer is “No.” Although the BBB services definitely are useful, the organization has little enforcement capability. For non-member businesses, moral suasion is the primary BBB mechanism for helping a consumer achieve resolution of a complaint, unless mediation or arbitration is agreed to by both parties. When a BBB accredited member is the subject of a complaint, mediation and arbitration are again options, as well as the specter of accreditation revocation. None of these measures alone or in combination is sufficient to ensure that consumer interests are protected.

3.2 STAKEHOLDER FEEDBACK

3.2.1 Public Forums

3.2.1.1 Approach

The assignment also chartered the consultant "to solicit feedback from entities and individuals impacted by possible regulation of general and specialty residential contractors in Washington State." It was determined that five public forums would be desirable to secure demographically representative input from entities and individuals impacted by the potential regulation of general and specialty residential contractors. The meetings were held in Burien, Vancouver, Pasco, Spokane and Olympia during the period July 8 - 22, 2008.

Known stakeholders identified during prior legislative hearings were notified. Additional stakeholders were added during planning for the forums. The public was invited to the meetings through notification of identified stakeholders from prior legislative sessions and hearings, follow-up phone calls to those stakeholders, e-mails to legislators to notify interested constituents and press releases to local newspapers including some additional follow-up calls. Most attendees learned about the forums through the newspapers or via e-mail notification from associations or a legislator.

All of the meetings were held in public facilities. A variety of times and durations were provided to attempt to engage as many people as possible. The meetings were conducted in an interview format and were recorded using digital video. Because there was not a defined proposal to comment upon, the discussion was open ended. However, participants were asked to focus on the following questions:

- ▶ What works and doesn't work in the current system for consumers?
- ▶ What works and doesn't work for contractors?
- ▶ What type of regulation makes sense for consumers and contractors?
- ▶ Please describe your experience and feel free to offer your ideas and suggestions.

Testimony in some cases was long, because of the extended time frame offered and because turnout was fairly light.

Although an abstract of public comments is included in Appendix 3, readers are encouraged to view the forums in their entirety on line. All of the testimony is available at the following web addresses until June 30, 2009. It has been edited only to minimize pauses and transitions.

<mms://198.239.32.152/VideoArchives/host/promos/Spokane.wmv>
<mms://198.239.32.152/VideoArchives/host/promos/Pasco.wmv>
<mms://198.239.32.152/VideoArchives/host/promos/Vancouver.wmv>
<mms://198.239.32.152/VideoArchives/host/promos/Burien.wmv>
<mms://198.239.32.152/VideoArchives/host/promos/Olympia.wmv>

3.2.1.2 Participation

53 individuals signed in at the five forums. 34 individuals spoke and were recorded on the videos. Both consumer and industry stakeholders participated. The categories as represented by the speakers are noted:

<u>CATEGORY</u>	<u>NO. OF SPEAKERS</u>
Homeowners	19
Industry representative/staff (local BIAW)	3
Insurance agent	1
Contractors (landscape, roofing)	2
Real estate investors ("flippers") or their association leaders	5
Member of Building Officials association	1
Director, Habitat for Humanity	1
Attorney	1
Carpenters Union	1
Legislative Candidate (also BIAW staff)	-

3.2.1.3 Observations

Common themes and statements from the forum participants are summarized:

Use of registered/bonded contractors

This is a small, self-selected sample but all the consumers present had retained registered contractors and had also done more than many consumers to be cautious before committing to a contractor. Some industry stakeholders have stated strongly that the unregistered contractors are a major problem. In this highly engaged group this was not the case. All of the homeowners' problems were with registered contractors. All of the homeowners came to talk specifically about a negative experience. However, when asked directly, most also had some experience with contractors either before or after the negative experience that was positive, sometimes extremely so. Only one individual indicated that they had already testified before the legislature.

It might be reasonable to speculate that for the big jobs or entire homes, people are more likely to select a registered contractor and would be more likely to feel upset when things went wrong. One might also guess that if someone takes a chance on an unregistered contractor, they might feel it is partly their fault and be less likely to complain. The greater number of L&I complaints compiled in July 2008 about unregistered contractors might stem from people reporting the "bad" ones.

Contract problems

Several people felt they had been forced to sign a disadvantageous contract and they lost their rights by agreeing to arbitration without understanding the ramifications.

There appears to be a common use of boiler plate contract language that makes it very difficult for the homeowner to use the available processes to remedy their situation. For instance, if the contract requires arbitration in lieu of court action, it may serve to delay or be a firewall between the

consumer and the bond. Even bright, diligent people find it hard to understand the contracts and to know the implications of the language in them.

It was learned during the forums that the Washington State Bar Association (WSBA) is working to develop standard contract language that might alleviate some of the identified problems. This effort is currently under way, but evidently has not reached a point where it has been discussed outside of the WSBA. We were advised that the Office of the Attorney General had not yet been involved in discussions about the initiative.

Confusion about authority and definitions

That there is considerable confusion about what the state does or does not do to protect the public is definitely part of the problem. For instance, nearly all of the individuals who spoke did not understand the difference between registering and licensing and thought the business license meant that there were standards in place.

A strong desire for the state to do more to protect consumers was stated by the homeowners but not by those in the industry

All of the homeowners felt that the system did not work at all for the protection of the wronged homeowner. Some were as critical of the state system as they were about the contractor.

Insurance and bonding requirements and practices

For the really “large ticket” problems, the homeowners who spoke felt there was no mechanism for reasonable recovery. Several faced the loss of their life savings and one had fought for nearly ten years. Some had serious issues with the various insurance and bonding entities that were involved in their case. The \$12,000 doesn't go far when the claim is for more than \$100,000. Even for the small claims within that amount, the barriers are high and the process is difficult. Several gave up because the attorney's fees for using the process would exceed that amount of the claim.

Diligence and research insufficient in some cases

All had attempted to check out the contractor in advance. The unhappy homeowners were shocked and dismayed by the lack of state assistance when things went wrong. All had experienced both poor business behavior and poor response from systems designed to deal with problem cases and to protect consumers. Several had prior, positive experience with construction projects or believed that the state system offered protections that it did not.

3.2.1.4 Issues Identified

The following issues and problems were extracted during the five forums. Unhappy consumers are recognized to be the most vocal segment. As might be expected, the personal remarks of individuals who had been through a negative experience were powerful and served to surface issues unknown at the beginning of the process. The list provides a picture of the problems that were severe enough to motivate the individual to attend a forum and provides perspective on the range of issues. All of the homeowners cited multiple issues.

- ▶ Arbitration required and unfair
- ▶ Attorney fees exceeded actual or potential recovery
- ▶ Bankruptcy used as way to keep money unfairly and repeatedly
- ▶ Billed for materials not provided
- ▶ Bond insufficient to cover damage/repair
- ▶ Code violations
- ▶ Communication (very bad or lacking)
- ▶ Contractor ignored contract requirements
- ▶ Contractor refused to fix problems
- ▶ Ethics in business practice
- ▶ Health code violations (septic)
- ▶ Inspections inadequate for code issues
- ▶ Insurance refused to pay after loss in arbitration or court
- ▶ Contractor or subs performed shoddy work
- ▶ Liens were used to force payment when work not done correctly and owner attempted to gain compliance with contract
- ▶ Materials substituted
- ▶ Plumbing
- ▶ Sewer back up or install issues
- ▶ Site/soils issues improperly addressed
- ▶ Subcontractors changed to unregistered subs
- ▶ Unfair contract language or fine print
- ▶ Warrantee issues for home or installed mechanical systems
- ▶ Water in crawl space
- ▶ Water leaks

3.2.1.5 Lessons and Inferences from the Forums

Lessons learned and the issues surfaced during the forums are detailed.

Potential losses may be much greater than other data on claims would indicate, especially if attorney fees are included.

We do not know how many large cases there are, but when they occur there is little recourse for the homeowner and few consequences for the worst contractors. There are obviously many good, competent contractors out there and they may be paying in excess of what is justified for insurance and bonding while the “bad actors” avoid these costs.

The process doesn't work well without an attorney and attorneys will not take cases that are too small even though they may be too large for small claims court.

Many of the homeowners were shocked and dismayed at how hard and long the process was.

Only consumers who can afford an attorney have a chance to recover part of their loss.

Registered contractors can indeed be part of the "problem" group.

The high dollar claims associated with new, expensive custom homes would be more likely to involve registered contractors.

When things go very wrong, none of the systems work well for anyone.

For large claims there is no reasonable method of recovery. One homeowner said that in hindsight he should have gotten a "premium policy that covers everything from Lloyd's of London" before embarking on building his home.

In other cases a bankruptcy might cut off all legal action thereby cutting off access to the bond. It is not clear whether the bond might be an asset that a patient claimant might secure during the bankruptcy process.

In an arbitration case, if the homeowner does not completely prevail, there will likely be no record made for an appeal and the grounds for an appeal may be very narrow. If the homeowner prevails in arbitration, the builder and his/her insurer or bond provider can keep appealing it, increasing the non-reimbursable costs of legal assistance.

In another case a homeowner may withhold a large payment for a small defect, thereby causing the subs to go unpaid and forcing the contractor and subs to put liens on the house. This makes the dispute escalate and become more difficult to settle.

Although homeowners have difficulty accessing insurance and bonds, contractors feel that they pay a lot in premiums and that the smallest claim can cause cancellation or huge cost increases. When a dispute of any magnitude develops each party has a large stake...the homeowner a dream and their life savings, the builder a livelihood and reputation.

Unethical behavior, poor communication skills and ignorance of good business practices and contract law are as much of a problem as poor skills or incompetency at the work.

This parallels findings from other sources.

The arbitration process

There appears to be a lack of knowledge and understanding of legal options that are forfeited when arbitration is used.

The performance bond

Accessing the bond is an issue as well as the sufficiency of the bond.

3.2.1.6 Emerging Issues

The following are some issues that were not anticipated but need to be acknowledged.

Challenging site conditions

The cost of land and tendency to use more challenging lots because the "easy" land is used up may result in more water and environmental issues and require greater engineering and hydrology knowledge in order to avoid problems. Several of the most expensive and complex cases involved issues related to environmental and site issues. This could signal a trend toward more litigation and conflict.

Accommodation of investors (flippers)

The recent enforcement of the requirement to have investors (flippers) registered as general contractors may need to be revisited if the standards are to be changed or a stringent licensing program developed and implemented.

Nonprofits

The unique role of non-profit organizations such as Habitat for Humanity in residential construction should be considered.

Emerging building methods and green technology

There are increasing environmental and financial reasons to seek energy efficiencies via alternative construction methods and mechanical systems. There could be increased problems with contractors and inspectors unfamiliar with those methods if expertise is lacking.

3.2.2 Online Surveys

In order to provide a complementary, independent research tool a web-based survey was posted at the DOL Web site from July 1 - 31, 2008 and publicized through emails, DOL and L&I web sites during the public forums and in the course of research. This online mechanism was believed important to supplement public forums and accommodate persons who could not attend or who had missed the forums in their region.

The survey form addressed a range of questions:

(1.) Please provide the following basic information: M/F: Age:___ County of residence:

(2.) Please provide some information about your experience with contractors

- ▶ Have you had work done on your home by a contractor?
- ▶ Were you satisfied with the work done for you?
- ▶ If unsatisfied, did you resolve the problem satisfactorily?
- ▶ Do you think the current system of regulation works to protect the public?
- ▶ Other (please specify)

(3.) Please indicate how you would select a contractor

- ▶ References from friends
- ▶ Registered with the state
- ▶ Belongs to professional group
- ▶ Talk to past customers
- ▶ Look at past work
- ▶ Check Better Business Bureau
- ▶ Interview and decide
- ▶ Newspaper or phone book
- ▶ Professional certifications/training
- ▶ Other (please specify)

(4.) If you have had an experience with residential contracting, was your project new construction? Remodel/Renovation/Addition? Other?

(5.) Regarding the specific project(s), please check all that apply:

	<u>Satisfied? (Y or N)</u>	<u>Cost of project</u>	<u>Year of project</u>	<u>Comment</u>
▶ Roofing				
▶ General Contractor				
▶ Excavation				
▶ Landscaping				
▶ Plumbing				
▶ Electrical				
▶ Remodeling				

- ▶ Concrete/Asphalt
- ▶ Flooring
- ▶ Sheetrock
- ▶ Finish carpentry

(6.) If you have had an experience with a contractor, please indicate that experience from the choices below

Not a problem Somewhat a problem Serious problem Don't know

- ▶ Poor work quality
- ▶ Work not completed
- ▶ Completion was untimely
- ▶ Not done per agreement
- ▶ Cost overrun
- ▶ Treated poorly
- ▶ Contract discrepancy
- ▶ Unable to voice complaint
- ▶ Unpaid subcontractors
- ▶ Failed inspection
- ▶ Permitting problem
- ▶ Damage to property
- ▶ Customer expectation unreasonable
- ▶ Unregistered contractor
- ▶ Other (please specify)

(7.) If you have had a problem with a contractor that could not be resolved, did you seek help from other sources? If so, please indicate who you contacted.

- ▶ Better Business Bureau
- ▶ Construction Membership Organization
- ▶ Attorney General's Office
- ▶ Department of Labor and Industry
- ▶ Private Attorney
- ▶ Other (please specify)

(8.) Please indicate how you feel about the residential contracting industry in the areas below.

- ▶ What changes would you make if it were up to you?
- ▶ Are you a homeowner, contractor or both?
- ▶ If you were to hire another contractor, what would you do differently?
- ▶ If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.

(9.) As an optional part of this survey we would like your name and contact information, if you would like to share additional information.

A total of 204 surveys were returned. As might be expected, not all questions were answered. Comments provided a rich and diverse perspective.

3.2.2.1 Observations

The details of the responses, including comments, are reported in Section 3.2.2.3. Common themes from the on line survey are not dissimilar from the ideas from the public forums and other research sources:

The current system of regulation is not understood by the public.

Respondents do not understand how the system operates. The system is invisible and the public is unaware of its existence. Information is not disseminated to the public. There is no “clearing house” for complaint history. Consumers overestimate the responsibilities of local building officials.

The current system is inadequate to safeguard the public.

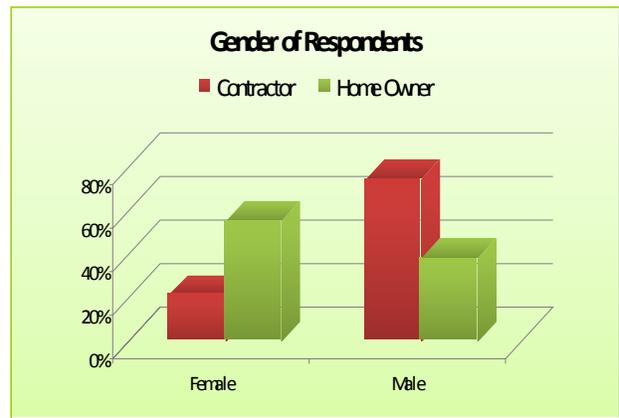
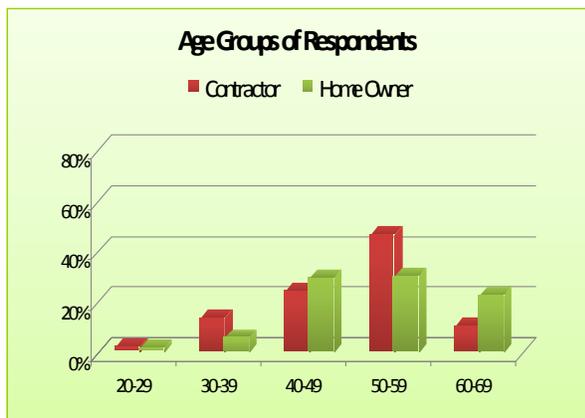
The bond value is insufficient to cover losses. Contractors are free to go out of business and then reapply. There is no mechanism for checking the business history and qualifications of potential contractors. Contracts are written to disadvantage the consumer. Bonds can be accessed only through court suits. The threat of a lien is used to pressure consumers to accept unsatisfactory work. There are no tests / benchmarks for gauging the proficiency of registrants.

3.2.2.2 Dichotomy of Opinion

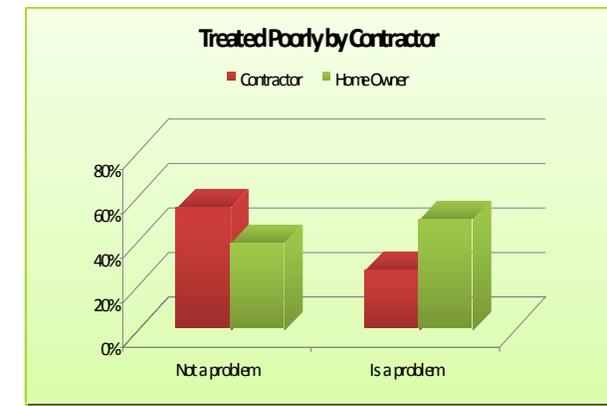
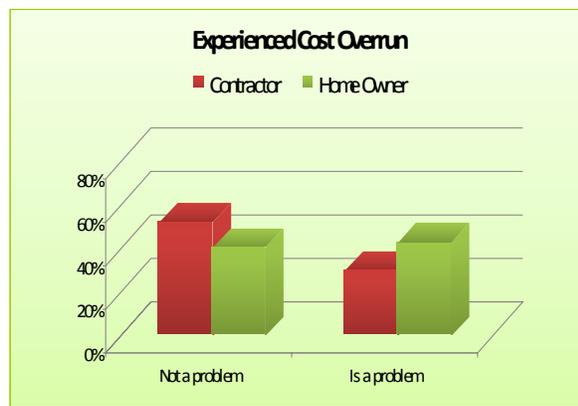
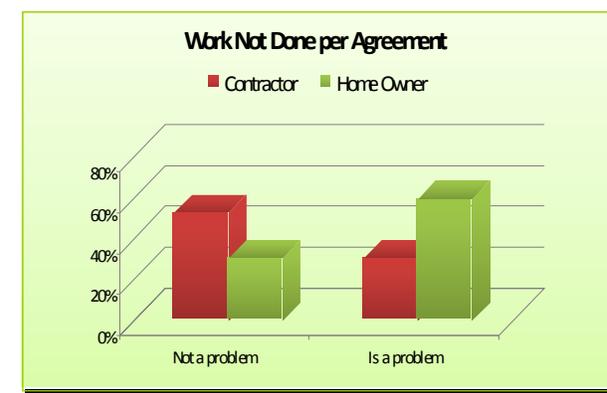
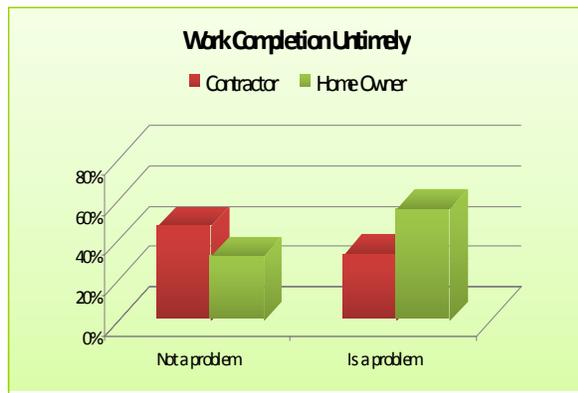
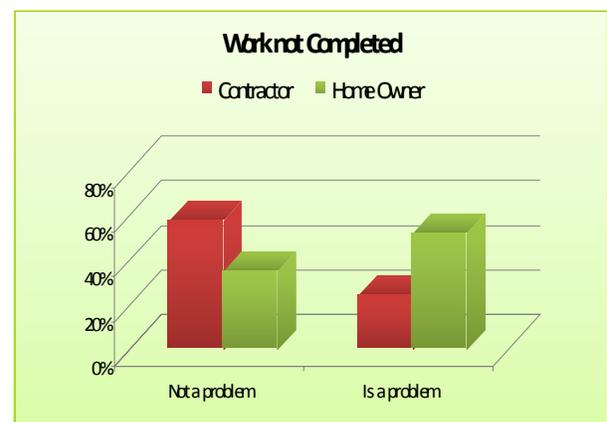
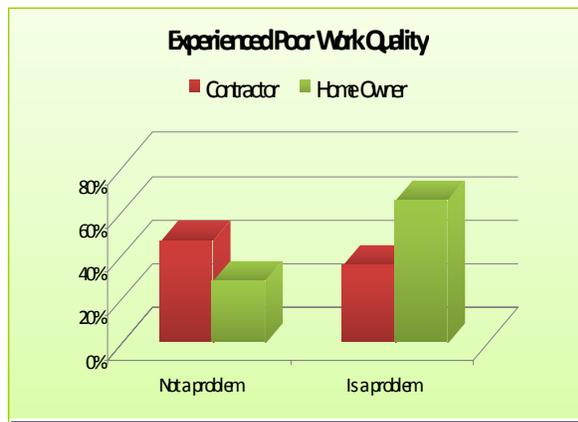
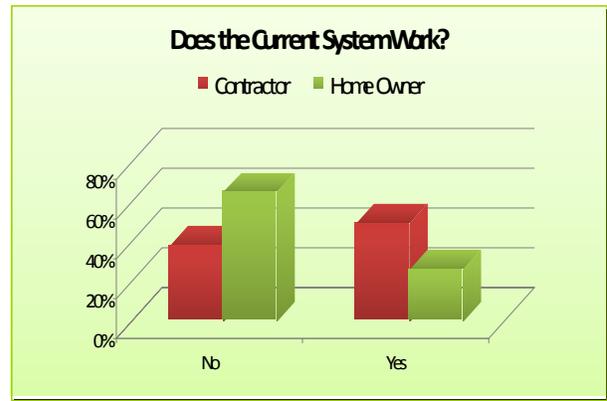
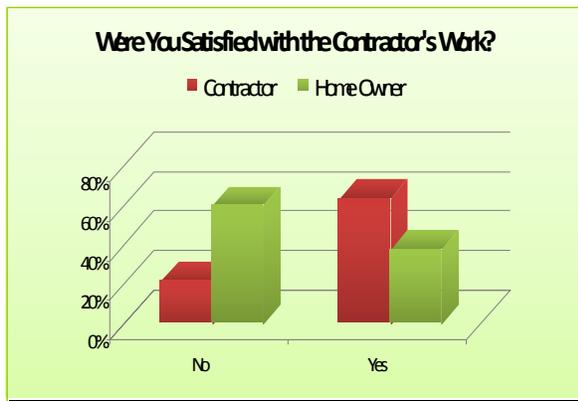
The online surveys were completed by both consumers and contractors. Some respondents identified with neither group. The opinions of the groups that could be differentiated showed a dramatic divergence. We can graphically contrast demographics and opinions of the two populations.

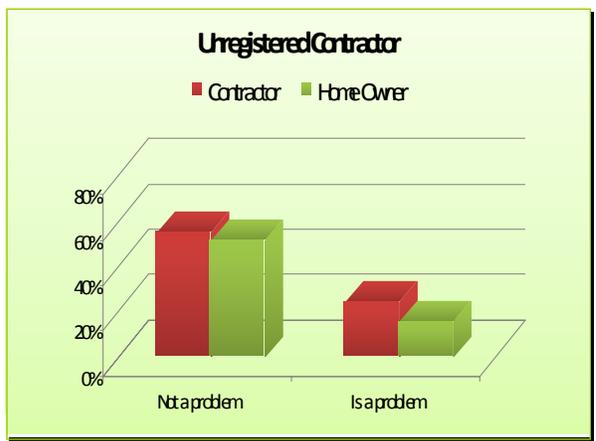
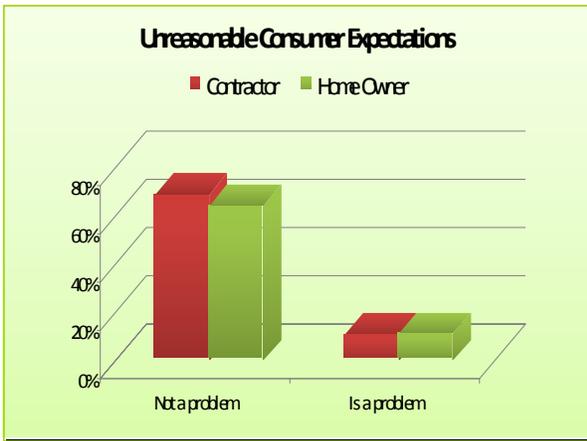
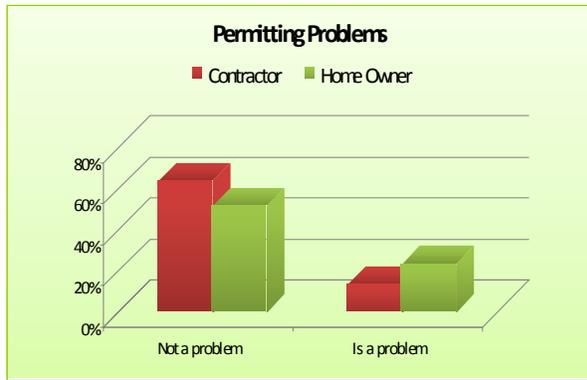
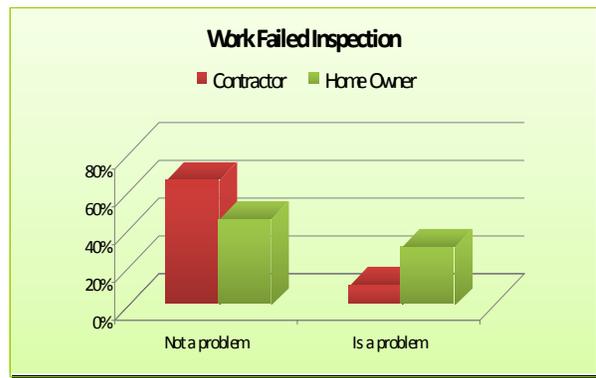
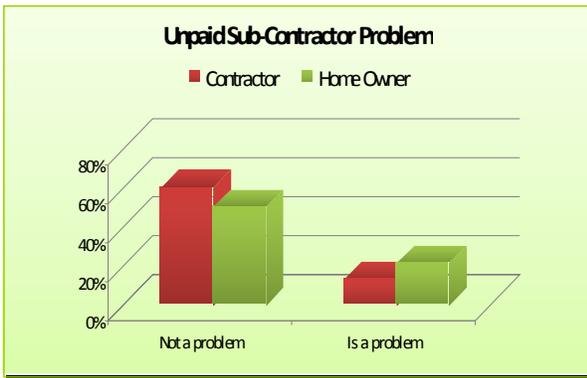
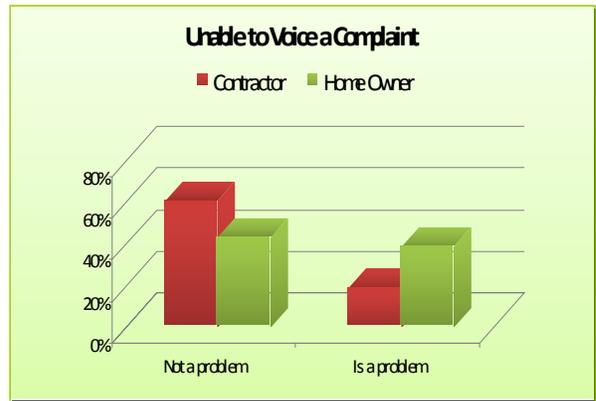
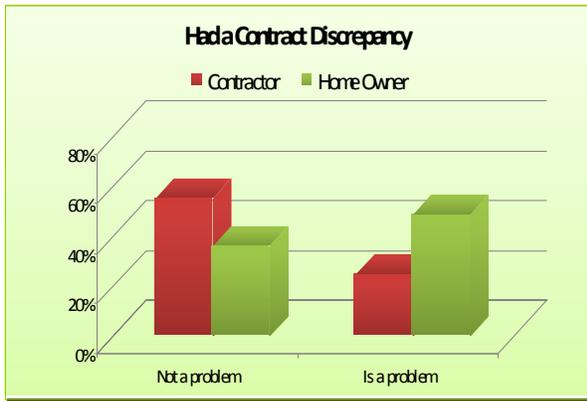
The survey results are much more revealing when opinions of the two populations are segregated.

Demographics



Opinions Expressed





Divergence of Contractor / Home Owner Opinion

The age groups show most contractors respondents were in the 50-59 age group, while the homeowners were spread out fairly evenly from about 40 to 70 years of age.

More women homeowners responded to the survey. Contractors that responded were mostly male.

It is interesting to note how diametrically opposed are the opinions of contractors and home owners on some key questions:

Satisfaction: Contractors believe the customer is generally satisfied, while the homeowner respondents are clearly not. This is probably biased by the nature of the typical homeowner who is looking for an audience to voice a complaint about bad experiences.

Efficacy of current system: Contractors are of the opinion that the current system works satisfactorily. Homeowners are clearly not of the same opinion.

Quality of work: The contractors expressed that work quality, work completion, timeliness, and working within the specs were positive while the homeowner thought of these as problematic.

Customer relations: Homeowners had mixed opinions on cost overruns, customer treatment, contract discrepancies, and access to complaints although contractors claimed these were not problems.

Business practices: Contractors and homeowners both thought unpaid subs, failed inspections, and permitting problems were for the most part not problems.

Incidental damages: Contractors didn't think damage to property was a problem, while homeowners were split on the issue.

Expectations: Contractors and homeowners did not think customer expectations were unreasonable.

Registration: It is interesting that the contractors had a higher percent of responses than homeowners that said unregistered contractors were a problem, but the majority of contractors still did not see this as an issue. This conflicts with much of the testimony we heard from contractors in the public forums.

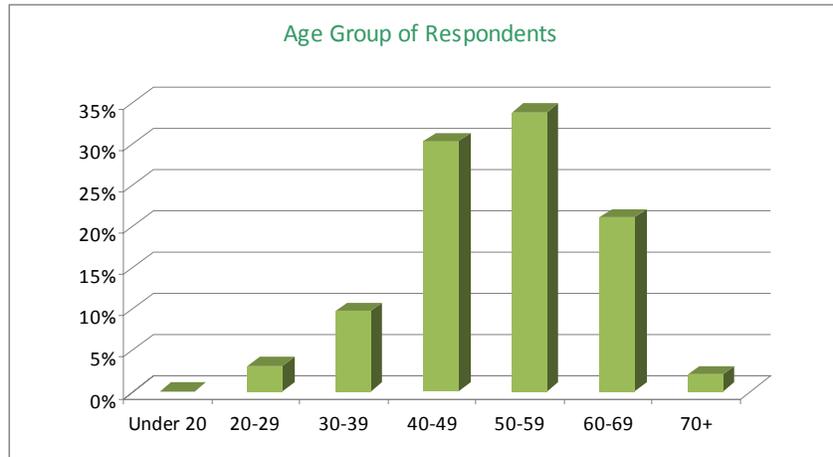
3.2.2.3 Outcomes

Outcomes are detailed.

3.2.2.3.1 Demographics

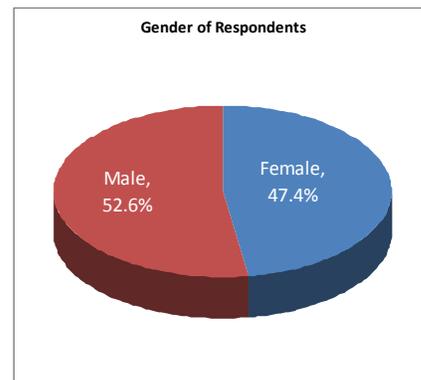
Respondent Age:

	Under 20	20-29	30-39	40-49	50-59	60-69	70+	Response Count
Number	0	6	19	59	66	41	4	195
Percent	0.0%	3.1%	9.7%	30.3%	33.8%	21.0%	2.1%	100.0%



Respondent Gender:

	Female	Male	Response Count
Number	92	102	194
Percent	47.4%	52.6%	100.0%



County of Residence:

	ADAMS	ASOTIN	BENTON	CHELAN	CLALLAM	CLARK	COLUMBIA	COWLITZ	DOUGLAS	FERRY
Number	0	0	3	1	1	40	0	5	2	0
Percent	0.0%	0.0%	1.5%	0.5%	0.5%	20.5%	0.0%	2.6%	1.0%	0.0%
	FRANKLIN	GARFIELD	GRANT	FRAYS HARBO	ISLAND	JEFFERSON	KING	KITSAP	KITTITAS	KLICKITAT
Number	0	1	0	2	3	2	33	11	0	1
Percent	0.0%	0.5%	0.0%	1.0%	1.5%	1.0%	16.9%	5.6%	0.0%	0.5%
	LEWIS	LINCOLN	MASON	OKANOGAN	PACIFIC	PEND OREILLE	PIERCE	SAN JUAN	SKAGIT	SKAMANIA
Number	3	0	3	1	1	0	13	2	2	0
Percent	1.5%	0.0%	1.5%	0.5%	0.5%	0.0%	6.7%	1.0%	1.0%	0.0%
	SNOHOMISH	SPOKANE	STEVENS	THURSTON	WAHKIAKUM	WALLA WALLA	WHATCOM	WHITMAN	YAKIMA	Response Count
Number	12	8	1	37	0	0	4	3	0	195
Percent	6.2%	4.1%	0.5%	19.0%	0.0%	0.0%	2.1%	1.5%	0.0%	100.0%

Counties hosting the public forums were well represented.

3.2.2.3.2 Your Experience with Contractors

QUESTION ELEMENTS		Yes	No	Not Applicable	Response Count
Have you had work done on your home by a contractor?	Number	188	10	3	201
	Percent	93.5%	5.0%	1.5%	100.0%
Were you satisfied with the work done for you?	Number	91	100	11	202
	Percent	45.0%	49.5%	5.4%	100.0%
If unsatisfied, did you resolve the problem satisfactorily?	Number	15	94	48	157
	Percent	9.6%	59.9%	30.6%	100.0%
Do you think the current system of regulation works to protect the public?	Number	69	118	6	193
	Percent	35.8%	61.1%	3.1%	100.0%

Written comments were recorded *verbatim*. The full text of comments submitted during the *Online Survey* is included in Appendix 3.

3.3 BENCHMARKING WITH OTHER STATES

A wealth of information regarding regulatory practices in other states was compiled during this part of the study.⁹ Little self-examination of shortcomings and successes was found. States rarely conduct program reviews.

Sixteen states were found to have no mechanisms for regulating residential contractors. In some cases, contractors are regulated in varying degrees by the cities or counties where work is done. In other cases regulation is via registration. Electrical, mechanical and plumbing trades are often licensed by their own specialty boards. The “No Regulation ” states include:

Colorado	Kansas	New Hampshire	Pennsylvania
Idaho	Kentucky	New York	South Dakota
Illinois	Maine	Ohio	Vermont
Indiana	Missouri	Oklahoma	Wyoming

Twelve states provide for residential contractor regulation but require no examination. Fees are often used as a source of revenue, in some cases to pay into “construction guarantee” funds.¹⁰ These states include:

Connecticut	Massachusetts	New Jersey	Texas
Delaware	Montana	North Dakota	Washington
Iowa	Nebraska	Rhode Island	Wisconsin

In 22 states and the District of Columbia, residential contractors are regulated and their skills verified through examination. These jurisdictions are:

Alabama	Florida	Minnesota	South Carolina
Alaska	Georgia	Mississippi	Tennessee
Arizona	Hawaii	Nevada	Utah
Arkansas	Louisiana	New Mexico	Virginia
California	Maryland	North Carolina	West Virginia
D. C.	Michigan	Oregon	

Research was confined to this latter group of states.

⁹ Source: *Contractor’s State Licensing Information Directory*, 2008 Edition, National Association of State Contractors Licensing Agencies, Phoenix, AZ

¹⁰ Connecticut for example

“Best Practices” noted among the 22 states that regulate residential contractors through examination are referenced by state.

3.3.1 Alabama

- ▶ Complaint Handling: Staff of 13 includes six investigators and two attorneys.
- ▶ Recovery Fund: In all, eleven states have some type of fund to reimburse consumers.

3.3.2 Arkansas

- ▶ “General” or “Prime” residential contractor must be licensed. Not required for subcontractors.
- ▶ Licensing promoted by Arkansas Home Builders Association
- ▶ Staff of 17 includes six field investigators, five of which are primarily engaged in uncovering unlicensed activity.
- ▶ Licensing requires four years of appropriate experience plus exam.

3.3.3 California

- ▶ Four years of experience required, plus exam.
- ▶ Enforcement Division is one of three major components. State has a large agency structure.

3.3.4 Hawaii

- ▶ Emphasized that the key to regulation is enforcement.

3.3.5 Michigan

- ▶ State requires 60 hours of training as a requisite to licensing.

3.3.6 Minnesota

- ▶ Investigators place priority on educating contractors in improving business conduct.
- ▶ Regulation promoted by Builders Association of Minnesota to simplify licensing previously done by cities and counties. Builders Association now collaborating with agency to revamp licensing processes.
- ▶ Contractor’s Recovery Fund provides ample level of relief to consumers.
- ▶ State has very formal complaint handling process.
- ▶ State can discipline contractors. Extensive enforcement tools available.

3.3.7 Mississippi

- ▶ Suffers because complaint processing is left up to cities and counties.
- ▶ Board empowered to revoke license or levy fines. Staff of 15 includes three investigators.

3.3.8 Nevada

- ▶ Residential Recovery Fund has been successful in reimbursing homeowner claims. Said to have industry support and worked to reduce litigation.

3.3.9 North Carolina

- ▶ Board receives all complaints. All complaints against licensed contractors are investigated. Of 19 employees, six are field investigators.
- ▶ Complaints against unlicensed contractors prompt remedial action.

3.3.10 Oregon

- ▶ Annual Performance Report submitted to legislature addresses critical performance metrics.
- ▶ Formal complaint resolution process with enforcement powers.

3.3.11 Virginia

- ▶ Transaction Recovery Fund in addition to an alternative dispute resolution mechanism.
- ▶ Believe that consumer education is still the best remedy.
- ▶ State Board for Contractors is one of 19 individual profession/trade licensing boards for State. Share investigative staff.

The National Association of State Contractors Licensing Agencies (NASCLA) has been found to be an outstanding source of information on best practices in contractor regulation. Almost all states are represented.

The following matrix (pages 54-61) provides a summary of practices in those states found to have residential contractor licensing programs accompanied by examination. Information is presented on the *Cognizant Authority*, existing *Residential Contractor Regulations*, *Associated Fees*, *Insurance/Bonding Requirements*, and *Regulatory Strengths / Problems*. We compare Washington with 22 states and the District of Columbia. Appendix 4 contains a detailed narrative of contractor regulation practices in many other states.

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Reqmts.	Regulatory Strengths	Notes
WASHINGTON	Department of Labor & Industries, Contractor Registration Section, P. O. Box 44400, Olympia WA 98504-4400, (360)902-5226, www.ini.wa.gov/tradeslicensing/contractors	Applicants are not required to take any examination or document experience for general contractor or specialty contractor licenses	\$113.40 application fee, \$113.40 biennial renewal fee	\$200,000 public liability insurance, \$50,000 property damage, \$12,000 bond (general) \$6,000 (specialty)		
ALABAMA	Home Builders Licensure Board, 445 Herron St., Montgomery AL 36130, (334)242-2230, www.hblb.state.al.us	Established in 1992. Licensing required for residential homebuilders and remodelers. New applicants must pass a test on experience and ability. Credit report required. Now 12,000 licensees. 250 claims processed per year. Total staff of 13 including six investigators and two attorneys.	\$205 annual fee plus \$30 for Recovery Fund	No insurance or bond requirements	Recovery Fund provides \$20,000 max per claim. Staff includes six investigators, two attorneys.	
ALASKA	Division of Occupational Licensing, Contractors Registration Section, P. O. Box 110806, Juneau AK 99811-0806, (907)465-5372, www.commerce.state.ak.us/	DETAIL IN NARRATIVE General contractors licensed. A general contractor must have a residential contractor endorsement in order to undertake construction or alteration on a privately owned residential structure of one to four units. Applicant for residential endorsement must complete an Alaska craftsman home program recognized by the state and pass a trade exam with a minimum score of 70%.	\$50 application fee, \$125 exam fee, \$200 license fee.	\$10,000 bond, \$100,000 insurance		
ARIZONA	Registrar of Contractors, 3838 N. Central, Phoenix AZ 85012-1906, (602)542-1525, www.azroc.gov	General contractors licensed as "Commercial" and "Residential". Requirements include experience, passing a business law examination and a trade examination with a 70% score. A transaction privilege (sales) tax license from state department of revenue must be presented.	\$445 application fee, \$125 exam fee, \$290 annual renewal, \$450 recovery fund.	\$1,000 to \$105,000 bond, depending on license type and annual sales volume. Insurance not mentioned.	Recovery Fund	

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Reqmts.	Regulatory Strengths	Notes
ARKANSAS	Contractors Licensing Board, 4100 Richards Road, North Little Rock AR 72117, (501)372-4661, www.state.ar.us/clb	Regulation of residential construction work of over \$20,000. Applicants must have four years experience and submit financial statement. Must score over 70% on open book exam pertaining to business law and state requirements. 4,500 "residential" licensees. DETAIL IN NARRATIVE	\$100 application fee, \$75 exam fee, \$50 license renewal fee	\$10,000 bond for commercial contractors only.	Staff of 17 includes six field investigators. Licensing supported by Home Builders Assn.	License not required for subcontractors, only "primes". License requires four years of experience.
CALIFORNIA	Contractors State License Board, P. O. Box 26000, Sacramento CA 95826, (800)321-2752, www.cslb.ca.gov	License required for residential construction projects of over \$500. First time applicants subject to business law and trade examinations. Must verify that operating capital exceeds \$2,500. DETAIL IN NARRATIVE	\$250 application fee, \$150 annual license fee	\$12,500 bond. Proof of workers compensation coverage.	License requires four years experience plus exam. Emphasis on enforcement	
DISTRICT OF COLUMBIA	Business Regulation Administration, P. O. Box 37200, Washington DC 20013-7200, (202)442-4515, www.dcrd.dc.gov	Contractors on residential projects of over \$300 must be licensed. Applicants for Home Improvement Contractor's License must submit documentation on business practices.	\$65 application fee, \$120 license fee	\$100,000 liability, \$50,000 property insurance. \$5,000 surety bond.		
FLORIDA	Construction Industry Licensing Board, 1940 N. Monroe St., Tallahassee FL 32399-0771, (850)487-1395, www.state.fl.us/dbpr/	Regulation of residential construction both at the state and local level. Applicants must pass written exam on business, finance and construction subjects with a 70% score. Also document four years of experience, credit report and a financial statement of net worth. Proof of continuing education required for renewal.	\$135 exam fee, \$309 license fee, \$100 per year renewal fee.	Insurance required. Must demonstrate net worth.	Recovery fund	
GEORGIA	State Licensing Board for Residential and Commercial Contractors, P. O. Box 13446, Macon GA 31208, (478)207-2440, www.sos.state.ga.us/plb /contractors	License for residential and commercial contractors started January 1, 2008. Examination (PSI) and experience requirements.	Proof of financial responsibility and insurance -- depending on license type.		Newly-initiated program	

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Req'm'ts.	Regulatory Strengths	Notes
HAWAII	Professional and Vocational Licensing Division, P. O. Box 3469, Honolulu HI 96801, (808)586-3000, www.hawaii.gov/dcca	Applicants must score at least 75% on exam on knowledge of the trade and regulations applying to contractor licensing. Demonstrate four years of experience within past ten years. Business practices/financials must be documented. DETAIL IN NARRATIVE	\$50 application fee, \$25 (min.) license fee, \$150 recovery fund	\$5,000 minimum bond. \$300,000 insurance	Recovery Fund provides \$12,500 per job; \$25,000 per contractor	Emphasized that key to regulation is enforcement.
LOUISIANA	State Licensing Board for Contractors, P. O. Box 14419, Baton Rouge LA 70898-4419, (225)765-2301, www.lslbc.louisiana.gov	Projects \$7,500 to \$75,000 require registration. Residential license required for residential construction in excess of \$75,000. Applicants must pass exam on specific trade as well as business law.	\$100 application fee, \$100 annual fee.	Insurance certificates for worker's comp and \$100,000 liability		Multitude of types of construction licenses.
MARYLAND	State Highway Administration, Office of Construction, Home Improvement Commission, 500 North Calvert St., Baltimore MD 21202-3651, (410)230-6270, www.dlr.state.md.us/license	Home Improvement contractors licensed at the state level. Requires a score of 70% on exam (PSI) of state/federal laws and regulations plus various business subjects. Applicants must document at least two years experience in building/home improvement and/or related vocational education. Must show financial solvency based on intended size and scope of business	\$54 exam fee. \$225 application fee plus \$100 to Home Improvement Guarantee Fund. \$300 for two year license.	\$50,000 liability insurance.	Guaranty Fund reimburses homeowners up to \$15,000.	
MICHIGAN	Department of Labor & Economic Growth, Bureau of Commercial Services -- Builders Unit, P. O. Box 30018, Lansing MI 48909, (517)241-9288, www.michigan.gov/builders	"Residential Builders and Maintenance & Alteration Contractors" tested on both trade skills and business law. Credit check required of applicants. DETAIL IN NARRATIVE	\$15 application fee, \$40 license fee, \$10 recovery fund.	None required	Construction lien recovery fund. \$100,000 limit per property	Requires 60 hours of training for licensing.

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Req'm'ts.	Regulatory Strengths	Notes
MINNESOTA	Dept. of Labor and Industry, Residential Building Contractors, 443 Lafayette Rd. North, St. Paul MN 55155, (651)284-5065, www.doli.state.mn.us/contractor.html	License Residential Building Contractor and Residential Remodeler. Residential contractors must pass a two part (business/law and trade) examination (70%). Proof of workers compensation insurance. Seven hours of continuing education required for renewal. DETAIL IN NARRATIVE	\$100 application fee, \$100 renewal fee, \$100 - \$200 consumer recovery fund.	\$100,000 general, \$10,000 property damage.	Recovery Fund. Formal complaint mechanism. State can discipline contractors.	Priority on educating contractors. Supported by Builders Association.
MISSISSIPPI	Mississippi State Board of Contractors, 215 Woodline Drive, Jackson MS 39232, (601)354-6161, www.msbc.ms	License required for residential construction projects of over \$50,000 and remodeling over \$10,000. Applicants must pass a business law and trade exam (PSI -- 70%). Must provide documentation of experience plus financial statement/net worth test. DETAIL IN NARRATIVE	\$200 application fee. \$200 annual renewal.	No insurance requirement for residential contractors. Bonding prescribed by cities and counties.	Board has disciplinary powers. Staff of 15 includes three investigators.	Weak laws
NEVADA	Nevada State Contractors Board, 9670 Gateway Drive, Suite 100 Reno, NV 89511 (775) 688-1141, www.nscb.state.nv.us	Applicant must complete management survey (CMS) and trade examination (specific to the requested classification) must be successfully completed. Four years of experience (obtained within the 10 years immediately preceding the filing of an application) as a journeyman, foreman, supervising employee or contractor in the specific classification is required. Applicants must submit a current financial statement. Bank verification form required. Applicants subject to a background investigation of experience, financial responsibility and criminal history. DETAIL IN NARRATIVE	N/M	Bonding from \$1,000 to \$500,000. Proof of compliance with industrial insurance law.	Residential Recovery Fund (RRF) covers \$35,000 per homeowner, \$400,000 per contractor. RRF said to have industry support.	

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Reqmts.	Regulatory Strengths	Notes
NEW MEXICO	Construction Industries Division, Regulation and Licensing Department 2550 Cerrillos Road Santa Fe, NM 87505 (505) 476-4700 www.rld.state.nm.us/cid /	The applicant's qualifying party must submit evidence of experience required for the license classification being sought (two to four years), as well as passing both a trade and a business law exam with a minimum score of 75%. A 20-hour course taken from a school approved by the division may be substituted for the business law examination.	\$30 application fee, \$30 exam fee, \$100 license fee	Bonding from \$500 to \$5,000, based on anticipated volume of work.		Complex licensing categories
NORTH CAROLINA	Licensing Board for General Contractors, Post Office Box 17187, Raleigh NC 27619 (919) 571-4183, www.ncibgc.org	Applicants must pass a qualifying examination for licensure with a minimum score of 70%. Financial statements reflecting minimum working capital amounts are required to be submitted with the application. Required minimum working capital amounts are \$17,000 for limited, \$75,000 for intermediate, and \$150,000 for unlimited licenses. Applicants for intermediate and unlimited licensure must submit audited financial statements.	\$75 to \$125 application and annual renewal fee. \$60 exam fee.	No insurance or bonding required for licensing.	Homeowners Recovery Fund derived from \$10 assessment on each building permit. Board receives and handles all complaints	Many types of licenses. Active field investigation staff.
DETAIL IN NARRATIVE						

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Req'm'ts.	Regulatory Strengths	Notes
OREGON	<p>Construction Contractors Board, 700 Summer NE, Post Office Box 14140, Salem, OR 97309-5052 (503) 378-4621, www.oregon.gov/ccb</p>	<p>One responsible individual, per new business (except Licensed Developers), shall complete 16 hours of business and law classes and pass a state examination before an application can be submitted. Beginning July 1, 2008, new contractors (and at renewal time for existing contractors) will be required to choose from the new licensing endorsement system that separates residential and commercial contractors. Types of Licenses:</p> <p>General Contractor - This is the unlimited endorsement with no restrictions on number of trades for residential structures, zero-lot-line dwellings and or small commercial structures. Residential general contractors may also do residential specialty contractor work. The homebuilders, remodelers and residential contractors who work on residential and/or small non-residential structures may belong in this category.</p> <p>Residential Specialty Contractor – Contractors with this endorsement can perform up to two trades or crafts (including those that are subcontracted out) per job, per year on residential structures, zero-lot-line dwellings and or small commercial structures can change from job to job.</p> <p>DETAIL IN NARRATIVE</p>	<p>\$260 application fee.</p>	<p>\$20,000 bond. \$500,000 insurance.</p>	<p>Annual Performance Report to legislature. Formal complaint resolution process with enforcement powers.</p>	
SOUTH CAROLINA	<p>Residential Builders Commission Post Office Box 11329, Columbia SC 29211-1329, (803) 896-4696, www.llr.state.sc.us/pol/residentialbuilders</p>	<p>Home Builders applicants must pass both a business law and a trade exam (70%). One year experience and credit check required.</p>	<p>\$100 application fee, \$90 exam fee, \$160 annual fee.</p>	<p>\$15,000 bond</p>		

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Reqmts.	Regulatory Strengths	Notes
TENNESSEE	<p>Board for Licensing Contractors 500 James Robertson Parkway, Nashville TN 37243-1150 (615) 741-8307 or (800) 544-7693, www.state.tn.us/commerce/boards/contractors</p>	<p>Contracting is regulated at various licensing levels. A "Contractor" license is required for projects in excess of \$25,000 as a prime; subcontractors performing mechanical, plumbing, HVAC or electrical subcontractors must obtain a contractor's license. A license is required before offering a bid or contracting. A "Home Improvement" license is required for projects from \$3,000 to less than \$24,999 in nine (9) counties; projects less than \$25,000 are mainly regulated at the local level. Financial statement and proof of workers compensation insurance required.</p> <p>DETAIL IN NARRATIVE</p>	<p>\$50 application fee plus \$200 each two years.</p>	<p>General liability insurance of \$100,000 to \$500,000 depending on contract monetary limit. Contractor must have 10% of monetary limit in working capital. Bond not required.</p>		
UTAH	<p>Department of Commerce, Division of Occupational and Professional Licensing 160 East 300 South Salt Lake City UT 84114-6741, (801) 530-6628, www.dopl.utah.gov</p>	<p>An applicant's qualifying individual must pass the required examinations with a minimum score of 70%. Examinations (PSI) cover Contractor's State Licensing Information, Directory 182 business law and the specific trade. Applicants must demonstrate financial responsibility by answering questions in a financial questionnaire in the application. Four years of related experience required.</p> <p>DETAIL IN NARRATIVE</p>	<p>\$210 application fee, \$195 initial residence lien recovery fee,</p>	<p>Liability insurance of \$100,000/ \$300,000</p>	<p>Lien Recovery Fund</p>	

STATE	Cognizant Authority	Residential Contractor Regulations	Associated Fees	Insurance / Bonding Req'm'ts.	Regulatory Strengths	Notes
VIRGINIA	<p>Department of Professional and Occupational Regulation, State Board for Contractors, 9960 Maryland Drive, Richmond VA 23233 (804) 367-8511 www.dpor.virginia.gov</p>	<p>Contractor licenses are issued to business entities and are not transferable. Contractor classes (A, B, C) have single contract value limits. Class A and Class B contractors must have a Designated Employee who must successfully complete the appropriate business examination. Applicants for the building classification must also pass a technical examination. Applicants for the contractor's license must also complete an eight-hour pre-license education course that has been approved by the Board. The course covers basic business requirements for contractors in Virginia. There are no examination requirements for Class C contractor applicants. Additionally, Class A and Class B applicants must provide a financial statement documenting the net worth of the firm applying for the license.</p> <p>DETAIL IN NARRATIVE</p>	<p>\$265 application fee (Class A), \$85 exam fee, \$195 renewal fee, \$30 transaction recovery fund assessment</p>	<p>None</p>	<p>Transaction Recovery Fund plus ADR mechanism.</p>	<p>Believe that consumer education is the best remedy.</p>
WEST VIRGINIA	<p>West Virginia Division of Labor, Contractor Licensing Board, State Capitol Complex, Charleston WV 25305 (304) 558-7890 www.labor.state.wv.us/</p>	<p>All applicants must pass an open book examination on business and law. Major trade classifications must also pass a trade specific examination. Proof of workers compensation, tax registration and employment security coverage is required. A wage bond is required of all commercial contractors.</p>	<p>\$90 application fee, \$42.50 exam fee, \$90 renewal fee</p>	<p>Proof of workers compensation, tax registration and employment security coverage</p>		

3.4 MEMBERSHIP ORGANIZATIONS

The Building Industry Association of Washington (BIAW) is a vocal advocate for the residential construction industry. However, many builders, often sole proprietors, are not members. Of its 13,500 members, roughly 3,000 are active builders and remodelers. The remainder are inactive or are associate members providing services to the industry. The BIAW is associated at a higher level with the National Association of Home Builders and serves its members through 15 local associations / Master Builder Associations. About 90% of the members are said to be small businesses. The federal government defines “small businesses” as having fewer than 500 employees or less than \$6 million annual sales.

The BIAW is actively engaged in education and training, sometimes in conjunction with the Washington Association of Building Officials to address code (Residential Construction Code) issues. Total training attendance was 2,560 in 2007 and 1,084 through May, 2008. Self regulation is said to occur via selection by general contractors of sub-contractors who are known to do good work. Reputation is highly valued. However, the BIAW is reluctant to expel members due to the potential for litigation.

Registered contractors are encouraged to report observations of work being done “unregistered”. The building industry points to the weakness in enforcement as an argument for why further regulation would be unproductive.

The BIAW recognizes the need for further regulation but argues that since current registration requirements are not well enforced, it is difficult to persuade members of the value. Members are reported to be reluctant to see increased barriers to entry since most have had to “bootstrap” their businesses from simple beginnings and are hesitant to discourage “startups”.

4.0 NEED FOR ADDITIONAL REGULATION

The current system is seen as having multiple deficiencies. However, most of the problems with residential construction uncovered by this study can be addressed through enhancements to the existing regulatory framework rather than the enactment of a new regulatory scheme. We perceive that implementation of such enhancements will reduce consumer problems without need for investing in further levels of regulation at this time.

The current system is observed as having weaknesses that can be surmounted. We suggest improvements to the existing regulatory system that will have a positive impact on consumer welfare. We further recommend that the regulatory structure be re-examined after there has been time for the impact of those improvements to be felt. Time is also needed for the State to implement systems to effectively measure and report resulting trends in the quality and value of residential construction services.

4.1 RECOMMENDATIONS

All findings are based on research conducted for this study. Recommendations are presented in a sequence believed indicative of an order of implementation:

4.1.1 State Authority Over the Regulated Industry

Findings: **The State has weak mechanisms for disciplining contractors believed to act against the best interests of consumers.**

The Better Business Bureau (BBB) does not provide an adequate remedy against poor business practices.

The AGO is restrained in its pursuit of offenses against individual consumers.

Some type of alternative dispute resolution (ADR) process would help consumers while possibly helping contractors and lowering their insurance rates.

Many states grant complaint resolution and enforcement powers to licensing boards.

In contrast to Oregon, the Washington Legislature receives no performance report as to how well regulation is succeeding in fulfilling its intended purposes.

Recommendation: **Strengthen registration requirements by authorizing the Department of Labor and Industries (L&I) to suspend registration for cause. Establish mechanisms for monitoring industry performance.**

RCW 18.27 mandates contractor registration, bonding and insurance to protect the consumer from unreliable, fraudulent, financially irresponsible or incompetent contractors. However, based on our research, this protection isn't adequate. Adding the ability to suspend contractor registration for other causes is one recommendation that would strengthen consumer protection. Minnesota and Oregon provide two different approaches that can be modeled.

Comparable States: Other states have been found to have effective processes for disciplining residential contractors. **Minnesota's** Regulated Offices Complaints Board in the Department of Labor and Industry was so empowered as recently as 2007. Minnesota has the authority to investigate complaints against contractors and take administrative enforcement action against contractors who are determined to have engaged in violations of the laws and rules over which Minnesota has authority. Minnesota does not have authority to make legally binding determinations on either party in cases of factual or contractual disputes, and cannot order contractors to make corrections, cancel contracts, or pay specific damages. These remedies are to be pursued through private, civil action (litigation, arbitration, mediation, etc.). Consumers who are successful in litigation against a licensed contractor may be eligible for compensation for their direct out-of-pocket losses through the Contractor Recovery Fund, which Minnesota administers as the consumer protection component of its contractor licensing program.

Minnesota's Department cannot take action against a contractor based on workmanship complaints unless the contractor refuses to correct a violation of the State Building Code that has been documented by a certified building official or other municipal code enforcement official.

Minnesota's Department is authorized to take disciplinary action if the licensee, unlicensed contractor, or license applicant has:

- ▶ filed an application for a license which is false or misleading.
- ▶ engaged in fraudulent, deceptive or dishonest practice.
- ▶ is permanently or temporarily enjoined by the Court from engaging in or continuing in any aspect of their business.
- ▶ failed to reasonably supervise employees, agents, subcontractors, or salespersons, or performed negligently or in breach of contract so as to cause injury or harm to the public.
- ▶ failed to comply with any provision of the licensing law.
- ▶ been shown to be incompetent, untrustworthy, or financially irresponsible.
- ▶ been convicted of a violation of the State Building Code, or, if the work was performed in a non-code area, refused to correct a violation of the state building code as certified by a structural engineer licensed by the State of Minnesota.
- ▶ misused or converted client funds or failed to use the proceeds of any payment for the payment of labor, skill, material, and machinery contributed to the construction or improvement.
- ▶ forged lien waivers or has failed to furnish valid lien waivers to the person making payment.
- ▶ engaged in conduct which was the basis for a recovery fund payment and the payment has not been reimbursed.
- ▶ engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit.
- ▶ has had a judgment entered against them for failure to make payments to employees, subcontractors, or material suppliers, and all appeals of the judgment have been exhausted or the period for appeal has expired.
- ▶ if unlicensed, obtaining a building permit by the fraudulent use of a fictitious license number or the license number of another, or, if licensed, has knowingly allowed an unlicensed person to use the licensee's license number for the purpose of fraudulently obtaining a building permit.

Advanced processes have been implemented in Minnesota for enforcement and administration of these requirements.

Our neighboring **State of Oregon** has been found to provide sound mechanisms for complaint resolution and contractor discipline. Complaints against contractors are investigated by the Construction Contractors' Board (CCB). Before filing a complaint with the CCB, a complainant must send a written notice to the contractor. The notice must meet the following criteria:

- It must be sent by certified mail 30 or more days before filing the complaint.
- It must state that the complainant intends to file a complaint with CCB.
- It must be sent to the contractor at the address listed on CCB's records.

- If the notice is mailed less than 45 days before the time limit to file a complaint runs, the time limit for filing the complaint is extended by 60 days from the date the notice was mailed.

After the pre-complaint notice has been mailed, and the 30 days have passed, a complainant may file a complaint with CCB's Dispute Resolution Services (DRS). There are different complaint forms. They are the following.

- Homeowner/Primary Contractor Complaint Form
- Subcontractor Complaint Form
- Material Supplier Complaint Form
- Employee Complaint Form

There are certain time limits within which a complaint must be filed. DRS reviews the complaint to make sure that it was filed within the time limit.

Each complaint is processed by a dispute analyst. In addition to determining that the complaint was timely filed, the dispute analyst will determine that the complaint is within the (substantive) jurisdiction of the CCB.

Qualifying complaints include the following.

- A complaint that the property owner alleges breach of contract or negligent or improper construction work.
- A complaint that an employee alleges nonpayment of wages earned from construction.
- A complaint that a material supplier (or equipment rental company) alleges nonpayment for materials or equipment used in a construction project.
- A complaint by one contractor against another for breach of contract or negligent or improper construction work, or nonpayment for construction work.

If the complaint involves a residential structure (or possibly a small commercial structure), CCB may perform an investigation. If the complaint involves improper or negligent construction work, a field investigator visits the construction site and reviews the construction work. The field investigator attempts to help the parties reach a compromise settling their dispute.

If there is no agreed resolution of the dispute, the field investigator observes the alleged defective work and prepares a report recommending whether there should be repairs or whether the allegations are unfounded and the complaint should be dismissed. If the CCB recommends repairs, the law provides that the contractor must be allowed an opportunity to correct the defective work.

If the contractor fails to make the recommended repairs or to satisfy a settlement agreement, the dispute analyst may require the complainant to obtain repair bids from other licensed contractors. The dispute analyst may then issue a proposed order proposing that the contractor pay a certain amount of money to the complainant. Alternatively, if there was no finding of breach of contract or defective work by the CCB, the dispute analyst may issue a proposed order dismissing the complaint.

If either party objects to the order, the agency will forward the matter to the Office of Administrative Hearings (OAH) to arbitrate the matter. If either party requests a contested case hearing instead, the matter will be sent to OAH to conduct such a hearing.

Following a contested case hearing, a party may appeal the decision to a committee of the CCB Board, known as the "Appeal Committee." (Presently, the entire board sits as the Appeal Committee). If still dissatisfied, the party may appeal the decision to the Oregon Court of Appeals.

If the complaint involves a large commercial structure (or sometimes a small commercial structure), the matter is determined by a court. The complainant sends the court judgment to the CCB for processing. There is no field investigation or arbitration for these complaints.

If the contractor does not pay a final award or order, the award or order is sent to the contractor's surety bond company to pay the complainant.

If CCB determines that it has jurisdiction of the complaint, it will request that the complainant pay a \$50.00 processing fee. If the complainant receives an award from the contractor, the \$50.00 will be included as owing from the contractor (or the surety company). No fee is charged for large commercial complaints.

Alternative problem resolution in Washington State – Mediation

One way to reduce costs to all parties would be to encourage mediation. Mediation may be considered as a means of solving problems before they escalate to the need for State review. Many of the conflicts between consumers and contractors evolve through a series of events, disagreements, and arguments about what is required in the contract. Early dispute resolution before liens are used, lawsuits are filed, contractors are fired or consumers withhold payment could be of great benefit. The study found that there are gaps in process options. For instance, there might be no action possible to attach the bond without a court action involving an attorney and there are cases where the monetary value is too high for small claims court and too low to interest an attorney, leaving the consumer with no options at all.

The BBB offers mediation and arbitration for a fairly low fee. In addition, the Attorney General's Office sometimes assists consumers via informal mediation even when they do not take any legal action.

For consumers, the process of complaining to Labor and Industries in order to access the contractors bond is complicated and formal and involves administrative law hearings or litigation that nearly always requires the services of an attorney.

Within some contract language, binding arbitration is mandated. Sometimes there are heavy incentives to use arbitration instead of any future court action. (This may ensure that the bond is never accessed). In that process, there is no record of the testimony unless either the contractor or the consumer pays for the court recorder and transcription. Also, although there may be an appeal, the grounds for any appeal are very narrow, and the consumer may be at a disadvantage if they have not hired an attorney prior to the arbitration process.

During the study, it was discovered that many disputes that are sufficiently small for small claims court are currently being referred by local judges and court personnel to local Dispute Mediation Centers. These programs exist in nearly every county and were created through the State through dedication of court filing fees. Some are city or county programs and others are local non-profit organizations. They offer trained community-based volunteers and are used to address a wide range of problems. Although the contract-related small claims cases currently handled through these programs are not counted separately, there are a substantial number of contractor issues already in this process.

One advantage of mediation over binding arbitration is that it can be very inexpensive and it does not preclude other options. We do not have enough information about how mediation would best be applied to include a concrete recommendation. There is little experience to draw on from other states. The Washington AGO and other sources have engaged in informal construction problem mediation. Further attention is warranted.

4.1.2 Enforcement

Findings: **There are many complaints involving unregistered contractors**

Unregistered subcontractors are substituted for registered subcontractors without the knowledge or consent of the consumer

Some states dedicate significant resources to enforcement and investigation

“Licensing without enforcement is meaningless.” Quoted from response from State of Hawaii that typifies responses from a number of states.

Recommendation: **Ensure that enforcement resources, including staff and investigative tools, are adequate to establish full compliance by contractors.**

Other states that regulate construction report universally that enforcement is key to effective regulation. (The survey results indicate that enforcement of Washington’s registration requirements has been lacking.) In response to 2008 legislation (SB 6732) L&I is currently stepping up enforcement efforts in the construction industry. Six positions have been authorized for the L&I Compliance Division's Fraud, Audit, Investigation and Referrals team (FAIR). Three were authorized last biennium and three additional this biennium coincident with the Underground Economy study. An additional three positions have been authorized in the Workers Compensation/Industrial Services Division and are currently being filled.

No mechanisms exist in Washington for measuring the “non-registered” segment. It is believed to be sizeable. During FY 2007 L&I identified 1,431 contractors who had failed to register. The proportion of unregistered contractors that this represents is unknown. The past three years are:

FY 2007:	1,431 infractions
FY2006:	1,000
FY2005:	1,039

Closer attention is warranted. Possibly the state can take better advantage of the “eyes and ears” of local building officials who are in close proximity to construction sites. It is believed that responsible contractors and construction material suppliers are also in a position to detect and report “non-registered contractor” activity.

The **State of Oregon’s** CCB has two sections devoted to enforcement activities - the Enforcement Section and the Field Representative Section. The Enforcement Section reviews matters for potential enforcement actions and initiates administrative and judicial enforcement actions. The Field Representative Section consists of up to 11 investigators (together with a manager and administrative assistant). The investigators make job site checks and conduct other investigations to determine if persons doing construction work are complying with Oregon's laws.

The Oregon CCB's civil enforcement powers are found in ORS 701.026, 701.098, 701.102, 701.106, and 701.992. In general, the agency may impose civil penalties, refuse to issue a license, refuse to renew a license, suspend a license, or revoke a license.

- ▶ CCB may impose a civil penalty against persons working without a license or against contractors hiring subcontractors or others when the contractor is licensed "exempt" (meaning the contractor carries no workers' compensation insurance).
- ▶ CCB may revoke, suspend, refuse to issue, or refuse to renew a license, and/or impose civil penalties for the following:
 - Violation of certain CCB laws.
 - Violation of certain other laws.
 - Violation of CCB rules.
 - Knowingly assisted an unlicensed person.
 - Allowing the filing of a lien by wrongfully failing to pay moneys owed.
 - Working without a construction permit.
 - Working with other contractors without workers' compensation insurance.
 - Conviction of certain crimes.
 - Failing to pay for labor or materials.
 - Made bad faith or false complaints against contractors.
 - Engaged in dishonest or fraudulent activities.
 - Being unfit or not fit for licensure.
- ▶ CCB may immediately suspend a license if a licensee has no bond or insurance, hires employees without having workers' compensation insurance, engages in dishonest or fraudulent conduct or fails to pay a construction debt.

In cases of serious law violations, CCB will seek civil court remedies through the Attorney General's office (Oregon Department of Justice). These may include injunctions or relief under Oregon's Unfair Trade Practices Act.

CCB also works with district attorneys in the state to prosecute theft or racketeering. In addition, the district attorneys have independent authority to prosecute unlicensed activity as a criminal misdemeanor. Also, it is a misdemeanor in Oregon to use a contractor's license number without authorization or to use a contractor's license number with the intent to deceive the public. (ORS 701.990).

4.1.3 Registration Requirements

Findings: **A large number of complaints involve contractors who are already registered.**

Many contractors need better understanding of business principles.

A number of contractors need to better understand construction processes and building codes.

Non-payment of suppliers and subcontractors places a burden on consumers and these contractor business partners.

Current ceilings on contractor bonds are inadequate to cover major losses.

Contractors use threat of bankruptcy to discourage lawsuits.

Attaching a contractor's bond may require retaining an attorney to file suit.

Attorney fees to initiate lawsuits can exceed the amount of probable recovery.

Requirements for obtaining building permits are often ignored.

Contractors "disappear" after work completed. Reappear under new name. There are no barriers to resurrecting businesses under new identities.

LLC/Corporate status provides shield. Bankruptcy absolves contractor of personal liability.

Registration filing information does not inform consumer of contractor work history.

Contractors do not have to demonstrate skill in construction management.

Registration requires no proof of financial capability. No financial or credit checks are made.

No requirement exists for continuing education of contractors.

Many other states require proof of experience / test of knowledge.

The construction industry has been supportive of increased regulation in other states such as Arkansas.

Recommendation: Strengthen registration by requiring disclosure of prior business names and/or bankruptcy, two years experience in the construction industry, and evidence of training in regulations and business practices in the construction industry. Consider higher bonding limits.

Good business practices on the part of the contractor have been found to be central to consumer satisfaction. The registration process can be easily enhanced to better screen applicants. It is fairly common for contractors to close their business when problems arise and quickly “reinvent” their business under a new name to avoid repercussions. Registration should probe the former businesses of applicants. A process for imposing sanctions is of course needed first to remove applicants who make false statements.

The consumer should be clearly informed prior to signing a contract that the bond may be insufficient to satisfy claimants. A \$12,000 surety bond is now required for registration as a general contractor and a \$6,000 bond is required for specialty contractors. Based on input from forums and survey, this limit was found to be inadequate. Claims against bonds may be made by the homeowner, material supplier, subcontractor or an employee. Often the homeowner is last in line. The bond amount must equal the value of the work if all claimants are to be satisfied. The consumer needs to understand that the homeowner can be liable for obligations of a contractor. This would be addressed in the *Consumer Education* element recommended later in Section 4.1.7.

Applicants should have two years of experience in the construction industry. Many states require four years of experience working in the construction industry. Further, training in applicable regulations, project management and building codes is suggested. The absence of problem history data makes it difficult to suggest exact training needs. Findings suggest that poor service/business practices are as critical as are workmanship issues. Other states mandate from 16 to 40 hours of training. Continuing education is appropriate in light of changing regulations and building codes.

4.1.4 Recovery Fund

Findings: **Non-payment of suppliers and subcontractors places a burden on consumers and business partners.**

Current ceilings on contractor bonds are inadequate to cover major losses.

Contractors use threat of bankruptcy to discourage lawsuits.

Attaching a contractor's bond may require retaining an attorney to file suit.

Attorney fees related to lawsuits may exceed the amount of probable recovery.

Contractors "disappear" after work completed. Reappear under new name. There are no barriers to resurrecting businesses under new names.

LLC/Corporate status provides shield. Bankruptcy absolves contractor of personal liability.

Recommendation: **Consider creating a Recovery Fund to improve consumer protection by backing up bond capacity.**

We have found that 11 other states have established "Recovery Funds" to improve consumer protection by backing up bond capacity. Funding usually comes from a small part of the regulatory fees assessed. By example, one of the main benefits to consumers of **Minnesota's** regulatory process has been the Contractor's Recovery Fund, which was created in 1994. Minnesota has been paying out over \$1,000,000 annually to consumers who have suffered a financial loss as a result of their licensed contractor's failure of performance, fraudulent, deceptive, or dishonest practices, or conversion of funds. The state has benefitted countless consumers by helping them achieve resolution to disputes with contractors through their complaint investigation process.

A consumer cannot make application to the Recovery Fund until they have obtained a final civil judgment against their contractor. Once they have done that and made every effort to achieve satisfaction of the judgment from the contractor, they can apply to the Minnesota's fund. Fund claims are handled through two processes: an accelerated process (for claims under the Conciliation Court threshold of \$7,500) and a standard process (claims over \$7,500). The Fund currently is limited to paying out no more than \$150,000 on behalf of any single licensee. No claimant may obtain more than \$75,000 from the Fund. In the event the total claims against a licensee exceed \$150,000, all claims are paid on a prorated basis. Up to \$50,000 of the \$150,000 limit can be paid through the accelerated process. Through that process, the licensee is generally notified of a claim and given 15 days to either satisfy it or appeal it. If they satisfy it, the case is closed. If they appeal it, the case is suspended pending the final outcome of the litigation. If the licensee does neither or fails to respond, the Fund begins the process of paying that portion of the claimant's judgment that represents the consumer's actual and direct out-of-pocket loss.

In the standard process, all claims are held until the end of the fiscal year. In the meantime, Minnesota's fund administrator evaluates the claims to determine whether the fund and the claimant can agree on an amount that reflects the claimant's actual and direct out-of-pocket loss. If agreement is reached, a stipulation agreement is executed. When Minnesota and a claimant cannot agree on an amount, the matter is decided by an administrative law judge at the Office of Administrative Hearings. Once the claim amount is determined, the claimant assigns their interest in the judgment (to the extent of the stipulated agreement) to Minnesota, and the claim is paid in the fall (after a review of all claims received in the fiscal year to ensure that claims are properly prorated in the event there are multiple claims against a single licensee which total more than \$150,000. The Department then pursues the licensee for collection of the amount paid to the claimant and if the licensee's license is still active (rarely the case), the payment from the Recovery Fund provides cause for the suspension or revocation of the license (the license is usually suspended or revoked by this time anyway).

Minnesota provides a good model. Other states having recovery funds are identified in the tables on pages 54-61.

4.1.5 Centralized, Uniform Complaint Reporting

Findings: **The information on complaints filed is scattered between the Attorney General, L&I, local building departments, the BBB and other organizations. There is not “one place” where complaints are filed or complaint history can be researched.**

Complaints submitted are not coded in a manner to allow meaningful intelligence to be extracted.

Recommendation: **Create central complaint repository within State government. Establish database and encourage state agencies and local authorities to share information in a uniform format allowing information to be easily extracted.**

The consumer in Washington State currently has no single place to go to register a complaint or find out the performance history of a prospective contractor. Complaints are lodged with and recorded by L&I, the Attorney General, local building officials, the BBB and other consumer protection agencies. Due to privacy restrictions and other mandates, these entities do not share information. A central “clearing house” for registering complaints and learning the work history of a contractor is essential to both a well-informed consumer (Ref. 4.1.7) and strengthening of registration by allowing sanctions against poorly behaving contractors (Ref . 4.1.1).

Efforts are needed to launch a unified database and allow agencies to share information. Appropriate controls on releasing sensitive information will be necessary.

4.1.6 Standard Construction Documents

Findings: **Lien laws are confusing and often disadvantage the consumer. Threat of liens exert pressure to pay for unsatisfactory work.**

Lending institutions do not receive lien notification.

Important insurance provisions are often omitted.

Consumers feel pressured to sign contracts that favor contractor. One-sided contract language is used. Contracts are written to limit contractor liability.

Contracts offered restrict legal remedies. Mandatory arbitration can favor the contractor.

Contractors frequently demand payment in advance, placing the consumer at risk.

Consumers report being billed for material not delivered to job.

Warranties given to homeowners are restrictive and may limit right to sue. Warranties limit recovery to current (one) owner. Notification of defects is often required to be given within first year, precluding remedies for defects that appear long term.

No standards have been created to govern information given to the consumer by a contractor.

The bid sheets prepared by contractors often have insufficient detail to allow informed subsequent negotiations. Material and labor costs are often not itemized.

“Model contracts” have been found to be practical.

Recommendations: **Develop and require the use of model construction documents and specify prohibited provisions. Documents should include contracts, warranties, bid sheets, lien explanation. Consider elective escrow provisions to avoid problems resulting from advance payments.**

Five public forums held by MEA in five geographically dispersed cities served to collect information from homeowners and contractors regarding problems experienced during the construction or renovation of single family residences. A recurring theme from homeowners was that the contracts they signed placed them in a vulnerable position.

Contract language is at the center of many of the cases described by consumers who came forward in the forums. Issues included the fairness and balance of the contract language between consumer and contractor, questions of whether the terms had been met, confusion about the contract and

quality standards for contracted work.

When some consumers find themselves in a dispute over a residential construction project, they find that the contract they have signed limits their options or is weighted heavily in favor of the contractor, leaving them without true recourse if things go badly. For instance, some contracts have language that requires binding arbitration and requires that a consumer who does not comply with arbitration become solely responsible for the attorney fees of all parties no matter who is at fault in the dispute.

The AIA (American Institute of Architects), ACEC (American Consulting Engineering Council), CSI (Construction Specifications Institute) and many other professional organizations have created an array of model contracts to cover commercial construction practices. Attorney associations are reported to have drafted model contracts for the construction industry.

4.1.7 Consumer Education

Findings: “Consumer education is the best remedy”. Quote from response of State of Virginia that is typical of reports from many states.

Consumers of construction services are not adequately informed about State oversight. Consumers are unaware of how State law affects residential construction contracting.

The Master Business Application processed by the DOL is misinterpreted by consumers as credentialing by the State. Firms may take advantage of the confusion.

Consumers do not verify contractor registration. They are often unaware of State regulatory mechanisms

Consumers are unaware of need to conduct due diligence.

Consumers do not appreciate the financial obligation placed on them by lien laws.

Registration is often equated by consumers to proficiency.

The role of building inspectors is not understood. Consumers expect building inspectors to find all defects. In fact, even code violations are sometimes overlooked. Building codes are not uniform between counties.

The current regulatory system gives consumers a false sense of security.

Recommendation: Enhance L&I’s current efforts to increase consumer skills and awareness of issues, resources and strategies that are important in the area of residential contracting. Connect this effort to the issues identified as critical in this Sunrise study. Set goals and targets and define metrics for consumer awareness.

Encourage an integrated / coordinated consumer education program. Involve public agencies (AGO, L&I, DOL), industry trade associations, BBB, consumer advocates and other stakeholders sharing common values.

L&I currently has a consumer and contractor outreach program which was recently expanded by the Legislature (SB 6732). This recommendation would complement the program since:

- ▶ Several agencies already have a base of knowledge and experience incorporating some amount of consumer education into their portfolio of activities.

- ▶ The general agreement between disparate stakeholders that this is a worthy and legitimate role for government offers an opportunity for positive collaboration and partnership between public, private and non-profit organizations.
- ▶ There are additional stakeholders and interest groups that could be included in a comprehensive consumer education and protection campaign. Examples might include: The Bar Association, (through their effort to design "neutral" contracts for residential contracting), television stations that offer consumer protection programming and *public service* announcements, local government permit departments, vendors and suppliers of materials, bond and insurance providers, agencies on aging and AARP (to protect vulnerable elders).

A somewhat universal finding from other states is that consumer education is key to protecting the interests of the homeowner. These interests coincide with those of the BIAW, BBB and other consumer advocates in encouraging better informed consumers.

Many of the problems presented in the forums and analyzed in the cases from state agencies might have been avoided by better-informed consumers. Because of the potential for financial harm to the public, it is imperative to have well-informed consumers who know about resources available and assistance that can be accessed.

Consumers often do not have information and skills to prepare for hiring residential contractors. They often do not have knowledge of their rights and responsibilities about the process of contracting. They are reluctant to hire attorneys to review contracts and do not know how to identify when assistance is needed before or during a construction project. Further, it became evident during this study that the considerable information and assistance that is available for consumers is often not known, read or understood until problems become severe.

A number of State agencies have a keen interest in protecting the interests of homeowners and other consumers. There are several entities that have made consumer education part of their duties: Labor and Industries, the BBB, the Attorney General's Office, various media, and some non-profits all attempt to fill this role. However, there is no effective coordination or effort to comprehensively tailor the information and method of distribution to the actual issues occurring. Additional work is needed to develop messages and information that are linked to actual problems.

Research into important issues is warranted:

- ▶ What are the problem areas identified that could be addressed through "Consumer Education"?
- ▶ Are there key questions that should be answered in any contract and/or asked before signing?
 - What is covered and not covered?
 - What do you do in case of a disagreement?
 - What do the terms mean and what are the implications?
 - How will I know when the terms have been met?
 - What do the various State and local agencies do and how do I contact them?
- ▶ What are the indicators of a good contractor? A problematic one?

4.2 CONDITIONS REQUIRED FOR THE SUGGESTED REGULATORY MODEL

4.2.1 Conditions That Must Exist in Washington State

The State must have the power to levy appropriate sanctions on contractors who violate the rules. Absent disciplinary and enforcement mechanisms, regulatory standards are hollow. The ability to discipline in turn implies existence of a properly constituted process for hearing cases and receiving appeals. A mechanism for mediating construction problems would be extremely valuable.

Conditions under which disciplinary action would be taken need to be spelled out. The State of Minnesota's parameters have been cited earlier in this report. They represent one example.

In turn, a system is needed to compile information regarding contractor violation of rules, complaints registered and resolution reached. Access to performance history is key to identifying needs for corrective action. It is important that information from all sources be consolidated and reported in an integrated manner. The consumer must be educated in how to register a complaint and the steps in resolving it.

Contents of the agreement documents used in contracting should be restricted to shield consumers from giving up their legal rights and thus becoming vulnerable to predatory business practices.

The recommendations advanced earlier suggest that the applicant single family home contractor have knowledge of the regulations governing the trade, be experienced in managing construction processes, have sufficient monetary resources to sustain the project once started, have the financial standing through sufficient current assets or surety bond to stand behind the implied warrantee on work, carry liability insurance and have no recent history of unsatisfactory business practices.

This further requires that applicants provide the names of businesses they have been associated with in the past to allow previous financial history – including absence of bankruptcy / insolvency – to be verified. We have learned that contractors suddenly go out of business, only to reemerge under new names. It is reasonable to ask for business and trade references.

4.2.2 Contractor Qualifications to Meet the Regulatory Standard

The qualifications believed needed to fulfill strengthened registration requirements may have been anticipated. They include:

- ▶ Two years of experience in the construction industry. Many states require four years of experience working in the construction industry.
- ▶ Training in applicable Washington laws and business practices. A 16 - 40 hour course is required by many states. We see no value in an examination per se. The most critical attributes (business judgement, character) are difficult to test. Some continuing education requirements should be considered in view of potential changes in the regulatory landscape and building codes. We are reluctant to specify exact training needs due to an absence of history on construction problems experienced.

- ▶ A statement as to businesses owned/operated within the past two years under different business names should be mandatory.

4.2.3 Activity Implied

Future activities implied by these recommendations can be succinctly summarized:

Central Data Repository: Creation of a central database consolidating complaint history in a uniform format having query capability.

Residential Construction Satisfaction Metrics: Design and implementation of sound systems for gauging the levels of and trends in the quality, satisfaction and value of residential construction services.

Performance Reporting: Regular reporting to the legislature on how well regulation is succeeding is warranted. Specific goals and milestones must be established.

Criteria for Disciplining Contractors: Definition of the conditions under which the State would have cause for suspending or terminating contractor registration. Models are available from other states. An appropriate hearings process would be considered at the same time.

Recovery Fund: Establishment of a fund to “backstop” bond protection. Excellent models are in use by other states.

Mediation Systems: Development of alternative dispute resolution mechanisms involving mediation between contractors and homeowners.

Model Construction Documents: Development, testing and distribution of neutral language construction documents that protect the rights of the contractor and consumer equally. Guidelines applicable to handouts and other written information given to prospective customers.

Consumer Education: This critical function needs skillful public relations skills coupled with a coordinated campaign to fully engage the consumer at every step of the construction continuum. Many stakeholders share a common interest in creating an “informed public”.

Code of Ethics: As an organization that claims to represent the residential construction industry, the BIAW is superbly positioned to propose a Code of Ethics/Code of Conduct for its membership to subscribe to. An industry initiative of this nature would be a meaningful complement to activities pursued by the State.

Certification: Efforts by the industry toward self-certification as proof of competency and professionalism represents a possible complementary step forward.

APPENDICES

Appendix 1	Response to RCW 18.118.030
Appendix 2	Budget Provisos
Appendix 3	Additional Stakeholder Feedback Details
Appendix 4	State-Specific Responses

APPENDIX 1

RESPONSE TO RCW 18.118.030

Chapter 18.118.030 is oriented to serve business and professional interests that wish to apply for regulation of their sector under “Sunrise” provisions. As has been described in this report, the group of interest is already regulated by the State via registration by the Department of L&I. This study is driven by a request from the Legislature that the Department of Licensing examine the current regulatory structure and report on whether changes in regulation are appropriate.

Because of the need to respond using the factors in RCW 18.118.030, some latitude is needed. RCW 18.118.030 anticipates justification for regulating a profession for the first time rather than regulation of a business that is already being regulated. Issues of concern and findings relative to those issues are provided in order of the sequence that this Chapter stipulates.

1.1 *A DEFINITION OF THE PROBLEM AND WHY REGULATION IS NECESSARY*

1.1.1 *The nature of the potential harm to the public if the business profession is not regulated, and the extent to which there is a threat to public health and safety;*

The residential contracting industry is already regulated by the L&I. Registration is required for all construction contractors – both residential and commercial. A business license is required for corporations by the Secretary of State. The Department of Revenue also participates in regulation.

Analysis of extensive research tells us that considerable harm to customers of residential contracting services results under the current regulatory scheme.

Key problems can be synthesized from this research:

1. **Consumers are poorly informed about how they should contract for construction services.**

- ▶ The regulatory framework is complicated and difficult to comprehend. People do not understand the implications of state “licensing” and “registration”. Unregistered contractors can use their “license” number to imply recognition by the State.
- ▶ The abundance of information available on State web sites is not broadly publicized.
- ▶ The current process provides a false “sense of security”. It is assumed by consumers that registration designates some level of competency.
- ▶ “Due diligence” is neglected. Homeowners do not understand its importance and instead rely on the State’s oversight.
- ▶ The role of the State’s regulatory system is misunderstood.
- ▶ The focus of local building department inspections is overestimated .
- ▶ Consumers are pressured to pay for construction services in advance.
- ▶ There is insufficient understanding of lien laws.

- ▶ Inadequate mechanisms exist for checking contractor business history.
 - ▶ No standards have been established for information disseminated to consumers.
2. **Requirements for contractor registration need to be improved and made enforceable.**
- ▶ Efforts to strengthen enforcement are reported to be in progress through increased staffing and from legislative changes.
 - ▶ Severe penalties for non-registration are not collected. During FY 07 \$289,498 in penalties were collected for 1,431 infractions, an average of \$202 per infraction.
3. **There is limited authority for suspending/cancelling registration for cause.**
- ▶ Even though RCW 18.27.140 states: "It is the purpose of this chapter to afford protection to the public . . . from unreliable, fraudulent, financially irresponsible, or incompetent contractors" Chapter 18.27 does not authorize sanctions.
 - ▶ There are no provisions for remediation short of criminal prosecution for gross misconduct that must be pursued by counties that are prone to claim higher priorities.
4. **Financial stability is not verified**
- ▶ There is nothing preventing contractors from repeatedly "reinventing" their businesses under new names.
 - ▶ Threat of bankruptcy is used to discourage claims against contractors.
 - ▶ Bond ceilings are too low to cover major losses.
5. **"Boilerplate" contracts place consumers at a disadvantage.**
- ▶ Consumers do not take time to understand substantive clauses. Insurance companies often dictate provisions.
 - ▶ Right to sue can be forfeited in favor of arbitration.
 - ▶ Recovery amounts limited by contract provisions and bond value.
 - ▶ "Bid sheets" are not useful to consumer in negotiation.
 - ▶ Recovery of attorney's fees often restricted for consumer.
 - ▶ Limited mediation processes are available.

Due to the fact that a central repository for residential construction problem reporting has never been established in the State, the magnitude of damages can not be quantified. However, the large amount of anecdotal complaint information collected during this study combined with limited statistical data indicate that the financial and emotional tolls on consumers are significant. For example, 359 lawsuits against contractors' bonds recorded by L&I between January 1, 2005 and May 10, 2007 reflected single instances of up to \$524,000 in damages. The average of claims in 136 "New Home" lawsuits was \$50,534 in damages.

There are associated physical, mental and emotional losses. During the single month of July 2008 when this study was conducted there were 398 complaints involving residential contractors reported to L&I. During 2007, 953 complaints were lodged with the Attorney General.

Research persuades that many of the problems with residential construction voiced by consumers can be addressed through enhancements to the existing regulatory framework. We perceive that implementation of such enhancements will reduce consumer problems without need for investing in further levels of regulation.

The current system may be viewed as imperfect. It is premature to contemplate new regulatory models until the current system can be improved. Until that point is reached, the incremental value of alternative regulatory schemes can not be gauged with certainty.

Improvements to the existing regulatory system are suggested. It is further recommended that the regulatory structure be re-examined after there has been time for the impact of those improvements to be felt. Time is also needed to implement systems to measure trends in the quality and value of residential construction services.

1.1.2 *The extent to which consumers need and will benefit from a method of regulation identifying competent practitioners, indicating typical employers, if any, of practitioners in the profession; and*

As mentioned above, many of the problems with residential construction voiced by consumers can be addressed through enhancements to the existing regulatory framework. We perceive that implementation of such enhancements will reduce consumer problems without need for investing in further levels of regulation.

The numerical size of the residential construction contracting industry can not be determined. No State agency tallies this information. L&I lists 60,000 registered contractors in the State, including both residential and commercial contractors. The Department of Revenue lists 50,000 firms within NAICS definitions of construction contracting. The proportion confined to residential construction can not be ascertained.

The Building Industry Association of Washington (BIAW) is the largest and most active of groups representing the residential construction industry. Its membership includes about 3,000 active builders and remodelers. We know that many contractors are not BIAW members. It is probably safe to say that there may be up to 50,000 residential contractors. These are predominately small businesses – including many sole proprietorships. Commercial firms tend to be large in size but few in number.

1.1.3 *The extent of autonomy a practitioner has, as indicated by:*

- ▶ *The extent to which the profession calls for independent judgment and the extent of skill or experience required in making the independent judgment; and*
- ▶ *The extent to which practitioners are supervised;*

Contractors are expected to exercise independent judgement and be knowledgeable in the construction trades. However, the consumer has few mechanisms for gauging the capabilities and work history of a prospective contractor.

“Supervision” is much easier to discuss. Residential contractors operate very autonomously. There is no supervision of a “general contractor” – the entity contracting directly with the owner. Subcontractors are expected to work under the direction of a general contractor who negotiates with the owner and provides integration of crafts.

1.2 *THE EFFORTS MADE TO ADDRESS THE PROBLEM*

1.2.1 *Voluntary efforts, if any, by members of the profession to:*

- ▶ *Establish a code of ethics; or*
- ▶ *Help resolve disputes between practitioners and consumers; and*

Although problems are acknowledged to exist, our research has uncovered little progress made by residential construction trade associations to address those problems in an effective manner. This is a highly fragmented industry. The BIAW, a vocal advocate for the residential construction industry, represents only 3,000 of an estimated 50,000 builders and remodelers in Washington. No code of ethics or standards of performance have been found to exist.

1.2.2 *Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem.*

The problems enumerated earlier may be eliminated or significantly mitigated through strengthening existing regulations. The *Regulatory Environment* in Washington is examined in Section 2.4 of this report. Subsequent recommendations in Section 4.1 explore how “applicable law” might serve to deliver solutions.

1.3 *THE ALTERNATIVES CONSIDERED*

In increasing order of severity, the levels of regulation available are *Registration*, *Certification* and *Licensing*. The *Registration* model is currently used by L&I to regulate residential contractors. *Certification* and *Licensing* are used by L&I in the further regulation of two trades, plumbing and electrical. Meaningful definitions of these levels are found in DOL documentation.¹¹

Registration: This level generally has the least burdensome requirements. Registration provides a formal process whereby the applicant can register, pay a fee and submit specific information to the regulatory authority such as:

- Names and address of applicant
- Location
- Nature and operation of the business
- Activity to be engaged in
- Description of services to be provided

Registration does not normally evaluate minimum competency through a qualifying examination or other means. Generally, the process provides a minimum level of public protection.

Certification: Certification is a process through which a regulatory agency grants recognition to an individual who has met certain prerequisite qualifications – verified by examination. Once these prerequisites are satisfied the individual may use “certified” in their title or professional designation. An example is Certification of Librarians issued by the Washington State Librarian (RCW 27.04.055)

Licensing: This form of regulation has the most rigorous requirements among the three types of credentialing. The term “Licensing” can have multiple interpretations. For the purpose of this discussion it denotes that applicants meet significant education, experience and examination requirements before being licensed. In addition to fees, requirements may include:

- Examination to assess minimum competencies
- Basic educational requirements
- Codified professional and performance standards

Practice is limited to those holding a valid license in a given business or profession. Unlicensed practice is illegal and is generally considered a criminal infraction with significant penalties through administrative law or court action. These programs generally have a legislative mandate to administer the program with the primary objective of insuring and maintaining public health, safety and welfare.

¹¹ DOL/BPD (Department of Licensing/Business and Professions Division) Briefing Book, November, 2006

1.3.1 *Regulation of business employers or practitioners rather than employee practitioners;*

The residential construction industry is composed of business entities rather than individuals. The term “business entity” includes corporations, LLC’s, partnerships and sole proprietorships. In many cases a corporate structure is adopted to avoid personal liability.

1.3.2 *Regulation of the program or service rather than the individual practitioners;*

Since the residential construction services of concern are rarely offered by individuals without a business standing, the emphasis is upon regulation of residential construction businesses. The certification of individuals in the electrical and plumbing trades is provided for by the State.

1.3.3 *Registration of all practitioners;*

We recommend registration of contractors as defined in RCW 18.27 with an increase to registration requirements.

1.3.4 *Certification of all practitioners;*

We are recommending an increase to registration requirements as opposed to certification at this time. Certification is characteristically voluntary and has a skills competency requirement component which we are not currently recommending.

1.3.5 *Other alternatives;*

Strengthening the systems now in place would provide an improvement in the protections available to consumers. Section 4.1 of the report provides details of this strengthening.

1.3.6 *Why the use of the alternatives specified in this subsection would not be adequate to protect the public interest; and*

1.3.7 *Why licensing would serve to protect the public interest;*

We are constrained to advocating the minimum level of regulation needed to protect the public. We believe that an increase in registration requirements will suffice.

“Licensing” implies assessment of the qualifications of businesses to perform contracting based upon financial stability, business experience, test of business knowledge or examination of relevant skills. Most of these processes can be incorporated into the current requirements for “Registration”. If the consumer understands the limits to the factors examined by the State and is educated in how to discriminate wisely based on those factors, the public interest would be served.

1.4 *THE BENEFIT TO THE PUBLIC IF REGULATION IS GRANTED*

1.4.1 *The extent to which the incidence of specific problems present in the unregulated profession can reasonably be expected to be reduced by regulation;*

The construction industry is already regulated. Because the standards for registration are low and requirements for registration are inadequately enforced, the current system leaves the consumer vulnerable.

The accompanying recommendations are aimed at improving homeowner protection, improving business practices, centralizing complaint reporting, enforcing requirements, and creating a better informed consumer of construction services through strengthening of the existing regulatory structure.

1.4.2 *Whether the public can identify qualified practitioners;*

Unless consumers are educated in what capabilities the regulatory system does – and does not – attest to, they will continue to find it difficult to identify qualified sources of construction services. The *Consumer Education* component of the recommendations is expected to equip the public to better identify qualified practitioners.

1.4.3 *The extent to which the public can be confident that qualified practitioners are competent:*

- ▶ *Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;*
- ▶ *If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;*
- ▶ *The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;*
- ▶ *Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and*
- ▶ *The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certificated, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an*

examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met;

Response: The public is inadequately informed regarding whether a residential contractor is competent. A contractor's business competency is knowledge of how to identify and organize essential elements of the construction process, comply with regulations and codes, manage financial and business resources. A sense of business ethics is primary.

Current regulation requires no proof of business experience, financial stability or management skills. Strengthening of registration is a first step. Identifying processes for administering a stronger regulatory structure would follow naturally.

The qualifications sensed at this point to be needed to strengthen registration include:

- ▶ Two years of experience in the construction industry. Many states require four years of experience working in the construction industry.
- ▶ Training in applicable Washington laws and business practices. A 16 - 40 hour course is required by many states. We see no value in an examination per se. The critical skills are difficult to test for and fairly easy to falsify. Some continuing education requirements should be considered in view of potential changes in the regulatory landscape and building codes.
- ▶ A statement as to businesses owned/operated within the past four years under different business names should be mandatory.

Existing contractors would need to meet the recommended standards. Strengthening of existing regulation is expected to create little burden for qualified applicants. Reciprocity should be granted to those who previously have met standards in other jurisdictions equal to or greater than the requirements in Washington state. The standards existing in other jurisdictions would have to be cross referenced.

1.4.4 Assurance of the public that practitioners have maintained their competence:

- ▶ Whether the registration, certification, or licensure will carry an expiration date; and
- ▶ Whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

The best credential to gauge a contracting firm seems to be continued success in business. Technical skills appear to be less of an issue. Some continuing education requirements should be considered in view of potential changes in the regulatory landscape and building codes.

There are currently no mechanisms for compiling data on problems experienced with practitioners in order to identify weaknesses in *skills*. More importantly, there is no way to impose sanctions through suspension or cancellation of registration.

1.5 *THE EXTENT TO WHICH REGULATION MIGHT HARM THE PUBLIC:*

1.5.1 *The extent to which regulation will restrict entry into the profession:*

- ▶ *Whether the proposed standards are more restrictive than necessary to insure safe and effective performance; and*
- ▶ *Whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and*

Response: Strengthening of existing regulation is expected to create little burden for qualified applicants. An enhanced regulatory climate could encourage businesses to acquire the skills necessary to succeed prior to embarking on projects where failure can result in business insolvency and considerable loss to both the contractor and the consumer. Reciprocity can be granted to those who migrate to this state when the other jurisdiction has substantially equivalent requirements.

It is believed that responsible sectors of this industry would welcome a regulatory structure that benefits both its members and the public at large.

1.5.2 *Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;*

Professions such as engineering and architecture which are regulated to a “higher standard” through credentialing and examination should be exempted. It is recommended that nonprofit organizations like Habitat for Humanity with a charitable purpose be exempted.

Public comment has included requests that consideration be given to exclusion of real estate investors who improve / rehabilitate properties using registered contractors or their own personal skills. Some accommodation might be justifiable.

1.6 *THE MAINTENANCE OF STANDARDS*

1.6.1 *Whether effective quality assurance standards exist in the profession, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and*

Building codes, enforced at the local level, provide standards for public safety. These vary with locality and are not uniformly administered. Building officials themselves are not licensed or otherwise pre-qualified. Codes do not address the cosmetic and functional issues that are very important to the consumer.

As discussed earlier, no effort to promulgate a code of ethics or code of conduct for the industry has been discovered.

1.6.2 *How the proposed legislation will assure quality:*

- ▶ *The extent to which a code of ethics, if any, will be adopted; and*
- ▶ *The grounds for suspension or revocation of registration, certification, or licensure;*

Recommendations do not contemplate creation of a code of ethics. However, adoption of a code of conduct by the industry itself would be welcomed.

Quality of residential construction will be elevated via improving business practices, centralizing complaint reporting, enforcing requirements and creating a better informed consumer of construction services through strengthening of the existing regulatory structure.

There is currently little mechanism for revoking or suspending contractor registration. Strengthening of regulation is expected to include provisions for initiating action when abuse has been found.

1.7 A DESCRIPTION OF THE GROUP PROPOSED FOR REGULATION, INCLUDING A LIST OF ASSOCIATIONS, ORGANIZATIONS, AND OTHER GROUPS REPRESENTING THE PRACTITIONERS IN THIS STATE, AN ESTIMATE OF THE NUMBER OF PRACTITIONERS IN EACH GROUP, AND WHETHER THE GROUPS REPRESENT DIFFERENT LEVELS OF PRACTICE; AND

We recommend registration of contractors as defined in RCW 18.27 with strengthening of registration requirements.

The Building Industry Association of Washington (BIAW) is a vocal advocate for the residential construction industry. However, many builders, often sole proprietors, are not members. Of 13,500 BIAW members, roughly 3,000 are active builders and remodelers. The BIAW is associated at a higher level with the National Association of Home Builders and serves its members through 15 local associations / Master Builder Associations. About 90% of the members are said to be small businesses.

Many other professional, trade and business organization are impacted by the industry. They may have a keen interest in the instant examination of regulatory options. However, they do not claim to represent the residential construction industry.

1.8 THE EXPECTED COSTS OF REGULATION

1.8.1 The impact registration, certification, or licensure will have on the costs of the services to the public; and

1.8.2 The cost to the state and to the general public of implementing the proposed legislation.

Action to be decided on is unknown at this point. Costs will depend upon the level of regulation that is selected. Elevation of current regulation will entail significant cost. Other states report annual costs of \$20 million for administering licensing programs. Because contractor licensing is often one component of a larger system, program-specific costs are unavailable. Oregon, a highly analogous state, has a biennial (two year) budget of \$16,392,511 for a Construction Contractor Board that regulates both commercial and residential builders. Costs of other state regulatory programs and associated fees are detailed in Appendix 4.

A “Recovery Fund” such as is used in 13 other states, would add costs with associated benefits. This option is discussed at length in Section 4.1.4 of this report.

APPENDIX 2

BUDGET PROVISOS

Appendix 2 references the legislative charter for this study. Funding provisions were incorporated in Engrossed Substitute House Bill 2687, Chapter 329, Laws of 2008, 60th Legislature, 2008 Regular Session.

OPERATING BUDGET--SUPPLEMENTAL APPROPRIATIONS

EFFECTIVE DATE: 04/01/08

Page 151:

(21) \$40,000 of the general fund--state appropriation for fiscal year 2009 is provided solely for the department (*L&I*) to conduct a review of the need for regulation of general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010 and as generally described in Second Substitute House Bill No. 3349 (residential contractors). By October 1, 2008, the department and the department of licensing shall report their findings to the appropriate committees of the legislature.

Page 221:

(5) \$87,000 of the general fund--state appropriation for fiscal year 2009 is provided solely for the department (*Dept. of Licensing*) to conduct a review of the need for regulation of general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010 and as generally described in Second Substitute House Bill No. 3349 (residential contractors). By October 1, 2008, the department and the department of labor and industries shall report their findings to the appropriate committees of the legislature.

2SHB No. 3349 provided:

AN ACT Relating to a sunrise review of the need for single-family residential contractor licensing; creating new sections; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. (1) The department of licensing shall conduct a review of the need for regulation of general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010. In conducting the review, the department of licensing shall:

(a) Consult with representatives of and suppliers to residential contractors, consumer protection organizations and consumers, legal authorities, and any entity or individual that may assist in identifying the source or cause of prevalent home construction defects or concerns;

(b) Examine any general and specialty contractor regulatory and licensing programs in other states; and

(c) Conduct one or more public hearings to allow for industry and consumer testimony.

(2) The department of labor and industries and the office of the attorney general shall make available to the department of licensing any home construction defect and related consumer complaints. The department of licensing shall compile and evaluate consumer complaints and use this data and other data gathered throughout the research process to assist in conducting the review required by subsection (1) of this section.

(3) By October 1, 2008, the department of licensing shall submit recommendations to the appropriate committees of the legislature regarding:

(a) The need for regulation of general and specialty contractors involved in the construction and remodel of residential single-family homes; and

(b) If some form of regulation is recommended, the minimum qualifications to meet the regulatory standard.

(4) This section expires July 1, 2009.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void.

--- END ---

APPENDIX 3

ADDITIONAL STAKEHOLDER FEEDBACK DETAILS

OBJECTIVE

This *Appendix 3* is provided to report feedback from entities and individuals impacted by the potential regulation of general and specialty residential contractors in Washington State.

1.0 ABSTRACT OF FORUMS

Relevant comments voiced by the participants are summarized by forum location on the following pages. Each forum may be viewed in its entirety at the web addresses provided in the report.

Burien Forum # 1

Forum#/speaker#	Summary notes for speaker information and comments	Changes requested/ideas for remedy and/concerns about potential changes	Main ideas and notes
1/1	<p>Insurance/investor group / “flipper” rep.- Was concerned that L and I had recently included investors in general contractor requirements. It was felt that this was incorrect but tolerable. It would not be tolerable if the bar was raised or bond/insurance costs increase.</p>	<p>Protect small business from costs, Add consumer assistance and education Make everyone pay who should (full enforcement will help keep rates down)</p>	<p>Consumer ed. Enforce laws Separate category for investor who use reg. contrs. and get permits</p>
1/2	<p>Carpenter business rep “reasonable area standard” L and I need to enforce Like California model General contractors should have standardized, general knowledge of trades</p>	<p>Enforce laws to protect worker and owner Ensure knowledge base for those overseeing multiple workers</p>	<p>More enforcement by L and I Higher standards for Generals</p>
1/3	<p>Real Estate investors/flippers Don't hurt this group by making it too expensive. They already hire registered and licensed workers mostly. Make them do so rather than making them subject to the same requirements that an upgraded gen. contractor lic. program would require</p>	<p>Keep costs and burden small for small business people who renovate distressed neighborhoods.</p>	<p>Separate flippers from Gen. Contractors Keep costs down Look at insurance costs/realities</p>
1/4	<p>Investor Believes consumers should be more aware. Got into business after getting bad results and work from a registered bonded contractor for own roof. He feels it is a matter of individual responsibility. A naive homeowner might need education to be more aware</p>	<p>Consumer education Do not kill the small investor off through more regulation (1-3 houses per year, owner-remodel w/out occupation)</p>	<p>Same as #2</p>
1/5	<p>Homeowner (also is an investor/remodeler) Indicated biggest problem was with registered and bonded contractors. Problems included missed deadlines, aggressive behavior, poor communication and unethical behavior. Believes that too much state intervention is harmful. Concerned about requirements to be a General Contractor and what changes might be.</p>	<p>Should be exception for investor flipper if more reg. is selected Consumer education</p>	<p>Same as #2</p>
1/6	<p>Homeowner hired reg. and bonded GC for new home Multiple issues including water, site and health issues with septic and plumbing systems, warranty issues, inadequate bond requirements, inspections inadequate, code violations, unsatisfactory tool and processes, bad inspections</p>	<p>Higher insurance requirements Higher standards for challenging sites Penalties for substituting unlicensed professionals for licensed ones (surveyor) in viol. of contract.</p>	

Vancouver Forum # 2

Forum#/speaker#	Summary notes for speaker information and comments	Changes requested/ideas for remedy and/concerns about potential changes	Main ideas and notes
2/1	<p>Homeowner, hired reg./bonded contractor to build deck/addition Poor construction, complicit inspectors, code violations, not level, not square, bad materials, aggressive use of lien as defense strategy, legal battle, total tear down, person still in business, no consequences.</p>	<p>Skills/competence for basic work Make sure registration means something Create legal mechanism to fill gap between small claims court and suit w/attorney. Bigger bond Easier lawsuit process</p>	<p>Consumer ed. Path to bond</p>
2/2	<p>Homeowner, hired registered contractor for custom home. Did extensive research. Substituted unreg. for reg. subs, extensive water and runoff problems. Rude, refused to stand by work or fix defects bad plumbing and drainage related issues. Warrantee, bond issues high attorney fees. Included sales taxes in % fee. , , .</p>		
2/3	<p>Homeowner, pre-purchased unit in town-home development. Did not meet deadlines, one year warrantee no good because responsible subs had not been paid, missed deadlines have penalties for buyers but none for builders.</p>	<p>Contract enforcement Warranty enforcement</p>	
2/4	<p>Contractor from New Mexico visiting daughter with builder problems Described testing and licensing in New Mexico-recommends higher standards</p>	<p>Licensing with higher bar. Test for skills and knowledge of national and state and local building codes.</p>	<p>New Mexico</p>
2/5	<p>Local BIAW staff/Legislative candidate Members are on both sides of licensing issue, L and I should not have control, unregistered contractors are major problem, enforce current laws before writing new ones.</p>	<p>Supports state BIA position re:L and I Get information on problem builders on web sooner Enforce law .</p>	
2/6	<p>Landscaper contractor/member BIAW: State does not do anything to enforce laws now, wants professional licensing for landscapers, “fly by nights” are real issue</p>	<p>Make sure change matches the real problem</p>	
2/7	<p>Homeowner, new custom home, hired registered contractor Did lots of research up front, GC did not follow plans needed for disability in future, electrical wrong double billing, no repairs, water leakage, sewer failed, plumbing failed</p>	<p>Need information on history of contractors that shows everything, better warrantees and bond.</p>	

Vancouver Forum # 2, continued

Forum#/ speaker#	Summary notes for speaker information and comments	Changes requested/ideas for remedy and/concerns about potential changes	Forum#/ speaker#
2/8	Homeowner, hired reg. window company in business since 1980, they took money and went bankrupt quickly, which meant no legal or bond action possible. History of going bankrupt in this business and in this state.	Financial irresponsibility, repeated bankruptcies to protect money taken from consumer	
2/9	Homeowner in large town home development (drove from Lynnwood to Vancouver to speak). Represented more than 50 homeowners, three who had declared bankruptcy (because of costs of repairs required by bad building by prominent, registered large contractor). Issues: Plumbing, HVAC, roof, insurer refused to pay after judgment rendered, fire code violations, inspectors did not catch code violations.	Warranty issues, insurance, shoddy work, water problems, lack of recourse and options under system, possible bankruptcy prevents adequate recovery	
2/10	Local BIA executive Unregistered contractors cause most problems. L and I does not do enough enforcement. Any increase in costs will drive current registered members to underground economy. Consumers are part of the problem when they try to get work done cheaper.	Contract enforcement to locals to get the bad guys Enforce current laws Consider programs like the third party pay system that was piloted to avoid need for liens by subs. Do more consumer education Keep L and I out of any changes!! Do a survey based on building permits issued to find out real scope of problem.	
2/11	Homeowner, new home (not recorded, came late) Hired reg. contractor who was seldom present, sent unskilled “kid” who did shoddy work. Unfair lien practices, bullying poor project management. Wronged by binding arbitration clause in contract	Require higher standards for custom homebuilding with project mgt skills Address lien issue and arbitration problems	

Pasco Forum # 3

Forum#/speaker#	Summary notes for speaker information and comments	Changes requested/ideas for remedy and/concerns about potential changes	Forum#/speaker#
3/1	<p>BIA local staff member Problem is with unregistered contractors, state should look for illegal ones and close loopholes. The builder-owner exemption is a big hole, people lie about how long they will “live” in home.</p>	<p>Opposed to L and I because they do not enforce law now. Need to enforce law</p>	
3/2-3/3	<p>Homeowner hired registered and bonded contractor for custom “dream” home. Now in \$500,000 reconstruction 2.5 years later and in extended legal battle. Problems: Leaks, walls, roof, liens, water coming in through light fixtures, mold, \$200,000 in legal fees. Modest recovery from 7-8 individual subs bonds. “How can you rip people off and not be held accountable? If one passes a \$250 bad check it is a class C felony” ... but there are no consequences or adequate recourse in a situation like this</p>	<p>Increase bonds Enforce current laws aggressively Raise public awareness about contracts</p>	
3/4	<p>Homeowner hired registered and bonded contractor to build pool with concrete deck cover on relatively new home Very satisfied with original home builder, but specialist was recommended when leaks occurred. Homeowner researched and selected another registered contractor. Massive leaks occurred. Insurance co. insisted (but not in writing) that a certain contractor be used to fix- no shows, lack of knowledge and skills, children present, urination, drinking and 1.5 year battle resulted. Intimidation to female owner. Felt company and insurance provider were in collusion. “Urination makes it difficult to have a conversation” (not exact quote but close)</p>	<p>Enforce law! Make sure insurance companies act honorably and fairly Raise public awareness about laws on contracting and insurance Rights Bid process Change lien law so it cannot be used to bully people</p>	

Spokane Forum # 4

Forum#/speaker#	Summary notes for speaker information and comments	Changes requested/ideas for remedy and/concerns about potential changes	Forum#/speaker#
4/1	<p>Elderly home owners hired registered and bonded contractor to build patio cover. Poor materials, inadequate construction methods, aggressive use of lien process, had to be totally torn out and discarded, lost half of the cost (more than \$6000). Case too small to interest atty. and too big for small claims court, county court personnel refused to assist, told must hire atty. Question quality of building inspection, though bond would protect against liens on property. ‘We could not afford this.’</p> <p>Had worked with many good contractors in past, but when things went bad, the system did not work.</p>	<p>Make a simple, appropriate process for accessing bond without an attorney for smaller claims. Educate consumers. There should be some recourse.</p>	
4/2	<p>Roofing contractor who is also a member of Spokane City Council: One problem is that we have found 50% of projects requiring permits do not get them. Contractor must be registered to get permit for the homeowner. Unregistered contractors have homeowner get permit. ‘We are losing money and assurance for citizens’. Big problem is unregistered individuals and government does not enforce existing laws. They only go after the visible ones that are trying to comply. The bad ones maneuver around under different ‘shells’ and other business umbrellas. At some point the penalties should become criminal.</p>	<p>Enforcement of existing laws Permit requirements Progression to criminal penalties</p>	
4/3	<p>Newly licensed insurance agent Spoke about the increase in insurance products with newly increased bond level and how expensive it is for small contractors. Indicated bad credit could make someone uninsurable completely. Flippers are a new market since included in general contractor requirements.</p>	<p>Avoid doing things that increase costs of insurance for contractors</p>	
4/4-4/5	<p>Homeowners hired registered and bonded contractor for ‘green’ built dream home: C. refused to follow plans, arbitration issues, leaks and water damage, substitution of windows and doors, \$140,000 legal fees. Contractor walked off the job. Legal battle over value of work paid for but not performed. Contractor did not know proper building techniques for type of home warranty for furnace invalid because of unlicensed install. ‘Washington State has tough laws on other everything else, why not adequate here?’ Inspector missed code violations. Homeowner is licensed engineer and a construction project manager-would not have known about problems otherwise until more damage done.</p>	<p>Change binding arbitration law Find way to enforce contract performance Better inspections</p>	

Olympia Forum # 5

Forum#/speaker#	Summary notes for speaker information and comments	Changes requested/ideas for remedy and/concerns about potential changes	Forum#/speaker#
5/1	<p>Homeowner purchased home in new development: Soil and drainage problems, standing water in crawl space, crushed sprinkler system, builder refused to honor warranty, many homeowners stuck with arbitration clause that takes away rights. They keep winning but the builder keeps appealing while water issues continue.</p>	<p>Look at problem of water and drainage issues on challenging sites Change mandatory arbitration language Increase bond/insurance</p>	
5/2	<p>Homeowner in similar situation in same development as speaker #1 Raised additional issue of contract reciprocity re atty. fees as in California, mold language, generally unbalanced unfair contract language</p>	<p>Reciprocity in attorney fees Late penalties needed Need recourse when \system does not work</p>	
5/3	<p>Same water issues as homeowners 1 and 2 Stated real estate agent did not offer disclosure option which he would have taken if he had known. Developer did not comply with city conditions re: soil before building houses.</p>	<p>Need a “Bill of Rights” Ensure that rights cannot be signed away through bad contract language</p>	
5/4	<p>Realtors Association Concerned about recent registration requirement impact on investors (flippers). Bond is not too bad for someone with good credit, but liability insurance is very expensive.</p>	<p>Special category or exemption for investor/remodelers More consumer education Look at financial responsibility</p>	
5/5	<p>Habitat for Humanity director Wants to ensure that volunteers are not subject to “unintended consequences” if law is changed.</p>	<p>Scan proposals for negative impact on voluntary projects</p>	
5/6	<p>HVAC Association Lobbyist Better Business Bureau reports low level of complaints for HVAC part of industry, beware of unintended consequences. Wants to be sure that solutions match the problem targeted. Unethical behavior causes most problems-difficult to address by government.</p>		
5/7	<p>WA Association of Building Officials Clarified role and authority of inspectors. “Minimum life and safety issues”.</p>		
5/8	<p>Attorney from law firm Bar Association group is working on model contracts, both cost plus and fixed price that are neutral for both parties.</p>	<p>Adopt model contracts Consumer education Homeowner bill of rights</p>	

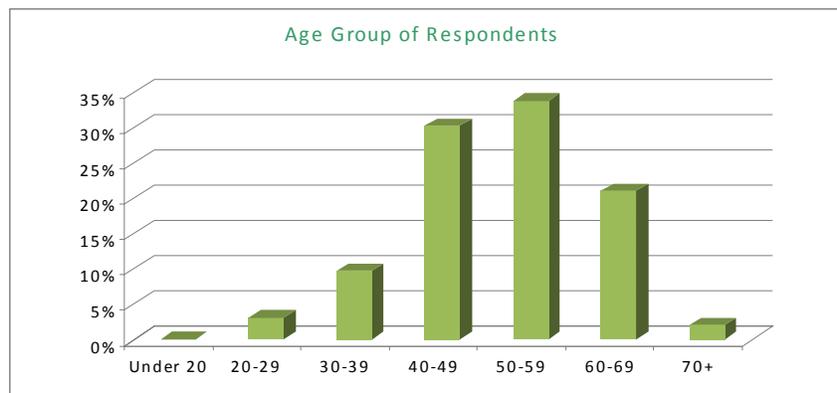
2.0 SURVEY OUTCOMES

Outcomes are detailed. Comments are recorded *verbatim*.

2.1 DEMOGRAPHICS

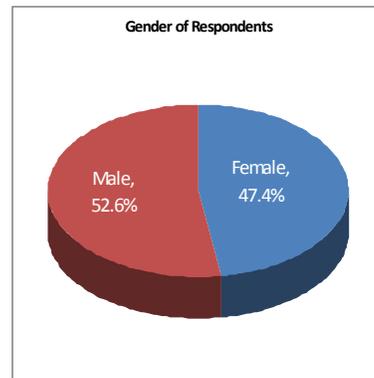
Respondent Age:

	Under 20	20-29	30-39	40-49	50-59	60-69	70+	Response Count
Number	0	6	19	59	66	41	4	195
Percent	0.0%	3.1%	9.7%	30.3%	33.8%	21.0%	2.1%	100.0%



Respondent Gender:

	Female	Male	Response Count
Number	92	102	194
Percent	47.4%	52.6%	100.0%



County of Residence:

	ADAMS	ASOTIN	BENTON	CHELAN	CLALLAM	CLARK	COLUMBIA	COMLITZ	DOUGLAS	FERRY
Number	0	0	3	1	1	40	0	5	2	0
Percent	0.0%	0.0%	1.5%	0.5%	0.5%	20.5%	0.0%	2.6%	1.0%	0.0%
	FRANKLIN	GARFIELD	GRANT	GRAYS HARBOR	ISLAND	JEFFERSON	KING	KITSAP	KITTITAS	Klickitat
Number	0	1	0	2	3	2	33	11	0	1
Percent	0.0%	0.5%	0.0%	1.0%	1.5%	1.0%	16.9%	5.6%	0.0%	0.5%
	LEWIS	LINCOLN	MASON	OKANOGAN	PACIFIC	PEND OREILLE	PIERCE	SAN JUAN	SKAGIT	SKAMANIA
Number	3	0	3	1	1	0	13	2	2	0
Percent	1.5%	0.0%	1.5%	0.5%	0.5%	0.0%	6.7%	1.0%	1.0%	0.0%
	SNOHOMISH	SPOKANE	STEVENS	THURSTON	WAHKIAKUM	WALLA WALLA	WHATCOM	WHITMAN	YAKIMA	Response Count
Number	12	8	1	37	0	0	4	3	0	195
Percent	6.2%	4.1%	0.5%	19.0%	0.0%	0.0%	2.1%	1.5%	0.0%	100.0%

Counties hosting the public forums were well represented.

2.2 PLEASE PROVIDE SOME INFORMATION ABOUT YOUR EXPERIENCE WITH CONTRACTORS

QUESTION ELEMENTS		Yes	No	Not Applicable	Response Count
Have you had work done on your home by a contractor?	Number	188	10	3	201
	Percent	93.5%	5.0%	1.5%	100.0%
Were you satisfied with the work done for you?	Number	91	100	11	202
	Percent	45.0%	49.5%	5.4%	100.0%
If unsatisfied, did you resolve the problem satisfactorily?	Number	15	94	48	157
	Percent	9.6%	59.9%	30.6%	100.0%
Do you think the current system of regulation works to protect the public?	Number	69	118	6	193
	Percent	35.8%	61.1%	3.1%	100.0%

Other (please specify)

- ▶ *Had a contractor get paid for work they never did!*
- ▶ *Excessive regulation benefits no one except bureaucracy*
- ▶ *Contractors and Insurance LAWS exclude Contractor damage*
- ▶ *The homeowner is not protected at all!!!!*
- ▶ *I think it could be better but I think unlicensed contractors are a bigger problem*
- ▶ *people who "flip" houses*
- ▶ *GC should have to pass a test for a license*
- ▶ *To many regulations the normal person can get frustrated and not understand the process anymore*
- ▶ *Contractor installed (supplier)deck material. The product was warped and remains warped, wavy looking. A (supplier) sales rep was called by the contractor but apparently nothing was offered to remedy the situation.*
- ▶ *L&I was pursuing this contractor but he kept getting new customers*
- ▶ *not sure*
- ▶ *The system works to protect the material suppliers.*
- ▶ *Results were mixed with some good and some bad*
- ▶ *If I understood how the system worked - it might.*
- ▶ *The laws and regulations are designed to protect the contractor*
- ▶ *Not Sure I'm waiting to hear back from L&I*
- ▶ *We have been in litigation for 5 years with builder's insurance company for reimbursement of assessments ranging from \$22,000.00 to \$29,000.00.*
- ▶ *Variety of skills needed to see a project finish to end. There is often many ways to solve a problem. Often the contractor is interested in the quickest and easiest rather than the best long-term solution. All the bosses now are making decisions that they don't necessarily have the right background/learning experiences to make. More licenses are needed by these people doing the work.*
- ▶ *Current system does not protect the public at all. Bonds are at a minimal amount, training is minimal, and there is no recourse for the homeowner other than to hire an attorney.*
- ▶ *I was personally unsatisfied by one electrical contractor. I have represented low income seniors ripped off by contractors.*

- ▶ *I complained to attorney general and got no help*
- ▶ *If we effectively enforced laws we now have relating to unregistered contractors, this might not be an issue.*
- ▶ *Not only is the current system ineffective in protecting the public, but it is so invisible that most of the general public does not know it exists for them or how to locate or use the system.*
- ▶ *Our situation included getting references for qualified contractors from the BIA. They provided us with a list which included the builder we eventually went with. (Contractor)"seemed" knowledgeable at the time. He was on the Board of Directors for the BIA, he projected himself in a professional manner, and he was building million dollar homes in Clark County so everything seemed to indicate he was a good choice. Unfortunately he ended up being a nightmare! He only had the \$12K bond which made it worthless for us to hire an attorney. Another couple was successful in getting a judgment against him but only received the \$12K which didn't even pay the attorney.*
- ▶ *As far as I can see, there is no successful regulation of building contractors. It takes specialized knowledge to construct, repair, and remodel a home. Many of those currently operating in Washington State, who call themselves contractors, do not possess the skills and knowledge they need to perform at an adequate level. The homeowners pay the price, and we need protection.*
- ▶ *Contractors (general and excavator) were not informed about the Critical Area Municipal Ordinances, that resulted in the City issuing a citation against us the homeowner when the contractor should have known the rules. I firmly believe all contractors should be LICENSED with the State not simply registered.*
- ▶ *Construction industry is legalized thievery*
- ▶ *The work was done at my family-owned business.*
- ▶ *As a lawyer, I'm uniquely qualified to protect myself from unscrupulous contractors, but I handle claims by and against contractors, so my knowledge is derived from that experience*
- ▶ *Washington state inspector have bad habit of doing drive by inspections, some don't even get out of there car, and refuse to even talk. Hell they don't check the snow loads, wind load, 100 year check, foundation ties, check off on things that been sheet rock, electrical with no master switches, or water shut off valves. Built water towers on nation highways, bridges that fall apart (124th street exit, DAAAAA)*
- ▶ *Company dissolved the day they "finished" the work.*
- ▶ *if work is not done by the contractor by the date on contract the contractor appears can still continue with no why of removing them.*
- ▶ *we had \$650,000 worth of construction defects where the contractor did not follow the architect's plans or the specifications and we had several years of struggle to get the repairs completed and ended with \$250,000 of the bill in our laps! the builder simply made his subs do the repairs with no expense to his business and I had to hire an architect to supervise the same workers who did the bad work to fix their mistakes*
- ▶ *The current system is fine and no more regulation is necessary.*
- ▶ *How can I answer? some were satisfying, some were not.*
- ▶ *Our only recourse was hiring an attorney for legal action.*
- ▶ *Too many contractors are unqualified*

- ▶ *Don't know. I never had a problem.*
- ▶ *I did all appropriate background checks on my contractor prior to hire, however, nothing was reflected on the official record because there have been no superior court judgments against him, only numerous small claims court cases. His is clever and writes his contracts in such a way as to guard against lawsuits before other legal hoops need to be gone through. If I had found his true history online under the contractor licensing board record or the better business bureau data, I wouldn't have risked hiring him. I am now in a costly lawsuit against him but see it as my duty to try and protect others against him.*
- ▶ *It works fine for the licensed, bonded & insured contractor but not at all for the unlicensed*
- ▶ *They should be required to maintain trust accounts and be subject to audits. All funds paid by a customer for work on a job, should be used only on that job. Too many contractors are undercapitalized and the contractors inability to manage a business becomes the customers problem.*
- ▶ *current system is too onerous and does not really get at issues, rather hiring even unregistered cash contractors that are good people is better than 'legal' contractor.*
- ▶ *I do not feel that I should have to hire an attorney to recover funds I will have to spend to correct shoddy work. The state should have an office which would inspect the work and resolve the issue on the spot. I have had to pay over \$400.00 to hire certified flooring inspectors to report that the flooring was installed improperly. It is obvious to all who wand into the house that the floor job is a mess and will have to be corrected. Yet the contractor is able to hide in back of Chapter 64.50 RCW in his effort to avoid having to correct the bad workmanship. That is just totally uncalled for. Now I am faced with paying an additional \$6,000+ legal fees on top of the \$18,000 I have already paid for the flooring.*
- ▶ *A 3 month remodel turned into a 9 month nightmare which almost destroyed my marriage. (Contractor) meant well but was inept as a businessman. His math skills were lacking: Trusses, windows and doors were reordered as he cannot measure accurately. A lien was placed against the home by the wallboard supplier for unpaid bills and that is when I investigated and discovered he was lying to the subs saying we had not paid him. My reputation in the community took was tarnished until I convinced his subs/suppliers that he had been paid. After that, my bank paid the subs/suppliers directly.*
- ▶ *I don't know*
- ▶ *I had to get very strong with the people who built my home to get things done. This was a brand new house I owned and the things that needed to be fixed took over a year to get people to come back to look at.*
- ▶ *I do not believe enough lic info is available to the public too many contractors do a shoddy job*
- ▶ *Contractors and home owners are financing a large majority of what they do. Until the money supply side gets cut off with regulations there will always be unlicensed contractors getting around the system and also not collecting or paying sales tax.”*

2.3 PLEASE INDICATE HOW YOU WOULD SELECT A CONTRACTOR

Answer Options		Yes	No	Response Count
References from friends	Number	184	9	193
	Percent	95.3%	4.7%	100.0%
Registered with the state	Number	172	21	193
	Percent	89.1%	10.9%	100.0%
Belongs to professional group	Number	122	49	171
	Percent	71.3%	28.7%	100.0%
Talk to past customers	Number	169	20	189
	Percent	89.4%	10.6%	100.0%
Look at past work	Number	168	18	186
	Percent	90.3%	9.7%	100.0%
Check Better Business Bureau	Number	103	62	165
	Percent	62.4%	37.6%	100.0%
Interview and decide	Number	169	21	190
	Percent	88.9%	11.1%	100.0%
Newspaper or phone book	Number	55	98	153
	Percent	35.9%	64.1%	100.0%
Professional certifications/training	Number	117	43	160
	Percent	73.1%	26.9%	100.0%

Other (please specify)

- ▶ *pricing is also a factor*
- ▶ *Years of experience*
- ▶ *L&I ranking online*
- ▶ *Purchase expensive Loydes of London Insurance to cover everything*
- ▶ *I am a contractor I always get referrals from other contractors, subs or suppliers*
- ▶ *advertising, newspaper articles*
- ▶ *work is warrantied*
- ▶ *check with Master Builders for Built Green &/or LEED*
- ▶ *years of experience*
- ▶ *Long standing license and bond with no claims.*
- ▶ *Have had referrals that just stunk!*
- ▶ *Found Angieslist to be the best way: <http://www.angieslist.com/AngiesList/>*
- ▶ *Was provided by Realty Homes I had no choice*
- ▶ *I selected my contractor by using the (material supplier)homes preferred builder list, I sent out for three competitive bids, I interviewed the contractor prior to selection and went out to a home that the contractor stated he had built for a visual inspection. I confirmed that he was registered with the state*
- ▶ *check L&I website to see if they have been sued. Get written estimate or bid.*
- ▶ *I would like to see a agency for home owners to contract when contractors fail to comply with a contract that has teeth (power) for contractors to comply.*
- ▶ *my contractor kept changing his name in bbb*

- ▶ *Certificate of Insurance - original copy*
- ▶ *These were not the ways I selected my previous contractor. This is how I would now that I have been burnt. Previously I went upon a local reference and a church partner*
- ▶ *House Was A Spec House*
- ▶ *Builders Assc. doesn't is worthless*
- ▶ *We looked at the State's web sites and at the time, (contractor)did not have any judgments against him. We also looked to see if he had any certifications/trainings but we could not find where they are required to obtain any. In the future, we would like to see all complaints listed against contractors, not just the successful judgments. Had those been available, we would not have hired Greg. Information about the complaints should also include what the complaint is and whether it is pending a judgment. Unfortunately in our case, we had complaints but did not seek a judgment because of the attorney/court costs.*
- ▶ *Professional certifications and training protect the buyer/homeowner against poor quality workmanship, and give recourse if there is bad work done. We currently have no protection.*
- ▶ *Lower Columbia Contractors Association*
- ▶ *LICENSING WITH THE STATE SHOULD BE REQUIRED. Not simply registering. If the City is going to hold homeowners liable for errors by contractors, the City should also require a LICENSE backed by some actual knowledge of the contractor of the numerous complex arbitrary and ever-changing ordinances passed by the City*
- ▶ *I was to trusting.*
- ▶ *All the above are a good start but their current work is the best indicator*
- ▶ *selected by project manager who had been hired to screen contractors*
- ▶ *Competitive bidding*
- ▶ *Anyone can get certified, with new China website photographic memory's and giving answer to question why and why not. Experience should be required for anything certified. Example, chinatag.com Certification process all BULLSHIT. Accept "union approved certification, where union is responsible for the name of people being certified."*
- ▶ *Research the contractor's past work to verify competence.*
- ▶ *A contractor that's been referred is the best. Then, you have to decide if you can work with him. This was after talking with more than 10 contractors.*
- ▶ *Architect's recommendations*
- ▶ *Check for prior infractions and complaints record under the Contractor's Licensing Board.*
- ▶ *call the local supplier for recommendations*
- ▶ *Anyone can get bonded and licensed and slap a registered general contractor sign on a pickup and start advertising without any real experience. Contractors should be required to show some proficiency with construction management. L&I and ESD should take enforcement action as soon as payment is not made. If the contractor is not paying employment taxes, and it is not a genuine one-time, oversight, the business is heading for failure.*

- ▶ *My past CPA recommended the General to me, I looked at the work he did for the CPA, and figured that if I could trust the CPA to do my taxes for 25 years I should be able to trust him to recommend a good contractor. Bob was I disappointed. Needless to say I now have a new CPA.*
- ▶ *continued education, experience*
- ▶ *To see if*
- ▶ *We hired (contractor) on the recommendation of a friend who a few months later also began having difficulties with him as he had underbid the job and had not specified the cost of changes. They had to take out a second on their home as the project was \$50,000 over bid.*
- ▶ *Licensed contractor, the product/installation I paid for was inferior*
- ▶ *indications of prior dissatisfactions posted on the web site would help too*
- ▶ *State website- look Up A Contractor*

2.4 IF YOU HAVE HAD AN EXPERIENCE WITH RESIDENTIAL CONTRACTING, WAS YOUR PROJECT

Answer Options		Response Count
New Construction	Number	77
	Percent	40.7%
Remodel/Renovation/Addition	Number	132
	Percent	69.8%

Other

- ▶ *Added a second story to a single story house.*
- ▶ *I am a General contractor*
- ▶ *Complete deck replacement @ 700 sq. ft.*
- ▶ *both*
- ▶ *I'm a real estate agent--I've had all these experiences*
- ▶ *repair*
- ▶ *Finished off a basement*
- ▶ *hardwood floors and stairs*
- ▶ *We are currently in litigation with the contractor who sold us our home. We fought with him for 3 years before filing suit. We attempted to get help from professional organizations but received no help. The Builder's Association advised us to sue.*
- ▶ *Both remodel and addition of new construction.*
- ▶ *remove and redo deck with hot tub*
- ▶ *I have had clients who were involved all types of residential construction.*
- ▶ *Warranty work, legal loop hole in Washington Corp structure and bonding, allow for base company to consult to work company bleed the money off as fees, leaving the work company penny less and unable too cover its warrenties and gareentee's, bankrupting, screw the customer, then tax breaks for RENEW PROGRAM FOR fed and prison workers, even promote this behavior worse, so wearing INS hats too new construction on 122nw NE in Kirkland made huge dent in the labor force and they did not emit it but they did not complete construction for another 2 months. Awsome experiment, then on top of it, city councler men, city politions own, parts or on the boards of the consultant company's, THIS IS WHAT ITS LIKE TO LIVE IN WASHINGTON, this is what it is like to work in USA, NO WONDER, were loosing our jobs, BOTTOM LINE this survey reflects EXACTLY WHAT CURRENT SYSTEM DESIGN TO BE LIKE RIGHT?*
- ▶ *replaced outdated heating system with a new system that included central airconditoning*
- ▶ *both first they built it wrong and then we had to pay to fix it!!*
- ▶ *windows*
- ▶ *replaced cedar roof with asphalt shingles*
- ▶ *Nightmare*
- ▶ *Remodel, renovation and addition to a 1977 house.*
- ▶ *Land prep, set up modular home, build decks*
- ▶ *Construct above ground deck with concrete patio underneath.*

- ▶ *replacement windows*

2.5 REGARDING THE SPECIFIC PROJECT(S), PLEASE CHECK ALL THAT APPLY:

- ▶ Type of Project
- ▶ Satisfied – Yes/No
- ▶ Cost of Project
- ▶ Year of Project
- ▶ Comments

Type of Project

Were you satisfied with the outcome?				
Answer Options		Yes	No	Response Count
Roofing	Number	83	28	111
	Percent	74.8%	25.2%	100.0%
General Contractor	Number	74	47	121
	Percent	61.2%	38.8%	100.0%
Excavation	Number	47	18	65
	Percent	72.3%	27.7%	100.0%
Landscaping	Number	41	24	65
	Percent	63.1%	36.9%	100.0%
Plumbing	Number	75	23	98
	Percent	76.5%	23.5%	100.0%
Electrical	Number	72	20	92
	Percent	78.3%	21.7%	100.0%
Remodeling	Number	60	20	80
	Percent	75.0%	25.0%	100.0%
Concrete/Asphalt	Number	41	25	66
	Percent	62.1%	37.9%	100.0%
Flooring	Number	66	22	88
	Percent	75.0%	25.0%	100.0%
Sheetrock	Number	59	21	80
	Percent	73.8%	26.3%	100.0%
Finish carpentry	Number	62	18	80
	Percent	77.5%	22.5%	100.0%
Framing	Number	45	24	69
	Percent	65.2%	34.8%	100.0%
Siding/Windows	Number	69	25	94
	Percent	73.4%	26.6%	100.0%
Garage/deck/addition	Number	43	21	64
	Percent	67.2%	32.8%	100.0%
HVAC	Number	55	18	73
	Percent	75.3%	24.7%	100.0%
Masonry	Number	31	14	45
	Percent	68.9%	31.1%	100.0%
Paint	Number	67	24	91
	Percent	73.6%	26.4%	100.0%
Foundation	Number	39	23	62
	Percent	62.9%	37.1%	100.0%
TOTAL	Number	1029	415	1444
	Percent	71.3%	28.7%	100.0%

Cost of Project

Cost of project									
Answer Options		less than \$1,000	\$1,000-\$5,000	\$5,000-\$10,000	\$10,000-\$20,000	\$20,000-\$50,000	\$50,000-\$100,000	Over \$100,000	Response Count
Roofing	Number	7	16	24	19	6	3	1	76
	Percent	9.2%	21.1%	31.6%	25.0%	7.9%	3.9%	1.3%	100.0%
General Contractor	Number	2	5	4	8	12	8	45	84
	Percent	2.4%	6.0%	4.8%	9.5%	14.3%	9.5%	53.6%	100.0%
Excavation	Number	1	10	10	10	3	2	2	38
	Percent	2.6%	26.3%	26.3%	26.3%	7.9%	5.3%	5.3%	100.0%
Landscaping	Number	7	11	4	3	5	3	4	37
	Percent	18.9%	29.7%	10.8%	8.1%	13.5%	8.1%	10.8%	100.0%
Plumbing	Number	11	16	10	15	3	1	0	56
	Percent	19.6%	28.6%	17.9%	26.8%	5.4%	1.8%	0.0%	100.0%
Electrical	Number	12	13	10	13	4	2	0	54
	Percent	22.2%	24.1%	18.5%	24.1%	7.4%	3.7%	0.0%	100.0%
Remodeling	Number	0	9	15	8	9	9	6	56
	Percent	0.0%	16.1%	26.8%	14.3%	16.1%	16.1%	10.7%	100.0%
Concrete/Asphalt	Number	1	8	10	8	6	1	0	34
	Percent	2.9%	23.5%	29.4%	23.5%	17.6%	2.9%	0.0%	100.0%
Flooring	Number	3	21	12	7	7	0	0	50
	Percent	6.0%	42.0%	24.0%	14.0%	14.0%	0.0%	0.0%	100.0%
Sheetrock	Number	7	9	8	10	7	2	0	43
	Percent	16.3%	20.9%	18.6%	23.3%	16.3%	4.7%	0.0%	100.0%
Finish carpentry	Number	5	10	9	6	6	2	0	38
	Percent	13.2%	26.3%	23.7%	15.8%	15.8%	5.3%	0.0%	100.0%
Framing	Number	3	3	5	4	10	1	3	29
	Percent	10.3%	10.3%	17.2%	13.8%	34.5%	3.4%	10.3%	100.0%
Siding/Windows	Number	2	12	17	15	8	3	4	61
	Percent	3.3%	19.7%	27.9%	24.6%	13.1%	4.9%	6.6%	100.0%
Garage/deck/addition	Number	1	5	5	10	6	2	1	30
	Percent	3.3%	16.7%	16.7%	33.3%	20.0%	6.7%	3.3%	100.0%
HVAC	Number	2	10	9	19	3	1	1	45
	Percent	4.4%	22.2%	20.0%	42.2%	6.7%	2.2%	2.2%	100.0%
Masonry	Number	2	9	7	1	3	1	1	24
	Percent	8.3%	37.5%	29.2%	4.2%	12.5%	4.2%	4.2%	100.0%
Paint	Number	7	24	11	9	4	2	2	59
	Percent	11.9%	40.7%	18.6%	15.3%	6.8%	3.4%	3.4%	100.0%
Foundation	Number	2	8	8	4	3	2	0	27
	Percent	7.4%	29.6%	29.6%	14.8%	11.1%	7.4%	0.0%	100.0%
TOTAL	Number	75	199	178	169	105	45	70	841
	Percent	8.9%	23.7%	21.2%	20.1%	12.5%	5.4%	8.3%	100.0%

Year of Project

Year of project												
Answer Options	Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	Response Count	
Roofing	Number	18	2	3	2	10	4	10	17	19	11	96
	Percent	18.8%	2.1%	3.1%	2.1%	10.4%	4.2%	10.4%	17.7%	19.8%	11.5%	100.0%
General Contractor	Number	15	3	4	1	8	5	10	17	23	14	100
	Percent	15.0%	3.0%	4.0%	1.0%	8.0%	5.0%	10.0%	17.0%	23.0%	14.0%	100.0%
Excavation	Number	7	1	2	0	6	2	5	6	17	4	50
	Percent	14.0%	2.0%	4.0%	0.0%	12.0%	4.0%	10.0%	12.0%	34.0%	8.0%	100.0%
Landscaping	Number	5	1	1	1	3	2	6	7	14	7	47
	Percent	10.6%	2.1%	2.1%	2.1%	6.4%	4.3%	12.8%	14.9%	29.8%	14.9%	100.0%
Plumbing	Number	6	2	1	3	5	5	9	13	19	10	73
	Percent	8.2%	2.7%	1.4%	4.1%	6.8%	6.8%	12.3%	17.8%	26.0%	13.7%	100.0%
Electrical	Number	9	1	1	1	5	5	7	9	22	8	68
	Percent	13.2%	1.5%	1.5%	1.5%	7.4%	7.4%	10.3%	13.2%	32.4%	11.8%	100.0%
Remodeling	Number	5	0	1	2	4	6	6	10	20	10	64
	Percent	7.8%	0.0%	1.6%	3.1%	6.3%	9.4%	9.4%	15.6%	31.3%	15.6%	100.0%
Concrete/Asphalt	Number	6	2	1	0	3	3	4	8	13	6	46
	Percent	13.0%	4.3%	2.2%	0.0%	6.5%	6.5%	8.7%	17.4%	28.3%	13.0%	100.0%
Flooring	Number	5	2	1	4	6	4	6	12	12	13	65
	Percent	7.7%	3.1%	1.5%	6.2%	9.2%	6.2%	9.2%	18.5%	18.5%	20.0%	100.0%
Sheetrock	Number	7	2	2	1	6	2	7	8	20	5	60
	Percent	11.7%	3.3%	3.3%	1.7%	10.0%	3.3%	11.7%	13.3%	33.3%	8.3%	100.0%
Finish carpentry	Number	4	2	2	0	4	4	7	10	13	8	54
	Percent	7.4%	3.7%	3.7%	0.0%	7.4%	7.4%	13.0%	18.5%	24.1%	14.8%	100.0%
Framing	Number	6	3	1	1	5	2	6	4	11	6	45
	Percent	13.3%	6.7%	2.2%	2.2%	11.1%	4.4%	13.3%	8.9%	24.4%	13.3%	100.0%
Siding/Windows	Number	7	2	2	0	10	4	4	16	19	10	74
	Percent	9.5%	2.7%	2.7%	0.0%	13.5%	5.4%	5.4%	21.6%	25.7%	13.5%	100.0%
Garage/deck/additi	Number	7	1	0	0	5	0	5	7	12	5	42
	Percent	16.7%	2.4%	0.0%	0.0%	11.9%	0.0%	11.9%	16.7%	28.6%	11.9%	100.0%
HVAC	Number	5	3	2	3	5	3	7	8	15	4	55
	Percent	9.1%	5.5%	3.6%	5.5%	9.1%	5.5%	12.7%	14.5%	27.3%	7.3%	100.0%
Masonry	Number	5	0	2	0	3	0	3	4	10	5	32
	Percent	15.6%	0.0%	6.3%	0.0%	9.4%	0.0%	9.4%	12.5%	31.3%	15.6%	100.0%
Paint	Number	5	2	1	0	7	1	8	10	22	16	72
	Percent	6.9%	2.8%	1.4%	0.0%	9.7%	1.4%	11.1%	13.9%	30.6%	22.2%	100.0%
Foundation	Number	6	3	1	1	4	0	5	5	9	6	40
	Percent	15.0%	7.5%	2.5%	2.5%	10.0%	0.0%	12.5%	12.5%	22.5%	15.0%	100.0%
TOTAL	Number	128	32	28	20	99	52	115	171	290	148	1083
	Percent	11.8%	3.0%	2.6%	1.8%	9.1%	4.8%	10.6%	15.8%	26.8%	13.7%	100.0%

2.6 IF YOU HAVE HAD A PROBLEM WITH A CONTRACTOR, PLEASE INDICATE THAT EXPERIENCE

ISSUE		Not a problem	Somewhat a problem	Serious problem	Don't know	Response Count	Somewhat a problem OR Serious problem
Poor work quality	Number	69	42	72	0	183	114
	Percent	37.7%	23.0%	39.3%	0.0%	1	62.30%
Work not completed	Number	83	23	66	0	172	89
	Percent	48.3%	13.4%	38.4%	0.0%	1	51.7%
Completion was untimely	Number	75	31	67	1	174	98
	Percent	43.1%	17.8%	38.5%	0.6%	1	56.3%
Not done per agreement	Number	75	23	78	0	176	101
	Percent	42.6%	13.1%	44.3%	0.0%	1	57.39%
Cost overrun	Number	91	29	48	4	172	77
	Percent	52.9%	16.9%	27.9%	2.3%	1	44.8%
Treated poorly	Number	90	20	66	1	177	86
	Percent	50.8%	11.3%	37.3%	0.6%	1	48.6%
Contract discrepancy	Number	86	21	62	1	170	83
	Percent	50.6%	12.4%	36.5%	0.6%	1	48.8%
Unable to voice complaint	Number	99	22	42	5	168	64
	Percent	58.9%	13.1%	25.0%	3.0%	1	38.1%
Unpaid sub-contractors	Number	109	8	29	17	163	37
	Percent	66.9%	4.9%	17.8%	10.4%	1	22.7%
Failed inspection	Number	102	19	33	13	167	52
	Percent	61.1%	11.4%	19.8%	7.8%	1	31.1%
Permitting problem	Number	110	14	26	16	166	40
	Percent	66.3%	8.4%	15.7%	9.6%	1	24.1%
Damage to property	Number	89	21	52	7	169	73
	Percent	52.7%	12.4%	30.8%	4.1%	1	43.2%
Consumer expectation unreasonable	Number	129	11	11	7	158	22
	Percent	81.6%	7.0%	7.0%	4.4%	1	13.9%
Unregistered contractor	Number	109	13	21	16	159	34
	Percent	68.6%	8.2%	13.2%	10.1%	1	21.4%
TOTAL	Number	1316	297	673	88	2374	970
	Percent	55.4%	12.5%	28.3%	3.7%	1	40.9%

Other

- ▶ *L&I should charge monly fees to contractors that would be used to repay customers of damage from contractors*
- ▶ *contractor knew of numerous problems and covered up defective work*
- ▶ *I only hire registered contractors.*
- ▶ *I had one bad experience with a sub and learned that the state offers no protection/recourse whatsoever to a GC when trying to get a sub to perform*
- ▶ *Unpaid material supplier.*
- ▶ *Have had a mixture of experiences*
- ▶ *na/We bought new home after it was built.*
- ▶ *Contractor promised all kinds of things mislead his Bond*

- ▶ *Undocumented Hispanic subcontracted labor force built 90% of the home I had a \$35,000.00 Mortgage when I began decided to sell my home and begin the building process. Sold my house for \$157,500.00 applies the entire amount to the building of the home less the \$35,000.00 balance for the existing home loan and \$32,000.00 I paid for the two acre building site. I presently have a \$100,000.00 / 15 year mortgage. county currently values the home at \$189,000.00 including the land. Hopefully I can pay it off and retire or sell it when I am 70 years old.*
- ▶ *I tried to reflect problems myself and my low income clients have had.*
- ▶ *Contractor took \$100,000 for down payment to build a home and failed to build the home.*
- ▶ *Defective Siding*
- ▶ *kept changing owners names to prevent bad reputation*
- ▶ *Contractor left sons to do work unsupervised. They were not licensed or certified in the work they did such as electrical. They walked away from my home leaving it with major damage. When I discovered the damage and contacted the City of Vancouver Permit Department, I learned that the contractor had not pulled permits and was not authorized to do the work. It has taken over 6 months to cure all of the damage! The building contractor told me that I should not have contacted the city because now I will need a permit which will cause my property tax to increase significantly. He tried to scare me out of the permit and help from the city and L & I. I believe this happens a lot with older single folks. I know that he is still working on older people's homes and creating havoc.*
- ▶ *Footings Constructed UNDER Lake Tapps*
- ▶ *It cost \$500,000 to fix a new house from defects*
- ▶ *General Contractors need to be held accountable for their work. They should be REQUIRED to successfully complete a technical test and be licensed and bonded for the amount of the construction project as a whole. Those 2 requirements would greatly improve the system for homeowners and unqualified builders would most likely not take the chance on building if they felt they could get sued.*
- ▶ *Contractor refused to talk with us when presented with facts. The only way we could voice a concern was to hire an attorney.*
- ▶ *no communication from builder, delayed 11 months for move in.*
- ▶ *arbitration clause unconscionable*
- ▶ *The framing contractor did not follow the plans. We had to get another structural engineering letter saying how they did fram was OK. Delay, then the City delayed three more weeks in inspecting because they Neglected to read the structural engineer letter. Neither general contractor nor excavator were aware of the City critical area ordinances, resulting in citation which we are still appealing. City wrote on plans that we needed separate grading permit if we moved more than 50 cu yards - which we did not, but still cited for grading without a permit. We do not know if anyone was registered. We assumed they were licensed by the State and appropriately licensed by the City. I have never lived in a state where the contractors were not licensed. They can file mechanics liens against the property for payment, but the City and State do nothing to ensure they are appropriately trained and experienced to perform the work they have contracted to do.*

- ▶ *I had too much faith in them.*
- ▶ *contractor hired unlicensed contractors to do the work and only sought to collect payment, a balloon payment when he was dismissed*
- ▶ *My own projects are addressed in 5, but my clients have experienced all of the above problems with contractors.*
- ▶ *Everything got signed off, what a JOKE.*
- ▶ *All work was terrific. Different contractors. All professional. Couldn't be happier.*
- ▶ *roof began leaking two years after completion*
- ▶ *Settlement resolved in 2008 thru legal battle, although there's no blemish on the contractor's record.*
- ▶ *Work done was excellent. Contractor was very reputable, honest and ethical.*
- ▶ *We hired a general contractor to do the initial re-model; We had to hire a second contractor to complete the work & to repair damages to the original structure caused by this contractor, as well as to re-do defective/ non-conforming work*
- ▶ *General did the project without getting any permits except electrical and plumbing for the natural gas line.*
- ▶ *Not responding to requests and phone calls*
- ▶ *contractor not educated nor tested in construction*
- ▶ *I changed a few things mid-stream that caused project to go over time/budget*
- ▶ *Builder of my new home hired very low quality sub-contractors repeatedly. Which affected the quality of work on the framing and tile work for the house.*
- ▶ *Evan's glass will not honor lifetime warranty*
- ▶ *Unknown to me, his license had expired and was not covered by insurance.*
- ▶ *missing equipment*
- ▶ *I only deal w/ licensed contractors and people I know*

2.7 IF YOU HAVE HAD A PROBLEM WITH A CONTRACTOR THAT COULD NOT BE RESOLVED, DID YOU SEEK HELP FROM OTHER SOURCES? IF SO, PLEASE INDICATE WHO YOU CONTACTED.

Answer Options		Response Count
Better Business Bureau	Number	31
	Percent	38.8%
Construction Membership Organization	Number	24
	Percent	30.0%
Attorney General's Office	Number	28
	Percent	35.0%
Private Attorney	Number	59
	Percent	73.8%

Other

- ▶ *Our lender helped us*
- ▶ *Still under negotiable*
- ▶ *City Zoning Department*
- ▶ *Insurance Commisioner should require that any construction done is fully covered for Contractor damage including attorney fees*
- ▶ *Contact the Sub contractor, I have always been able to work it out. The advice for my Attorneys is always the same, work it out.*
- ▶ *Labor and Industry regarding unlicensed contractors*
- ▶ *Didn't take it further.*
- ▶ *The contractor died and the issue dropped*
- ▶ *no*
- ▶ *As a contractor, I have occasionally had issues with sub-contractors. The local builders association has always been able to deal effectively with those issues.*
- ▶ *settled it ourselves*
- ▶ *Went against their bonds.*
- ▶ *Clark County government and small claims court*
- ▶ *L&I*
- ▶ *L&I--Contractor did not do proper disclosure and elected to resolve the problem after the lacking disclosure was brought to his attention by L & I.*
- ▶ *cost of legal to high*
- ▶ *I blamed myself for not screening better and just paid and moved on. If it had been more money I would have sued.*
- ▶ *not applicable*
- ▶ *I just paid the bill under threat of a lien*

- ▶ *His bond is gone. He is gone. Costs more to file against bond than you get back.*
- ▶ *L and I*
- ▶ *Tried to resolve with companies, but not available or didn't care.*
- ▶ *king 5 TV did a story on Reality Homes*
- ▶ *N/A*
- ▶ *small claims suit*
- ▶ *I am a lawyer. I resolved my own and my client's problems*
- ▶ *I have contracted L&I which failed. I have a private attorney and after two years I now have a court date August 22, 2008. Every one agrees that money is owe to me, however, all I have seen so far is attorney fees.*
- ▶ *Also tried working with the construction firm*
- ▶ *building inspectors were very valuable in mediating and making it right*
- ▶ *Department of Labor and Industries - NO HELP!*
- ▶ *City of Vancouver Permit Department, Labor and Industries*
- ▶ *The BBB said they could not help us and suggested we contact an attorney. The BIA ignored our efforts in getting their help. Our attorney basically said it would cost more than the \$12K bond ~ He was willing to work with us but it would cost us more than that if it went to court.*
- ▶ *Still in process through the Home Owners Association*
- ▶ *The excavator and general contractor were able to escape the City citation process by claiming they did not know the rules, leaving us the homeowner responsible for their grading/critical area errors. The City issued a Critical Area Exemption, and then claimed that the work done was outside the exemption despite the plain meaning of the exemption. We have had to retain and pay, geotechnical engineers, habitat restoration experts, excavators, and landscape folks and we still do not have the minor grading permit from the City to implement the landscape plan they have required. Costs for this contractor error are now exceedign 10k with no end in sight and no landscaping. We are caught in the middle between the City's multiple permitting errors and omissions and the contractors apparent lack of knowledge of the ordinances.*
- ▶ *As a group -some have hired an attorney.*
- ▶ *I contact all of these organizations on behalf of clients.*
- ▶ *BBB is rip off, AGO only get involved if it deal with large issue TOO BUSY, Private Attorney goe into the law library at the GOV, talk and laugh about how to get both side to get mader at each other so they GET EVEN more money. SYSTEM is very very bad.*
- ▶ *here*
- ▶ *2 attorneys and a construction management consultant*
- ▶ *insurance companay--they poo-pooed the whole problem and paid entire amount whitout question*

- ▶ *Had problems: Three not resolved, one partial refund*
- ▶ *Spokane Cty code enforcement, WA State L&I*
- ▶ *The contractor can misrepresent himself to another homeowner tomorrow because there's no regulation to monitor his competence.*
- ▶ *No Problems*
- ▶ *The contractor demanded full payment before all contracted work had been completed & damages/ defects corrected. when we declined further payments until these had been done, he first threatened, & then filed a lien on our property, and a suit against us for breach of contract. It cost us over \$100,000 to defend ourselves from this suit.*
- ▶ *Court*
- ▶ *DOL&I*
- ▶ *Washington State DOL*
- ▶ *L & I*
- ▶ *Labor & Industry*
- ▶ *The business itself*
- ▶ *I consulted the LLB in Vancouver. They were not very helpful and I felt it was their job to protect the builder and not help the consumer.*
- ▶ *New Home Warranty company -- 2-10 Home Buyer Warranty Company Aurora, CO*
- ▶ *I am completing that now*

2.8 PLEASE INDICATE HOW YOU FEEL ABOUT THE RESIDENTIAL CONTRACTING INDUSTRY IN THE AREAS BELOW.

- ▶ What changes would you make if it were up to you?
- ▶ Are you a homeowner, contractor or both?
- ▶ If you were to hire another contractor, what would you do differently?
- ▶ If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.

Comments are compiled on following pages without editing.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
1	Easier access to licensing and complaint information	homeowner	ask for and check with previous customers and their level of satisfaction	Kept harping until the job got done right
2		Homeowner. Explain what? Why I own a home? Poorly phrased question, huh?	Get more competitive bids	
3	Proof of knowledge & background check before certification.	Homeowner	Check background and proof of knowledge-- check with past customers.	I ended up finishing job and cutting my losses.
4		Homeowner	Do better research, talk to more past customers	They refused to take phone calls, did not finalize project, we got our own home inspection from the county.
5	Consumer education on how to select contractors will do more than a licensing program.	homeowner	No	Some followup work was required but no problem or dispute was raised.
6	It is fine how it is.	Homeowner	establish expectations about cost over runs up front	Most experiences I have had have been wonderful except for landscaping. Very difficult!
7	Stronger protection from rip-off artists; stronger punishment	Homeowner		
8	Require a minimum education/training/competency within the industry/trade in which the work is performed.	homeowner	Make sure every little matter is well documented in the contract with payment hold-backs and penalties for unsatisfactory or non-performance.	with difficulty and a lot of arguing
9		homeowner		
10	Needs to be regulated better you feel at risk as a consumer.	homeowner	Make sure they were licensed and recommended	Work was never completed even though the job was paid for.
11				very hard to contact. and they don't resolve the problem right.
12	The idea of making it harder to run a construction company boggles my mind.	I am a home owner. I have friends who are carpenters & owners of small construction companies.	No. I have been very satisfied by the work of the contractor's I have hired.	Not applicable. I would never work with a company I did not have faith in.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
13	State citizens need a homeowner's warranty with enforcement process	homeowner	I do not know under existing Washington law how to protect myself	My new home built with many many defects. This is still unresolved.
14	While I work for government, take gov out of the role of protecting me from myself	no	I will research and select. Certifications mean little if the work cannot be done.	At one point I was. WE sat down and talked. The work was corrected.
15	None.	Homeowner.	Follow same procedures as before.	
16	Testing before giving them a license.	homeowner	Do phase payments at the 25%, 50% 75% completion, and keep a 10% retention until satisfied.	Lack of finish work. looked shoddy.
17	Abolish LLC status for builders/developers/contractors	homeowner	research principal owners past business relationships	
18	Easy access to accurate information about contractors Regulation similar to other industries.	Homeowner	Go courthouse and look up any lawsuits References from long term customers	None of the contractors repaired the defects Insurance coverage was not provided Several years of litigation and no resolution. Contractor continues to build all over Snohomish County.
19	Homeowner's Bill of Rights gets passed, but adds more teeth than just a warranty. Stop builders from building in the rain and then closing up walls with insulation and drywall while still wet. Make flashing mandatory on all building envelope openings.	Homeowner and construction attorney		I get complaints every week from customers who have been poorly served
20			Nothing. still go by personal friends references, and get a quote/bid.	
21	A State Contractor Agreement that would require all damage to be insured No exclusions in policy All Financial Institutions would be required to cover damages in a Policy. CBIC and other Contractor Insurance Firms would be required to have NO Exclusions in their Contractors Liability Insurance If the HomeOwner won the Lawsuit and the Contractor filed Bankruptcy then automatically all County Property Taxes would be eliminated until the House was back to 100%	HomeOwner	I would do it myself because the State of Washington does not have adequate safe Guards for all issues surrounding Contractors working in this State.	I used every possible State Agency and because the State of Washington does not Protect the HomeOwner I am forever in debt and still need expensive repairs
22	Make contractors get licensed and change the AIA contract to protect homeowner	homeowner	have attorney edit contract	contractor denied all responsibility for defective work- spent 2 yrs in law suit-we won but lost all the \$ fighting it

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23		Homeowner	Probably have a penalty for a delay past a reasonable time	I have held back his final payment until he finishes the last pieces. If they don't get finished, he won't get his last draw!
24	This applies to both New Home Builders and Residential Contractors. Ensure all post bonds for reliable workmanship toward ELECTRICAL, PLUMBING, FRAMING...etc. for 10 years after completion. Basically, there MUST be a Builders and Contractors "Bill of Rights" for Homeowners. Also, City, County and State Inspectors must be investigated. There appears to be colusion between builders, contractors and inspectors. Case in point....New home construction found close washer drains not hooked up. Thus, all water dumped into crawl space. Water under houses caused by area drains being hooked up improperly. These should have been caught by (City of Lacey inspectors) to sight an example.	Homeowner	Ensure there is a central Clearing House that people may access by Computer or letter that will share ALL information about work done (both Negative and Positive) on Builders and Contractors.	Situation not resolved yet. Have 2 problems that builder is not addressing to conclusion. One, catch plate on roof to direct rain water into rain gutter on corrected. Two, water under house. Builder indicates this is caused by 'high ground water'. The State should make it mandatory to have Builder/Contractor disclose this before construction.
25	None	Homeowner	No	
26	The contractor bond amount should be increased to \$30,000 and home owners should be able to attach the bond more easily than hiring a lawyer and filing a Superior Court action -- Do something like small claims with a higher dollar limit.	Homeowner	Check with my friends to see what work they have had done and how reliable the contractor is.	In almost all the cases, the contractor failed to complete the job. It is hard to get another contractor to come in and finish the work.
27	higher bond requirements	Contractor	I always get referrals	I am a contractor if I am not satisfied I don't rehire them.
28	needs a higher level of competency	Own, electrical contractor		

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29	Institute a testing requirement that would ensure contractors have sufficient business and construction knowledge to perform in their particular trade or industry segment. I would be happy to discuss the importance of the business knowledge component and how that might be achieved. Call or email me to set something up.	I am a former contractor (16 years) and a long time homeowner (since the late '70s)	not be a general	Since the state wouldn't let me go after the sub's bond, and my attorney advised me that it would cost more to sue the guy than what the damages were (if he had any money to pay them) I spent \$4,000.00 out of my own pocket to re-do the work and take care of the customer. Oh yeah, I quit the business too. It is a sad fact that good contractors being driven out by the bad is the typical result of policies created by lawyers and politicians.
30	don't know.	both. Low voltage electrical contractor & home owner	nothing, we only select with references & referrals	
31	Require L&I to pursue unregistered, require mandated state testing for moisture issues, land development, window install, framing etc.	yes	I think it is important to check credentials and that Built Green is important	I contacted L&I regarding 20 unregistered contractors with homes for sale in Mason County. They said they did not have the manpower to pursue that. Then managed to create a 545 Page Heat Stress Rule. I think that money needs to be moved from creating regulations to enforcing regulations. In addition some are easy to generate instant fines, like the Heat Stress Rule, but others like unregistered contractors are harder. They shouldn't go for the 'easy money'. That is unfair to the registered contractors who are easy to fine, versus the unregistered that take a lot of work.
32	Same applicable building codes to all countries	General Contractor & Landowner		
33	Better Business Bureau is useless - get rid of, does not do what it originally was meant to do - no information or wrong information - you pay to belong or as far as they are concerned you don't exist.	Both. I am a contractor who provides services and a homeowner who has work done on his own home that is not in my specialty.	Contact the Chamber of Commerce, BIA and other valid professional organizations for back ground checks	

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34	Licensing should be based on certification or completion of clock hour training	no	We'll ask for specifics and we'll put in writing our expectations	I felt that the contractor should have tried to get the (product) rep to replace all product that was warped.
35		Home Owner	Get more bids	
36	There are some VERY good contractors out there & you need to leave them alone. Go after the guys who get all the complaints.	both	nothing. we don't need the government doing everything for us.	Everything was fine.
37		both -- own home & own contracting company	make sure that they have used the labor they use before this job	the situation was with concrete work, damaged house, they sent someone out who completed part of the repair & then gave us a check for the rest
38	I don't know	home owner, I had a new 4000sf barn constructed	I will not hire a contractor, I will hire trades people and supervise their work myself	When a first met with the contractor I had specific needs, the owner understood and priced the bid accordingly, the crew was not informed and I had to redo the work myself at my expense after paying extra to have it done my way in the first place.
39	Require testing, education and more strict licensing requirements. Make the bond amount equal to the contract price.	homeowner	check with friends	Lawsuit was pointless, the guy went belly-up.
40	create a system to keep bankrupt contractors working to compete their jobs		see above responses	
41	Easier to find - need a listing somewhere - not just phone book	Homeowner	Possibly	WE had to encourage the man who painted our house to move it along as he kept delaying
42	Copy Ebay's system...clients provide Internet satisfaction feedback and rate work done	Homeowner, Land developer (small plats)	No	Daily communication resolved any questions that occurred.
43	talk about roles and responsibilities of the process with time frames	home owner	nothing	open discussions. have it in writing
44	None	Homeowner	Nothing	N/A

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45	No Changes, the system works well	I own my own home, on which I have hired other contractors to do work. I am also a contractor.	nothing	I have been very satisfied with the work registered contractors have done for me.
46	Enforce the codes that are law and enact laws to protect the consumers.	Homeowner	Tough question, and not one that can be answered in this survey.	Usually was not resolved, either fired the contractor, State Agencies would not intervene.
47	While I have not had problems in WA, I have elsewhere. Licensing and bonding are impt.	homeowner	look for more options	no problem in WA, just costs too high across board because too little local competition
48	I think contractors should be required to had out a standardize pamphlet to homeowners educating them on how to properly protect themselves; ie lien releases, joint checks, etc.			
49	I think oversiteis needed. How do people know if they can do the work.	home owner	That is really tough. Making sure they know what they are doing is the question.	
50	There is no accountability, they need to be accountable.	Homeowner	Check their references better, utilized the L& I website for summons & complaints against them, and check for licenses, certifications, etc.	I recently had a contractor that did not acquire permits however charged me in an itemized statement. Situation not resolved. General Contractors did not pay subs...never resolved. House painted, never completed, went against bond.
51	eliminate buddy system where contractors become gov't regulators	homeowner		case #1 : leaky roof; patched (not fixed) until 5-yr HOW expired; case #2: home next door built in violation of solar ordances
52	General contractors should have to show some competency before being allowed a license. Should be more public awareness of what speedy effective remedies are available to consumers for unsatisfactory results/treatment/pricing.	I am a homeowner, a real estate agent and Realtor() and I have been a general contractor in the past.	References from associates and past clients.	

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
53	Make contractors responsible for paying their bills, not the homeowner.	Homeowner	Go to the materials suppliers places of business and pay them for the materials used.	The contractor went out of business and my 10 year warranty is worthless.
54	I would like to see contractor warranties mandatory and transferrable to new owners (buyers). I would also hope that L & I could include one or two liaisons to work between home owners and contractors to resolve many of the issues that do arise as I believe involvement by L & I to that extent would ultimately improve, and hold accountable, contractors to a greater extent.	Homeowner, both primary residence and rental properties.	Nothing. I've been very satisfied with the majority of contractors that I've hired.	A roofer, utilized prior to 2000 and not the roofer from the survey, above, presented a final billing that was more than twice the contracted amount though minimal additional work was performed. The contractor provided no disclosure and had a contract amount greater than \$1,000. I contacted L & I; L & I contacted the contractor and advised that no lien could be placed on the property if we opted not to pay the bill. The contractor elected to honor the contract he had with me, plus a small additional fee for a minor amount of additional work, and the issue was resolved.
55	I am real concerned about the new laws affecting homeowners who might sell their house in the next year. I have been told that as a homeowner I have to become a licensed contractor even if I hire licensed contractors or am doing work myself that I consider maintenance and not a remodel (e.g. paint, landscaping, repair jobs, etc.). Now I am hearing rumors that as a homeowner I might have to get training to get that license. I do regular work to keep my house in good shape (I was taught redo a room a year by a realtor, so it will always stay updated), and now if I think I might sell the house in the next year I have to go get schooling and licensure? This is a real problem. Regulate people who do plumbing, electrical, and structural and let me do maintenance on my own property!!!!	homeowner	Interviewing at least 5 recent past customers where did same thing I am looking for & and checking out those jobs	Slower than expected, talked to contractor about this.

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56	Stop supporting contractors treat customers badly and allow the customer to choose who they use.	Homeowner and real estate investor	I have no clue, clearly having a state licensed contractor was of no benefit to me as a customer	In all cases the contractor went out of business and hid behind the law.
57	Require continuing education and membership in trade association. NAHB etc	both General contractor Repair & remodel CAPS certified	look at certifications	was not, over two years had passed, legal cost more than work done
58	I would change who must be a contractor, step up fraud enforcement and consumer education and have a statewide ethics in business campaign that combined political and business leaders	I am a homeowner with lots of skills and have self contracted a large complex project with success.	Check more closely: court records, registration, previous customers. Write more down and be more picky.	Too much time had gone by when I discovered sloppy, incomplete plumbing job. Paid the new plumber to fix rather than go after the original one. Did not have the time for the grief.
59	None	Homeowner and general contractor		
60	Require larger bond or insurance protections for consumers & knowledge/skills testing	homeowner	nothing different	not applicable
61	Some way to hold them accountable to bid and quality of work	Homeowner	Pray! Even those with good recommendations, mostly smaller jobs, give poor quality of work.	I threatened not to pay, he threatened to lien my property. I paid.
62		both		
63	Professional license and testing of contractors. Contractor must know codes and their craft. Contractors should have a higher insurance claim limit.	Home owner	None. I have personal knowledge of quality work and contractor responsibility.	N/A
64	tougher laws to stop the crooks from starting up new companies over and over again.			
65	put a time limit on the project	both	talk to more existing customers	

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66	Only english speaking contractors should be allowed to register in our state. General Contractors would have to have an ICC contractors certification similar to California.	I am a municipal building inspector and a homeowner and have worked for GC's.	Interview. Get recommendations. Check L & I website to check on.	Make sure they are done before releasing last of payment and that all required inspections have been passed.
67	Bond greater then project value must be required for general contractor	Homeowner	Rely more on consumer recommendations. Construction organization, BBB, State of Washington are all of little value	The contractor did poor work and walked away from the project unfinished. The home builders assoc., BBB, Wash. State, and my attorney were just an expensive waist of time. The builder walked away with my money laughing. Contractor left job unfinished and still wants money, I'm not paying
69	I would require better standards from large building companies and not allow shotty construction to be continually pushed off onto insurance comapnies.	I am a homeowner	I would network more with people who have had homes built by the builder, I would do more research to see how many complaints the builder has had.	Our former board settled with the builder, (contractor) for \$100,000.00 (big mistake!), taking the advice of the attorney (big mistake!). Our reconstruction company (contractor) (big mistake!)is now under legal obligation to fix what they did before the warranty runs out.
70	I would like it clear if the company is subcontracting out the work. We hired one company to do the work and another company came out. We never had a chance to check out this other company.	homeowner		We discovered a problem with the roofing job on our deck roof. (contractor) and the subcontractor who did the work have ignored our calls and will not take responsibility for repairing the damage. We have hired another contractor to repair the roof, and now we have to go through the hassle of suing Affordable Windows to recoup the costs of the repairs.
71	Stronger requirements for a contractor's/specialty contractor's license in this state. Buying a bond and some insurance does not qualify one to be a contractor.	Both	Not much. You must have a complete understanding of the project and obtain multiple bids.	
72	Not sure. Having a license, certificates, etc doesn't guarantee good workmanship, honesty or willingness to resolve any problems.	homeowner	call previous customers, look at previous work, get at least 3 estimates, be more precise and firm, contract matches what promised, do more research.	Not resolved. Unexperienced, too trusting, first time homeowner. Not huge damage, just half-ass jobs- disappointed for money spent, some of the problems showed up after I paid.
73	none	N/A	nothing	N/A

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74		Homeowner	Go first to Angieslist: http://www.angieslist.com/AngiesList/	Beat on him every day until work was completed
75	HAVE L&J REGULATE AND GIVE THEM MORE POWER TO ENFORCE AND REGULATE	HOME OWNER	NOTHING	N/A
76	Have a warranty on work	Homeowner	Really don't know	Had to sue
77	It would be illegal for a company like (contractor) to operate in the State of Washington or any where else. They took my money and did not provide the quality home they promised me.	Home owner	I would never have gone with (contractor). I most likely would have purchased a manufactured home which has guidelines for construction and the customer has somewhere to go if there is a problem with the final product or I would have purchased a pre-existing home. If it did not pass a home inspection I could have passed it up or asked the seller to make the repairs, like I currently are and will continue to do on my Reality Home.	(contractor) sent out a handy man to temporarily correct problems, cosmetically fixing the problems. They did replace the glass side windows to the front door after attempts and finally after almost a year replaced the front hardy plank on the house. The exterior wall had a bow in it and the hardy plank was wavy they continued to install the hardy plank which I told them was not correct from the day they began to install. They will not do anything else. I have a skylight in the master bath room has a broken seal costing me extra costs in my heating bill and there is nothing I can do but replace it myself. It makes me sick what that company can get away with. They never did give me a final walk thru because they don't have to. They agreed to refinish the garage floor which their Mexican labor force scratched and gouged when installing the garage door and continued to scratch and gouge throughout the entire building process. The interior floors squeak walls cracked, sliding door does not close or lock correctly, crooked walls, but hey it still is in better shape than the
78	More transparency perhaps lists of all permits applied for, completed, etc.	Homeowner	More detailed bid with specific examples of quality level of work.	Depending on situation, either the contractor resolved or I resolved.
79		homeowner, had tree from wind damage. Insurance company was the problem.	Nothing. Would hire the same one. He will no longer work on Insurance claims due to my issues.	

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80	<p>Strict testing, enforcement of education and recertification requirements, avenue for home owners to file complaints with meaningful consequences. 75,000 Contractor Bond</p>	<p>Homeowner. During 2007-2008 I built a Lindal Cedar home due to my contractors incompetence and inability to complete certificate of occupancy I have terminated my contractor. We are now completing work and repairs of errors made during construction which include : \$17,200 of sub contractors not being paid, replacement of garage floor due to no vapor barrier, tile replaced, completed and sealed, Re-stain of pre-stained exterior due to shoddy and incomplete</p>	<p>Uncertain, we selected our previous contractor from a (manufactured home) preferred contractor list, interviewed the contractor and visually inspected a home that the contractor said he built. We thought we did everything we needed to but were very wrong. Which is why I feel that much more restrictive practice of who becomes a contractor and a homeowner recourse for those contractors who breach the contract and do not perform the work is needed.</p>	<p>We terminated the contractor due to inability to complete the work and receive certificate of occupancy. Since then we have discovered that sub's have not been paid even though funds were withdrawn from the construction loan of \$17,200 to pay subs for work. We are also repairing and completing damage and rework on our home we will pursue with our attorney.</p>

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81	1.require contractors have specific knowledge/pass test 2.increase bond to 100,000 3.make it easier to recoup money	homeowner	I did everything right,was able to resolve but only after filing small claims + involving L&I	1.Contractor removed install + refund 2. Contractor removed install + reinstalled (after small claims)
82	Actual license based on knowledge or skills test required, not just registration. Raise bond amount.	I am a homeowner and a landlord and a lawyer for a nonprofit		I sued one contractor for 3 elderly clients. Bond was not enough. That contractor just purchased another bond and went back to ripping people off. I will not again hire an electrical company that the inspector failed.
83	Allow law suits for negligent construction	homeowner	More checking of references, Require independent inspections at critical points, perhaps involve attorney in drafting of contract	We finally gave up the fight and are trying to rectify the building problems ourselves.
84	I would change the entire industry!! When a contractor takes money they should be accountable and if they fail to comply there should be consequences for their actions in a timely manner.	I am a homeowner, however, I have hired subs to build my home after the first contractor walked off with my money.	Until the laws change, there is nothing one can do except pray that maybe the next contractor won't be as bad as the last one.	After two years of attorney fees and extreme stress, my situation is still not resolved.
85	Better inspection or proof of quality work (pictures?). Recourse for faulty products.	Homeowner; home built with faulty siding product, builder KNEW & has not replaced	Not ever buy a home built by (contractor).	Tried mediation, now in lawsuit. Builder said sue so his insurance could get involved
86	The system needs to protect the home purchaser and eliminate delays in repair	Homeowner	more thoroughly check their work, demand more references	we are involved in a lengthy and costly lawsuit to have siding replaced that was faulty

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87	Must pass a test; list all names used by contractors business in last five years, make attorney generals office investigate even if first or only complainta against contractor	homeowner	hire someone licensed in oregon, they have more controls	had to pay sub contractor to release lein against property, builder was later indited by washington state attorney general office for bad practices on other properties, could have been resolved ten years earlier if they would've listened to us, others had to be hurt first. contractors name was cliff cook, lacumas builders, please call me, I have an earful of complaints and would love them to be of record to help make contractors licenced and accountable.
88	Facts regarding property the contractor is working on disclosed while on the market	homeowner	no	Currently in litigation
89	Enforce present laws with more officers to respond immediately to unregistered contractor calls.	Both.	Ask for ALL client list for the last year. Spot call. check registration.	As a GOOD Residential Remodeling contractor, I call in unregistered people regularly. The same L&I response is "We will journal the call and have someone respond as quickly as possible" = SEVERAL DAYS! -too slow -too overloaded? I have never seen or heard of any follow up done.
90	Tighten the regulations for residential building contractors, require them to take training to receive certification that must be shown to customers at the first visit to include informaton about appropriate permits for the proposed project, specialized licensing which prohibits a contractor and employees from working outside the scope of the license, broader education for the general public - perhaps periodice workshops and flyers inserted with utility bills and newsletters.	homeowner	Much more extensive research about the contractor, hire an attorney to review and approve any proposals, guarantees, licensing, permits, certifications, contact previous customers, and visit both the L & I and Better Business Bureau websites to learn if this contractor had prior problems or restrictions, insist a permit is pulled before any work is started, insist on drawings, proposal, time line, and warranties in writing prior to work start.	The contractor was in denial even with the obvious hole in my outside wall, the rain pouring in through the wall above the new slider, etc. It was Larry Mullouch from Labor and Industries, along with Cindy Meyer, Mike Shrum, and Rick Uskoski from the City of Vancouver who put the pressure on the contractor to help resolve the work. I was able to convince the contractor to sub-contract with other contractors to make the repairs. I had to take time off work to oversee the any work the contractor did himself because he was trustworthy. I recently had my kitchen flood due to work he did not complete correctly, but hired the subcontractor myself to get the job done correctly this time. I don't want the original contractor back in my house. Additionally he gave me a one-year warranty on his work, written on a post-it note that my attorney says in useless. This was a six month nightmare that affected my health and my career in addition to my finances and home. I don't want this to ever happen to anyone else. I will gladly volunteer my time to help this cause and to make our sy

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91	Remove Privy Of Contract, Warranty Goes With Home. Remove Imunity From Inspectors	Both: I own an Industrial/Commercial General, Mechanical & Demolition Company. Residential Contractors and Inspectors are DANGEROUS!	I'd hire ALL Commerical Contractors, Force Them To Include an "ALL RISK" Insurance Policy from "A" rated insurance company.	House is under water, no support for footings/foundation, toxic mold, rodent infestation \$2,000,000 house that has to be moved. County won't discuss permits because I filed a claim against County.
92	need immediate resolve to problems	homeowner	hire allen leffel who repairs all of the bad contractors mistakes and who has scruples	theres nothing you can do as a consumer, attorneys ask for thousands of dollars and guarantee nothing in return plus years to resolve
93	Contractors should be held criminally responsible for cheating their clients with shoddy work.		YES	It cost \$200,000 in legal fees for resolution.
94	Require technical test for Gen Contractors & increase bond equal to const amount.	Homeowner	May not! But if you change the requirements we would reconsider.	We just ended the contract, fired the contractor & are trying to finish ourselves.
95	Put in place laws that held a contractor responsible for incorrect installation irrespective of time.	homeowner	Demand clarification of warranty and time limits; also demand that contractor respond to my concerns.	Legal technicality precluded any resolution even though experts verified that damage was due to incorrect installation.
96	I would never deal with this builder again. There needs to be a more stringent control. This is the most expensive purchases of a lifetime, and the buyer is in jeopardy with the current system.	Homeowner. I love where I am living, but would NEVER have dealt with these builders had I known what they are really like.	Just that, and a lot more research. Information about builders should be available for all to examine.	Had to deal with contractor for 10 months in order to get purchase completed. They did not communicate with subs for desired changes included in contract.
97	Require classes, examinations, and certification	homeowner	We did everything we thought we could do to be sure the contractor was a good one. The Dept. of Building and Industry didn't show any problems on their websites.	The contractor agreed to correct the construction errors, but did not do it. We are currently in litigation-- which is an unnecessary expense for homeowners, especially those on a fixed income.

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98	making the building inspectors responsible for their shoddy inspections and holding the city or county responsible	homeowner	under the present Wash. State laws the consumer does not stand a chance no matter how you handle it unless the builder has some integrity.	It is in the hands of a lawyer at this time. It is a difficult situation because it is in a H.o.A.
99	Make the City do periodic inspections during construction and a FINAL INSPECTION. City of Longview does not do a final inspection nor make the contractor fix problems.	Home Owner (condo)	Would find a reputable contractor and use the Lower Columbia Contractors Association for a reference	The contractor left a number with a drainage problem and failed to grade lots properly and improperly installed a lot of sprinklers among other things. Contractor failed to finish the developmen. City will not do anything.
100	Make binding mandatory arbitration illegal in Washington state.	Homeowner	Assume state inspections aren't enough	Lawyer, MONEY

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.
101	<p>I would make it more difficult to become a contractor. I would require testing and a much higher bond. Our contractor has gone out of business several times leaving homeowners high and dry, then simply re-registers under a new name.</p>	<p>We are homeowners, recently relocated here from California. We bought a brand new home that was never completely finished, contractor simply vanished. We now have no warranty on the home and will have to pay extra to complete the work. Also, the contractor failed to pay most of the subcontractors and as a result multiple liens were placed on our home after closing.</p>	<p>Well, here in the state of Washington, it is clear that we would have to do a great deal more homework than we would have to do in California. Most people in this area knew about our contractor because he has done this type of thing several times before. But, because we are new to the area, we did not know about him and assumed that because he was "registered" that we were somewhat protected. Obviously, "registered" and "licensed" are two different things. In California, it is much more difficult to become a contractor, and for good reason.</p>	<p>The situation with our home has never been resolved, as the contractor simply vanished. As I stated earlier, he has done this several times in the past. Not only is our home not complete, and we have several liens, and we can't get any of the subs to comeback to repair anything because they weren't paid, but the extra money we paid for our "premium" neighborhood has also been a waste. The neighborhood has partially built homes. Those that have been completed are now up for rent and the empty lots have become dumping grounds for whoever drives by. The weeds are now taller than my children. I have never seen such irresponsible contractors.</p>

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.
102	Absolutely require licensing of all contractors in the State by the State, County and City where the work is done.	Homeowner	Demand proof of licensure, demand in writing that he/she is fully familiar with all of the municipal ordinances, County ordinances and State regulations, and will be legally responsible for any failure, or claimed failure, to follow all city, county and state ordinances, laws rules and regulations notwithstanding knowledge or lack thereof.	We had to retain another structural engineer to write a letter that the framing that did not follow the structural engineer's plans - saying that the way the framing was done was acceptable. We had to pay for a civil engineer, a geotech engineer and a habitat consultant to advise about regrading the less than 50 cubic yards of surplus soil that was not hauled away from the job site because neither the excavator, the general contractor nor the City told us the soil should have been hauled away and not added to the landscape topsoil in the back yard. The civil violation and order is still pending, the hearing is on hold while a settlement has been negotiated with the City Attorney, but has yet to be completed because we are still waiting (9 weeks now) for a minor grading permit. All because no one knew the city ordinances and the City forgot to tell us or provide us with copies of the ordinances attached to the building plans they approved that were silent on disposition of surplus excavated soil. We still have excavation work/minor grading to be done, and possible
103	easier for the consumer to locate a reliable contractor	homeowner	check out his paperwork more closely ask more questions look at some of his work.	he made a half baked effort to finish and please me and I couldn't wait for him to leave so I compromised.
104	If I could just make contact with the contractor		I would do alot of homework before hiring a contractor.	They do not return phone calls-I have no way of reaching them. Problems that were to be taken care of has not been done.
105	apprenticeship, skill testing and continuing education required for licensing; A ranking system would also be helpful	Homeowner and now General Contractor	Scrutinize recent work of prospective contractor and write iron-clad contract.	Work was quality was below contracted level; Many code violations that still passed inspection; Currently in litigation
106	None	Both	Nothing, I checked the L&I web page and got references and looked at previous work	no problems
107	There seems to be little assistance for the consumer; unscrupulous contractors, scam artists, are aware of this.	business owner	I would not hire a project manager (a general contractor); to screen contractors or to hire. I would carefully read contracts so that I can identify nebulous/vague terms myself.	The Dept. of Labor and Industries did not respond to my letter. The attorney general's office sent me an email telling me that my complaint was not within their jurisdiction.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.
108	None	Homeowner who contracted major home renovation	Better define what I wanted	
109	The time frames for submitting contract claims are generally short, and most warranties advertised as ten-year warranties require notification within the first year. Consumers don't understand such time constraints will bar their claims. Warranty policies (with their associated claims requirements) are not bargained for and often provided after construction is complete.	Both, I represent both homeowners with claims against contractors, and contractors with claims against homeowners.	Some arbitration organizations are notably biased, but since arbitration decisions are not reported, it is very difficult to decide who will be fair. I will never consent to AAA arbitration again.	Negotiated solutions are cheaper, than arbitration or litigation, are the best approach if they can be achieved.
110	It is fine now	homeowner	nothing	NA
111	Contractor licensing/certification - state regulated	homeowner	check references and qualifications	

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
112	<p>Hire independ inspector that works for the customer and contractor must comply with, devils advact, GOV does it, example OPERS, may done through unions, any way, some way to prevent JUST WRITE it off and say it's ok by a drive by WA inspector</p>	<p>Contract owner, Home owner, will not buy new construction in WASH from 1996 to now. Or only if custom craftman ship, MATERIALS from Homedepo covered with lead MADE CHINA, and Cost Co, if you take your coffee cups ask, do they have lead paint, they give your money back, Shhhh DON'T tell anyone, newspapers don't care unless some one got rapped, or</p>	<p>YES, don't tell gov(THEY DON'T CARE), do it right, over pay them, SCREAM AT THEM, DO IT RIGHT.</p>	<p>They went bankrupt and were own buy city council man, they had family partners to co op sturcture, GREASE EACH OTHER WHEELS, hide owner ships with LTD, etc. Basic SHMOOZING, Presents under legal amount every day. Plac's awards of best HOA president, crap like that.</p>
113		Homeowner	Nothing. I rely on references and association with professional groups to make initial selection and then interview.	
114	Keep track of projects worked and results based on Customer Surveys.	Homeowner	Done via HOA	Still in Lit. Our own attorney represented both us and them. Owned part of the company.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
115	I would like to be able to go to a site and see comments from other customers regarding their experiences	We purchased an older home and knew we would need to do some major changes	We only consider contractors who are referred to us and with whom we can contact past cust. for their input	
116	Contract of work to be completed by needs to have a real end to it.	Homeowner	no	Not even close to finished, plus we not sure they can.
117	Cert Testing for contractors to ensure level of ability	Homeowner and Building Code Official		
118	legislation to protect consumers from unethical and incompetent builders	homeowner	yes, the contractor i hired to fix the items that the original contractor refused to fix was good	legally- he agreed to fix mostly those items that he could force the subs to return to the job and fix- we had to fight hard to get the items that cost money from his pocket covered such as the new doors as the originals were installed wrong and the warranty was voided... these were expensive doors and our house is on lake wa and was a multmillion dollar purchase
119	None	Homeowner	Nothing	No problems
120	give regulators more latitude and enforcement authority	Retired home owner	get as many bids as possible--it pays to shop	we caught contractor in out and out lie with photos of the "dried out"protection he promised which led to 20,000plus \$s of water damage which was which was paid quickly and without question
121	Don't allow them to make up testimonials online.	Homeowner since 1978	I am doing more research (BBB, licensing) and trusting my instincts. Avoid last minute repairs that don't allow time for research on business.	Call me anytime--I called--he came--he left; did not do work as contracted and not resolved; tried hard to charge us for more hours, but we made him stick to his written contract
122	Show bankruptcies per name and not be able to start again under new name with correcting past problems	homeowner	pay for supplies so lien not on house	Threatened lawsuit to get work finished after waiting six months to get patio door fixed
123	Inspection done by Spokane City should cover proper installation of roof. Allow some form of filling against poor job with the county bldg department if they are going to continue to be responsible for inspections.	homeowner	Withhold payment for a longer period of time. HE was licensed and bonded so that was not an issue although it did not help in my case. He has ceased operation and the bond has expired.	Still waiting on repair from another contractor who is backlogged. Four contractors were unwilling to repair someone else's work. Interior damage is hard to trace.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
124	There has to be better regulation. The company that ripped out my kitchen was registered with BBB, but I still can locate him now changed the name	homeowner	definitely	ripped all the cabinets out of the kitchen threw them on the side of my house and then didnt return wouldnt answer my calls when he finally did answer told me some crap about being out of town...not discussed at start of project. Became angry when I said he was in breech and hung up the phone...havent been able to get him since and I paid 1/2 up from so I am out 3k
125	I don't see a need for change	Homeowner	Nothing	We can talk it out
126	I feel that if you select wisely there should not be any problems.	I am a homeowner.	Nothing.	
127	Harsh Discipline for unregistered people	Both	Nothing---I hire only registered contractors with good reputations	
128	Contractor should be required to take a test to determine their knowledge of skill and their bond should be raised to at least \$25,000.	Homeowner	Research contractor's past work extensively to verify he's not giving me another sound and dance, check out what value his bond is worth, check with better business bureau, check angle's list, inquire with friends neighbors and coworkers of contractors they've used, etc...	Hired an attorney for compensation but concluded with an arbitrator's decision which left the contractor with no blemish on his record and the homeowner with no compensation, just walk away. We and our attorney were furious!
129	Stiffer penalties for unregistered or unqualified contractors	Home owner and electrical contractor	Draft a detailed contract	Filing lawsuit in Superior Court
130	None they are highly professional, the bad ones can't stay in business.	Homeowner and Realtor; my referral list is extensive, which my clients trust and use.	I always check with other contractors, clients and fellow Realtor to find good referrals.	I write a letter explaining the problem and if not satisfied they are dumped from my referral list.
131	None that I know of.	Homeowner who had work done by a contractor.	Absolutely nothing.	N/A
132	None	Both-own my own business	nothing	none
133	The process that allows a lien on property protects unscrupulous contractors.	Homeowner	I would not allow sub-contracting	In-process. I have hired an attorney to protect my interest

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
134	<p>1. Increase the licensure bond so that it reflects a significant proportion of the cost of projects that contractor performs. The current \$12,000 bond must be divided among all claimants; In our situation, this would have been less than 8% of the cost to repair defects & damages caused by this contractor. Given that at the time we were attempting to reach resolution of this matter the contractor had 3 other jobs which were in similar straights, this bond would have been divided 4 ways (ie we could, at best, have recovered about 2% of our cost. 2. Lien laws need to be changed so that contractors can not use the threat of filing a lien as a means of intimidating consumers into paying for sub-standard work or costs in excess of the contracted price. 3. There is currently no way to recover legal costs incurred in defending ones self from contractors who file a lien with negligent or unethical contractors. 4. Minimal professional competency standards need to be established for all contractors. There is currently no requirement for non-spec</p>	<p>Homeowners who have done hands-on work on numerous prior major home remodeling projects</p>	<p>1. Go with a contractor recommended by our architect or friends/colleges who had used that contractor (even if it meant we would have to wait over a year for them to be available. 2. Hire the contractor recommended by the owner's agent we hired to evaluate the scope of work done by the original contractor &/or use the contractor we hired to fix damages & defective work done by the original contractor. 3 Require an additional, substantial bond or deposit as an aspect of our contract with the contractor 4. Hire an attorney in advance to review the contract prior to signing 5. Hire a third-party inspector to review all work as it progressed, with satisfactory completion (ie built to code; conformance with architects drawings) required in order for interval billings to be paid.</p>	<p>In accordance with current requirements, we initially tried to work with the original contractor, providing him with a list of defects & damages to be corrected, & meeting with the Project Manager & site Supervisor on a weekly basis to review a written list of defective work & damages which needed to be corrected (eg water leaking in around & under doors & windows; improperly installed doors & windows which did not open & close properly; floors, ceilings & walls which were up to several inches out of level or plumb, water leaking through 7 under the foundation, undermining & collecting in the lower level, etc). The contractor ultimately demanded full payment, for an amount in excess of the contract price, & before specified work was completed, with the treat that he would file a lien against the property if we didn't pay. When we did not pay, requesting him to complete the work & repairs first, the contractor voided his contract with us & filed a lien & lawsuit against us. The contractor dissolved the construction company, which was reborn at the same location, & with the same employees under a new name</p>
135	<p>enforcement and seeking out unregistered contractors is the biggest problem with this industry as it makes it harder for the good liscensed contractors to flourish and continue to exceed customer expectations.</p>			
136	<p>none</p>	<p>both</p>	<p>none</p>	<p>n/a</p>
137	<p>Put all complaints/feedback on record plus higher and lower courts data re cases filed and judgments.</p>	<p>homeowner</p>	<p>Only use someone I or someone I know has had personal experience with.</p>	<p>He refused to honor his warranty to fix problems despite promises to do so.</p>
138	<p>leave things as they are</p>	<p>homeowner</p>		

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
139	actually arrest unlicensed contractors & fine heavy get them off the streets	homeowner		
140	less state governing contractor although feel licencing and bonds are important	homeowner	nothing	
141	nothing at this time	Homeowner	nothing	
142	I would make sure ALL contractors are licensed & bonded	Homeowner	Nothing, I have hired 3 in my lifetime & had no problems	
143	Serious fines for hiring unlicensed sub-contractors and passing them off of licensed and experienced	homeowner	look at all their available work and talk to other customers	Our house is a mess and they want full payment for it even though they sub-contracted landscapers to frame our house.
144	reduce legal burden on contractors so they can reduce their costs	homeowner	just base it on local contacts, not government oversight which does not work	personal talking
145	I would regulate the industry completely and impose heavy fines and imprison fraudulent contractors	homeowner	check them out thoroughly and refuse to pay any money up front	legal system - 5 years in court
146	Go directly via DOL&I	Homeowner	NOT go through friend or family	He never paid subcontract and there is a lien against my property

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.
147	<p>I would first of all make the licencing requirements much more strict. In Utah there is a requirement for so many yerse experiance as s journeyman, written recommendations from supervisors, written tests etc. It takes years to get a General Contractor licence. Secondly I would recommend that the State of Washington establish an inspection and compliance office which would have the authority to inspect workmanship and if it is found to be substandard force the contractor to fix the problem. WA inspects cars for smoke and requires they be repaired why not construction. The few dollars that would be required from each contractor would ot have that much of an impact on the total cost of a construction/remodel job. The benefites to the public would be out of this world. The state should not even listen to the BIAW's complaints. They are part of the problem. I am not even sure that the contractor who collected state sales tax on an\$140,000+ remodel even payed the state. I am going to check on that my self. I am going to make it my life's work to destroy the General Contract</p>	Home owner	write down exctly what I expected, and pay only after the entire job is completed	<p>I am now in the process of hiring a flooring refinisher to correct the work done by the General abd his flooring sub. Then I am going to hire an attorney to go after the General in court in an effort to recover the funds I will pay the refinishing contractor. I will have to eat the attorney fees and floorit inspector fees. I think that is unfair. T he state shsould have an inspection office that can inspect a job and if it is as bad as my flooring they should be able to force the contractor to fis the problem with out having to go to the expense of hareing an attorney and going to court. Our courts are busy enough an should not waste their time looking at bad workmanship. Washington State has interceded in my behalf concerning a Insurance issue and it was resolved very quickly and fairly. Why not have the same for contractor disputes?</p>
148		Homeowner	Check for licensing, bond, ins., claims against	Not resolved. Will have to sue.
149	For the most part, we've been very impressed with both work and integrity	Homeowner	be more specific about details and timelines	
150	This contractor should be fined and have his license revoked.	Homeowner	Actually meet with previous customers to see the contractor's work and ask them questions regarding timeliness of project.	The situation has not been resolved for what was originally contracted in 2006. Neither the BBB or a private attorney were successful in getting this contractor to complete our deck. We still do not have stairs or railing on a deck which is 8 feet above ground.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
151	Require standardized bid sheets which breakdown cost of labor separate from materials - Set up a quick, efficient way to arbitrate disputes - can't file a lien unless you've agreed to arbitrate. Consumer protection greatly needed.	Homeowner	Insist on specifics regarding cost of labor and materials - check references better	Still is not resolved. Bad plumber - tub still not fixed
152	The bond requirements must be at least \$100,000 - the minimum right now is worthless.	homeowner	I did hire another contractor, they had a 6 page agreement and did a fantastic job, so would definitely have an attorney review the contract before signing	Went to an attorney, threatened to sue, they threatened to declare bankruptcy
153	Toughen laws to protect consumers. Make the process of being a Contractor tougher by making sure they can at least read and write English.	homeowner	Interview more candidates, but consumers still don't have much or any protection.	Major lawsuit that is still in litigation.
154	Professional Examination for contractors and continued education !!!!!	architect and past contractor for 25 yrs.	cautiously, w/ refernces, interview	contractors not always responsive to client concerns, not kalways knowledgeable
155	None/everytime the state adds on more fees etc.. the cost is passed on to the consumer and more people are put on the government payroll adding more taxes.	Homeowner	nothing	
156	Make contractors take certification courses/tests to receive license, but make licensing costs lower	Homeowner	Have my remodel plan down pat before construction process began	
157	Better warranty laws	homeowner	Look at past work ask more questions, Have more things in writing by contract	
158	none. The customer need to do their homework and be responsible as well as the contractor. The ones who take the low bid get nailed most of the time	yes a homeowner and a speciality contractor	nothing.	
159	Require a state test that would show knowledge in all areas of contracting; small business operations, and math skills.	We own our home in Brush Prairie, WA.	I should have taken my brother's advice (he works in the construction industry) and required a deadline in the contract with daily financial penalties. 9 months of hell for a 3 month job is too much.	Basically (contractor) did not pay his bills. The cabinet sub had to sue him to recover his expenses. (contractor's) right hand man came to us some months after completion to ask if we would pay more than \$300 for excavation work. We referred him back to (contractor).

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
160	Make all warranties and contracts that cause purchasers to waive their "warranty of inhabitability" illegal in the State of WA. All contractors and builders MUST be held to the current 6 year statute of limitations set by the legislature. All builders must be made to build homes to International Building Code with out exclusions.	Homeowner	I would never sign a "limited liability warranty" I would most likely not buy new construction in WA State	I was forced through the warranty company into "binding arbitration" which the builders refused to honor this judgment. I then had to take them to Superior Court where the judge found in my favor and granted additional attorney's fees. The builders have now appealed that decision and I am waiting for a spring court date for the appeal to be heard.
161	Pass "Home Owners Bill of Rights" legislation.	Homeowner.	Require home builders to disclose all home/property defects in their sales contracts.	Not resolved. (contractor) continues to do shoddy work.
162	I'd NEVER purchase windows from (contractor) again. POOR Customer service, windows leak, carpet damage	homeowner	YES	getting the run around as of 07/2008
163	Better communication between the county, homeowner and contractor on what has to be done. Things were approved on my home by inspector and should not have been approved.	Homeowner	Make sure that when the job was finished that a independent inspector check the home before I would move in.	I kept calling and asking for someone to fix my home. Time after time of phone calls I finally got the company to come and fix what needed to be fixed. Because they used so many different contractors it took months to get them back to finish what they started.
164	Have a contract and get an itemized statement	Home Owner	Yes	Not resolved. Contractor asked me to sign a 80K promissory note as security while he made up a statement, then took me to court and sued me for \$80,000.
165	Two areas need improvement - consumer education - enforcement of current licensing, those who are licensed seemed to have trouble competing against those who don't	homeowner	not much - I found a large amount of information available on contractors/licensing/etc	default to the contract - and current standards of construction
166		Homeowner for 40 years.	Check references more thoroughly and talk with past customers.	Through an attorney.
167	Increase bonded limits to \$100,000 for housing, \$50,000 for remodeling	Homeowner	Since the State does not require increased bonding, I would require private bonding for performance and payment.	

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractors work, describe how the situation was or was not resolved.
168	1st require completion date in all agreements, 2nd revoke contractor license for issues not cured in 60 days	homeowner with 10 years of field experience in new SFR construction	require completion date and liquidating damages / remedies in the contract, not use standard Norsk form	I met with them at the site to fire them and not pay them, they refused, we negotiated their exit & payment
169	I would like to see industries self regulate with professional certification then have the state monitor certification at the job sites.	Homeowner	Make sure they were MBA active member and interview recent customers.	
170	some kind of website with local referrals/reviews of state contractors	homeowner	see their work in advance and speak to their referrals (but can't trust their referrals aren't friends or family, etc)	dissatisfaction took to the form of communication problems and unreturned or calls being returned late. Resolved by discussing - ironically- over the phone.
171		homeowner	Ask for previous references, although this is not convenient for something like a plumbing emergency	Contractor refused to repair damage done by his workers.
172		homeowner	we ONLY hire after references and prior work are checked	roof was finished 2 months late and we had equipment missing, police report filed
173	Require written contract for all work	homeowner	Require written contract for all work	Pending resolution
174	not allow unpaid bills be leined against homeowner	homeowner	make checks payable to the subs and contractor	It was not resolved. I have about \$30,000 of leins against my new house. The contractor has relicenced under a new name.
175	Improve consumer education about their rights and how to choose a contractor	no	nothing	good communication
176	It would be nicer to know the companies that you could trust. The BBB doesn't really do anything, you cant always trust other peoples opinion. But it would be nice if the state considered a certain company good or not based on their work complete.	homeowner	no	
177	We need a homeowners bill of rights and real warranty protection. Not these fake warranties like 2-10.	homeowner and HOA board member	I am not sure I could do much differently in hiring, but in oversight I would be more aggressive.	Contractors performed work but refused to acknowledge or repair all defects.

No.	What changes would you make if it were up to you?	Are you a homeowner, contractor, both? Please explain.	If you were to hire another contractor, what would you do differently?	If you were dissatisfied with a contractor's work, describe how the situation was or was not resolved.
178	<p>I am a technical assistance provider in the affordable housing community. Our 501(c)(3) non-profit organization provides construction supervision and training for homeowner/builders in our program.</p> <p>As a member of the affordable housing community (specifically, self-help), I have concerns regarding unintended impacts upon the self-help homeowner/builders as well as the technical assistance provider, with regard to proposed changes to the current laws.</p>	<p>I am a technical assistance provider in the affordable housing community. Our 501(c)(3) non-profit organization provides construction supervision and training for homeowner/builders in our program.</p>		
179	<p>i think that there needs to be less needless regulation for the sake of regulation.</p>	<p>homeowner</p>	<p>nothing</p>	
180	<p>more regulation of unlicensed workers</p>	<p>I own two homes and own a small flooring business in Thurston County</p>	<p>Personally, nothing</p>	

APPENDIX 4

STATE-SPECIFIC RESPONSES

OBJECTIVE

Appendix 4 describes the structure and impact of general and specialty residential contractor licensing programs in other states. Subordinate goals include:

- ▶ Comparison of processes/procedures utilized by other states' regulatory and licensing programs.
- ▶ Examination of the shortcomings and successes of other states' programs
- ▶ Identification of best regulatory and licensing practices in other states

Although a wealth of information was collected regarding regulatory practices in other states, we found little self-examination of shortcomings and successes. States rarely or never conduct program reviews. We have been forced to make inferences in this regard.

1.0 REGULATORY COMPARISON

Sixteen states were found to have no mechanisms for regulating residential contractors. In some cases, contractors are regulated in varying degrees by the cities or counties where work is done. In other cases regulation is via registration. Electrical, mechanical and plumbing trades are often licensed by their own specialty boards. The “No Regulation” states include:

Colorado	Kansas	New Hampshire	Pennsylvania
Idaho	Kentucky	New York	South Dakota
Illinois	Maine	Ohio	Vermont
Indiana	Missouri	Oklahoma	Wyoming

Twelve states provide for residential contractor regulation but require no examination. Regulation is often used as a source of revenue, in some cases to pay into “construction guarantee” funds.¹ These states include:

Connecticut	Massachusetts	New Jersey	Texas
Delaware	Montana	North Dakota	Washington
Iowa	Nebraska	Rhode Island	Wisconsin

In 22 states and the District of Columbia, residential contractors are regulated and their skills verified through examination. These jurisdictions are:

Alabama	Georgia	Nevada	Virginia
Alaska	Hawaii	New Mexico	West Virginia
Arizona	Louisiana	North Carolina	
Arkansas	Maryland	Oregon	
California	Michigan	South Carolina	
D. C.	Minnesota	Tennessee	
Florida	Mississippi	Utah	

Research was confined to this latter group of states. The states that responded in detail to our research initiatives are indicated on the matrix incorporated in Section 3.3 of the Final Report. This matrix (8 pages) provides a summary of practices in those states found to have residential contractor regulation programs accompanied by examination. Information is presented on the *Cognizant Authority*, existing *Residential Contractor Regulations*, *Associated Fees*, *Insurance/Bonding Requirements*, and *Regulatory Strengths / Problems*. We compare Washington with 22 states and the District of Columbia.²

¹ Connecticut for example

² Source: *Contractor’s State Licensing Information Directory*, 2008 Edition, National Association of State Contractors Licensing Agencies, Phoenix, AZ

2.0 NOTABLE MODELS

MEA asked all 22 states that provided for licensing and examination of residential contractors to provide specifics of their programs. We asked for detailed information to explore the regulatory environment as well as to identify benefits and costs experienced. Interests included:

- ▶ What is the regulation philosophy for residential contractors?
- ▶ What was the driving force behind contractor regulation? When was it initiated?
- ▶ What benefits in consumer protection have been experienced?
- ▶ What are the lessons learned in the regulatory process?
- ▶ Are there new initiatives being considered in your manipulate?
- ▶ What are the costs associated with your state's contractor regulation programs?
- ▶ Are there complaint mechanisms? What enforcement powers exist?
- ▶ Metrics -- what are the number of licensees, specialties?
- ▶ Have any studies been done on the benefits attributable to your state's oversight?

Although not all states responded, we believe that the 13 states that did reply are those reflecting "best practices" in the regulation of residential construction. Those are states that are proud of their program and its accomplishments. We imply that the states responding most fully are those having sound regulatory mechanisms. A wealth of information was collected. As possible, results are recorded *verbatim* in order to avoid coloring the findings.

2.1 ALABAMA

The Alabama Home Builders Licensure Board was established in 1992. There are currently 12,000 licensees. The Board processes 250 complaints per year. A staff of 13 includes six investigators and two attorneys. There are no insurance or bonding requirements. A Recovery Fund provides a \$20,000 maximum benefit per homeowner.

2.2 ARKANSAS

A very complete response was received from Gregory L. Crow, Administrator of the Arkansas Contractors Licensing Board:

First, I would like to give a brief background on the Arkansas Contractors Licensing Board. The Arkansas Contractors Licensing Board was created in 1939 to regulate "general contractors". Shortly thereafter, the statute was modified to do two things, one cover both "general contractors" and "sub" contractors and to remove residential construction from the regulatory process. Residential construction was not again regulated in Arkansas until a Bill was passed in 1999, that went into effect in 2001, requiring a license for residential building contractors. Therefore, Arkansas has a long history of regulating the commercial side of construction, but a relatively short history of regulating the residential side. Additionally, I would note that Arkansas draws the line between "commercial" construction and "residential" construction by the number of units constructed in a project. Any project that has five or more units is considered a commercial project. A project that

has four units or less is residential. Therefore a residential project would include a traditional single-family residence, a duplex, triplex, or quadplex.

In response to your specific questions:

1. What form of regulation, if any, does your state have for residential and specialty contractors?

On the residential side, Arkansas requires a residential contractors license for the “general” or “prime” contractor on a residential project. Subcontractors who are performing work for a licensed residential builder are not required to have a license from the Arkansas Contractors Licensing Board. Please note, that regardless of whether they are required to have a license from the Arkansas Contractors Licensing Board a few of the “trades” have their own licensing agencies which require a license for any work. These trades include electrical, plumbing, and HVAC. Therefore, in a classic construction project, the general or prime contractor would be required to have a license from the Arkansas Contractors Licensing Board. Most of the subcontractors underneath that general contractor, the framer, the drywaller, the roofer, etc. would not be required to have a license from any entity. However, a few of the subcontractors, the electrician, the plumber, and the HVAC contractor would be required to have a license from those appropriate trades licensing boards.

2. Was regulation of residential and specialty contractors brought about in your state by industry request or legislative action?

As to the licensing of residential building contractors, it was very much a request from the industry, which led to regulation being adopted by the legislature. The Arkansas Home Builders Association led the fight for several years to require licensure of homebuilders.

3. What prompted your state to opt to pursue regulation?

There was no one single large event that led to the regulation of the residential construction industry. As noted above, the industry itself wanted regulation and it appeared that the majority of instances of harm to the public were occurring on the residential side of construction, as opposed to the commercial side.

4. Was consumer harm found in industry practices prior to regulation and, if so, do you have information about causal factors for complaints?

The legislative decision to regulate residential contraction was made shortly before I came to the Arkansas Contractors Licensing Board. I am not aware of any formal studies but I am aware that the general consensus was that there was the need to protect consumers from unscrupulous activity. I am not aware of any statistics for complaints against contractors prior to the licensing of residential contractors, as there was no entity to receive or gather those complaints.

5. Has your state seen a change in complaints since regulation?

Again, as I am not aware of any entity that was gathering complaints prior to regulation being enacted, it is hard to compare a “before and after” picture. I can state that the number of the complaints received by the Board since we adopted residential regulation has dramatically increased.

This would be because the public is slowly becoming aware of the fact that residential contractors are required to have a license and are starting to make more and more complaints to their regulatory authority. I strongly believe that through the complaints process, we have been able to “weed out” some of the worst offenders and continue to work on that process on a daily basis.

6. What costs are imposed on the industry in licensing, renewals, or other?

The licensing fees in Arkansas are relatively low. A new application requires a \$100 fee. That \$100 fee is also sufficient for the first year of licensure. Renewal fees are \$50, if renewed on time, \$100 if renewed late. The other costs incurred by contractors to obtain a residential license are as follows: a) Each residential contractor must take and pass a business and law examination. The cost of the business and law exam is \$75, the study manual which is recommended, but not required, cost between \$35 and \$55, depending upon from whom the book was purchased. b) Residential contractors are required to provide the Board with a financial statement upon initial application and upon each renewal. However, this financial statement can be prepared by the contractor himself. If the contractor chooses to seek professional help to prepare the financial statement obviously there is a cost involved. However, if the contractor chooses to prepare the financial statement themselves there is no out of pocket expense to the contractor for that process. c) By legislation adopted in 2007, all residential contractors are now required to carry workers compensation insurance. Many residential contractors were already required, under general workers compensation law, to have workers compensation insurance. However, certainly some contractors who were not previously required to have workers compensation coverage, under general workers compensation law, are now being required to have workers compensation. The cost of that would vary by contractor obviously.

7. Are your fees determined by the number of licensees?

No.

8. How many residential and specialty contractors are operating in your state?

The Arkansas Contractors Licensing Board license approximately 10,000 commercial and residential contractors. Of those contractors approximately 4,500 have a residential license. There are obviously a significant number of “specialty contractors” who do not have contractors license as they are not required to as long as they are performing work for a licensed residential contractor. I do not have access to the data as to how many of those contractors would exist.

9. How many staff are required to administer the regulation and what are their functions?

The Arkansas Contractors Licensing Board has a total of 17 employees. If we were simply regulation residential construction we would not need 17 employees. In addition, there are numerous of those employees who are on the enforcement side (taking action against unlicensed contractors) as opposed to the licensure side. Of the 17 employees, Arkansas has 1 administrator who is in charge of the entire agency. 1 full time attorney, 6 field investigators 5 of which are primarily focused on uncovering unlicensed activity, one of which who deals with consumer complaints against contractor, 1 paralegal who deals exclusively on the enforcement side, and 8 office staff who are involved, to various degrees, with the licensure process whether new or renewal.

Of those 8, 1 is primarily a financial investigator who looks at the finances of each contractor who applies for a new or renewal license each year (Arkansas requires a financial statement to be submitted with each contractor each year for either a new or renewal application, there are standards that must be met in order for the contractor to obtain a license). One who primarily deals with keeping up with which contractors have a \$10,000 bond on file (this is a requirement for a commercial license it is not a requirement for a residential license), one who primarily deals with consumer complaints and keeping up with which contractors have proof of workers compensation coverage on file, one who is a receptionist/switchboard operator but who also assist in the licensure process, two who primarily do "business" functions such as human resources, maintain the computer system, accounts payable, etc. however these two employees also assist, as time allows, with the licensure process, one who primarily work new applications, and one who primarily works renewal applications.

10. If used in your state, how did you determine the education, experience, testing, and ongoing education requirements for entry-level admission for the contractor regulatory system?

Several of these decisions were made long in the past and I am not privy to how those decisions were made. However, Arkansas has an experience requirement, a testing requirement, and a requirement of maintaining workers compensation insurance coverage. There is no educational requirement at this time. For residential construction, the experience requirement is 4 years of appropriate experience. That number was chosen due to the fact that most contractors who fail in the construction business fail within the first 3 to 4 years of business. The financial requirement for residential is that the contractor have a net worth above zero. For a commercial license, general contractors are generally required to have a \$50,000 net worth. When residential licensing began in 2001, it was felt that requiring such a substantial net worth for residential contractors would place too much of a burden on contractors. Therefore the financial requirement of having a positive net worth was put in place. It is anticipated that net worth requirement will be increased at some point in the future. A minimum net worth requirement was seen as a critical issue to protect consumers. The testing requirement is to take an Arkansas Business and Law exam. The exam is not a "trade" exam but is on business skills and the legal issues that arise for contractors. While some states have chosen to go with a "trade" or "skills" exam, and Arkansas may chose to adopt such an exam in the future, at the present time the Board feels that the experience requirement is sufficient to make sure that the contractor knows how to perform the functions in question and that a business and law exam will make sure the contractor understands the business environment. It has been the Board's experience that most contractors who fail do not fail because they do not know how to properly build, they fail due to bad business practices.

11. Has regulation in your state made a measurable improvement in the services provided by residential and specialty contractors?

I am not aware of any studies that have been performed to show a pre-licensure situation verses a post-licensure situation. However, my perception is that licensure has made a significant improvement in the level of services provided to the public.

12. Other comments, concerns, or advice that you may offer.

None.

2.3 CALIFORNIA

Information was received in an earlier format from California's Contractors State License Board is summarized:

1. Who Does the Board Regulate?

The CSLB is responsible for the licensing and regulation of contractors performing work in California. All contractors performing work in the amount of \$500 or more are required to be licensed. No distinction is made between residential and commercial contractors, and license requirements are the same for all applicants. Licensees who perform asbestos abatement or hazardous substance removal must hold the appropriate certification. Home improvement salespersons who solicit work on behalf of a licensed contractor must register with the Board.

There are two general license classifications, general engineering and general building, and 41 specialty license classifications. There are approximately 311,400 licensees holding nearly 383,600 classifications (multiple classifications can be listed on a license). Approximately 1,530 licensees hold the Asbestos Certification and 2,750 hold the Hazardous Substance Removal Certification. There are approximately 7,000 active Home Improvement Salespersons registered with the Board.

2. What is the size and responsibility of the Board?

A fifteen member board directs administrative policy for the agency's operations. The Board includes five contractor members (two general building contractors, one general engineering contractor, and two specialty contractors) and ten non-contractor members (one member from a labor organization representing the building trades, one member being an active local building official, and eight public members, one being from a statewide senior citizen organization). Board member appointments are made by the Governor and the Legislature. The fifteen-member Board appoints the Registrar of Contractors who oversees approximately 404 employees in ten (10) offices throughout the state.

The CSLB is divided into three main divisions: enforcement, licensing, and administration.

The Enforcement Division, which includes all field offices, is responsible for intake, mediation, and investigation of complaints against both licensed and unlicensed contractors. The Enforcement Division includes a Statewide Investigative Fraud Team (SWIFT) whose primary purpose is to combat unlicensed contractor activity.

Enforcement Division statistics for fiscal year 2006/07:

▶	Complaints received	21,773
▶	Complaints closed	23,282
▶	Complaints mediated	3,557
▶	Complaints closed to arbitration	811
	• Mandatory (612)	
	• Voluntary (199)	

▶	Complaints closed to citation	2,536
	• Licensee (680)	
	• Non-licensee (1,856)	
▶	Complaints closed to accusation	464
▶	Complaints closed to criminal referral	1,967
	• Licensee (109)	
	• Non-licensee (1,858)	
▶	Disciplinary license suspensions	345
▶	Licenses revoked	488

The Licensing Division is responsible for review and issuance of license applications and for processing renewals, bonds, and other documents required for maintenance of a license. The division also includes the Board's main call center and public counter.

Licensing Division statistics for fiscal year 2006/07:

▶	Original license applications received	32,420
▶	Licenses issued	22,266
▶	License renewals processed	105,774
▶	Judgments/Outstanding Liabilities	
	• Processed	3,597
	• Savings to public	\$29,765,382
▶	Bond Payment of Claims	
	• Processed	1,291
	• Savings to public	\$2,749,510

The Testing and Administrative Support Unit is responsible for the development, validation, and administration of all licensing examinations. With assistance from industry representatives, the Board's test validation staff conducts occupational analyses which are used as the basis for examination development. Currently, there are 42 trade examinations, 2 certification examinations, and a business/law examination administered by the Board. The examinations are reviewed and updated on a regular basis with the assistance of industry representatives. They are computerized and results are provided immediately upon completion of an examination. Examination candidates who fail to pass are given a breakdown of their results by content area to assist them in preparing to retake the examination. The Board is in the process of implementing a new Windows based exam administration system to replace the DOS based system that has been in use since 1990.

▶	Number of exams given during 2006/07	88,760
▶	Number of exam sites	8 statewide (Exams are given daily at most sites.)

The Administrative Division provides support and direction enabling staff to carry out the duties and responsibilities of the Board. It includes the mailroom, cashiering, personnel, file room, and the Board's Office of Information Services which provides technical support and services for the Board's computer systems.

3. What are the requirements for licensure?

To qualify for a license an individual must have at least four years journey level experience in the trade applied for and pass an exam consisting of two parts, business/law and trade. (There are some provisions for waiver of the exam.) Applicants for a license must have no construction related judgments or outstanding liabilities; indicate at least \$2,500 operating capital; post a contractor's bond in the amount of \$12,500; show proof of workers' compensation coverage or submit an exemption statement; complete an asbestos open-book exam; and, complete fingerprint requirements. (Effective 1/01/07 all contractors holding the Roofing (C-39) license classification must provide evidence of workers' compensation coverage whether or not they have employees.) If the qualifier on a license is designated as a responsible managing employee (RME), or as a responsible managing officer (RMO) with less than 10 percent ownership, a bond of qualifying individual in the amount of \$12,500 must be posted in addition to the contractor's bond. There are no education requirements for obtaining a contractor's license nor are there any continuing education requirements for maintaining or renewing a contractor's license in California.

4. What are recent legislative and regulatory changes?

AB 881 - Effective January 1, 2007, all contractors holding an active Roofing (C-39) classification were required to have a current and valid certificate of workers' compensation insurance, or certification of self-insurance on file with the CSLB whether or not the contractor employs anyone. Any licensee who failed to comply with the requirement as of January 1, 2007 resulted in suspension of the license. For contractors with multiple license classifications, failure to comply resulted in the removal of the C-39 classification from the license.

AB 2455 - Regarding claims against cash deposits filed by contractors in lieu of a license bond, effective January 1, 2007 the small claims court jurisdiction over such actions brought by a consumer increased from \$4,000 to \$7,500.

AB 2456 - Prohibits a qualifying person and personnel of record of a licensee from serving in any capacity that is subject to licensure by the CSLB until they resolve outstanding final liabilities assessed by the Employment Development Department, Department of Industrial Relations or the State Franchise Tax Board. Authorizes the suspension of the associated licenses until the debt is satisfied or the culpable member is removed from the license.

AB 2658 - Under prior law, a contractor was not required to satisfy any construction related obligation or debt that was "adjudicated" in a bankruptcy proceeding. This bill rephrased the law, replacing the word "adjudicated" with the word "discharged." The amendments require licensees to satisfy an obligation or debt to the extent it has not been discharged under federal law, and holds the licensee accountable for those obligations in order to be reinstated pursuant to a suspension or revocation of the license.

AB 2897 - Summarized points of the bill:

- ▶ If a person named on a revoked license had knowledge of or participated in the acts or omissions that were cause for revocation, he/she is precluded from being employed in any capacity by another licensee except as a bona fide non-supervising employee.

- ▶ Whether or not he/she had knowledge of the specified acts or omissions, a person who qualifies a license is precluded from being employed in any capacity by another licensee except as bona fide non-supervising employee if he/she qualified a license during the period in which any acts or omissions were committed that resulted in the revocation of the license.
- ▶ A member of the personnel of record who has been named on a license at the time of revocation must provide a prospective employer with a written notice regarding the license revocation.
- ▶ A licensee is precluded from knowingly hiring an individual who has been named on a license at the time of revocation in any capacity other than a bona fide non-supervising employee.
- ▶ A violation of any provision of this law is a misdemeanor punishable by a fine of not less than four thousand five hundred dollars (\$4,500), by imprisonment in a county jail for not less than 30 days or more than one year, or by both the fine and imprisonment.

Board Rule 829 - Under this Board Rule, applicants were granted up to five additional points ("experience points") on the trade exam if they provided evidence of trade experience beyond a specified number of years. Board Rule 829 has been repealed and experience points are no longer granted to applicants.

Board Rule 884 - Within the past few years, legislation was enacted that increased the amount the maximum amount of civil penalties for specified violations from \$2000 to \$5000. The penalty schedule in Board Rule 884 has been revised to reflect this increase.

5. What is the current legislation?

Major Legislation Sponsored by the Board:

AB 243 - Amends the Contractors' State License Law to allow a disciplinary action to be filed against a licensee for specified convictions within 2 years after discovery of the conviction. It also authorizes a disciplinary action regarding an alleged breach of a written warranty by a licensee to be filed within 18 months from the expiration of the warranty.

AB 244 - Clarifies that an indictment for an improper Home Improvement or Service and Repair contract may be brought within a specified time frame regardless of whether it is oral or written. Current law contains a loophole relative to such oral contracts.

AB 455 - This bill would require the concurrence of a majority of the duly sworn members of the Board in order to constitute an act or decision of the board.

SB 237 - The intent of this bill is to establish a process by which unenforceable mechanic's liens that cloud the title to an owner's property would be removed from the records of the county recorder's office. This is a two-year bill.

SB 354 - Would authorize the CSLB to order a licensee to pay a specified sum to an injured party if the Registrar finds that the financial injury is the result of a licensee aiding and abetting an unlicensed person in evading the Contractors License Law.

SB 797 - Would clarify that the enhanced penalties prescribed for second and subsequent violations by non-licensees apply to submitting a bid for contracting work, as well as for actual performance. The bill would also subject the culpable individuals on a revoked license to the enhanced penalties if they act as a contractor without a license. The enhanced penalties include mandatory jail time.

2.4 HAWAII

Our questions were insightfully responded to by Ms. Verna Oda, Executive Officer, Professional and Vocational Licensing Division (808.576.2700)

1. What is the regulation philosophy for residential contractors?

The main purpose of contractor regulation in Hawaii is for the protection and safety of the public. Our philosophy is to license contractors so that the public may be assured that the licensee has sufficient expertise and knowledge (is minimally qualified) to act as a contractor.

2. What was the driving force behind contractor regulation? When was it initiated?

Contractors have been licensed in Hawaii since 1957. I don't know what the driving force was at that time, but its purpose was stated as the protection of the public against fraudulent, unskilled and unqualified individuals.

3. What benefits in consumer protection have been experienced?

Consumers have a means of verifying whether a contractor has met our license requirements, checking a contractor's complaints history, and discovering whether any disciplinary sanctions were imposed on a contractor. Contractors may also treat consumers more fairly knowing that they may be subject to investigation and disciplinary sanctions.

4. What are the lessons learned in the regulatory process?

The key to regulation is enforcement. If the license requirements cannot be enforced, then regulation is meaningless. Also, there must be a balance between protecting the public and not imposing burdensome requirements on the industry.

5. Are there new initiatives being considered in Hawaii?

We recently enacted statutes which allow for a simplified licensure process for out-of-state contractors during a state of emergency or disaster. Current topics of discussion include the license classification required for photovoltaic work, and broadening the scope of the general engineering and general building classifications (which had been narrowed by a Hawaii Supreme Court interpretation of our statute in 2002).

6. What are the costs associated with Hawaii's contractor licensing?

The Contractors License Board is part of an umbrella agency, the Department of Commerce and Consumer Affairs. The Board comes under the Professional and Vocational Licensing Division, one of twelve divisions within the Department. The Professional and Vocational Licensing Division licenses over 40 professions; therefore, costs specific to contractor licensing are not available. Costs involved include personnel and resources required to administer the licensing program and handle complaints.

7. Complaint mechanisms? What enforcement powers exist? What is the interface to the Regulated Industries Complaints Office?

Complaints are investigated by the Regulated Industries Complaints Office, which is a separate division within the Department. It handles the complaints process for all the licensed professions. They may close a case for lack of evidence or issue a warning letter, or they may settle the complaint by having the licensee agree to paying a fine, restitution, or other action. Settlements must be approved by the Board. If the complaint cannot be resolved in this manner, the case may be heard by a hearings officer, who will issue a recommended order. The Board may adopt the recommended order or issue its own determination. Outcomes include closure with no action, the imposition of an administrative fine and/or restitution, and license suspension or revocation.

8. Metrics -- number of licensees, specialties?

We have approximately 12,000 licensees in over 90 license classifications and subclassifications. I do not recommend having so many classifications, as it becomes difficult to administer and may result in turf battles.

9. Have any studies been done on the benefits attributable to residential contractor oversight?

I do not know of any such study.

2.5 MICHIGAN

The Bureau of Commercial Services – Builders Unit – licenses 80,000 builders of residential properties. Contractors building offices, malls and similar commercial structures are not licensed. Legislation creating this Bureau dates to 1980 although there were similar functions prior. The Unit operates with a staff of 10 people. This does not include the Enforcement Division and Recovery Fund administration.³ Complaints are funneled to the Enforcement Division.

Recent (2006) legislation called for 60 hours of training as a prerequisite to licensing. It also mandated that the “Qualifying Officers” of businesses become licensed. Prior to that time, only businesses themselves were licensed. The intent of this legislation was to create better qualified builders.

³ Telecon with Linda Clewley, Assistant Administrator

2.6 MINNESOTA

We received a very insightful response from Mr. Charlie Durenberger, Manager, Construction Codes And Licensing Division (CCLD) Enforcement Services, Minnesota Dept. of Labor and Industry:

1. What is the regulation philosophy for residential contractors?

The Minnesota Department of Labor and Industry does not have a formal "philosophy" regarding the regulation of residential building contractors. We train our investigators to put a priority on educating contractors on the proper and appropriate methods of conducting business to help them operate more effectively and efficiently while maintaining a healthy level of consumer protection. In other words, we are not here simply to punish contractors who step out of line.

2. What was the driving force behind contractor regulation? When was it initiated?

The state licensing program for residential building contractors was created by the legislature in 1991 in response to an initiative that was brought forward by the Builders Association of Minnesota and other interested parties including local building officials. Part of the impetus for state licensing was a consolidation of regulatory authority. Prior to state licensing, cities and counties required their own licenses, so many contractors, particularly those operating the Minneapolis/St. Paul area found themselves having to maintain many different licenses. Requiring a single state license simplifies business for these contractors. The need for a more structured form of consumer protection was also a part of the initiative.

3. What benefits in consumer protection have been experienced?

One of the main benefits to consumers has been the Contractor's Recovery Fund, which was created in 1994. The Fund has been paying out over \$1,000,000 annually to consumers who have suffered a financial loss as a result of their licensed contractor's failure of performance, fraudulent, deceptive, or dishonest practices, or conversion of funds. We have also provided benefit to countless consumers by helping them achieve resolution to disputes with contractors through our complaint investigation process. We would also hope that consumers benefit from an increased level of knowledge and professionalism in the industry as a result of contractors having to pass an exam and take continuing education courses each year to maintain licensure.

Briefly, a consumer cannot make application to the Recovery Fund until they have obtained a final civil judgment against their contractor. Once they have done that and made every effort to achieve satisfaction of the judgment from the contractor, they can apply to the Fund. Fund claims are handled through two processes: an accelerated process (for claims under the Conciliation Court threshold of \$7,500) and a standard process (claims over \$7,500). The Fund currently is limited to paying out no more than \$150,000 on behalf of any single licensee. No claimant may obtain more than \$75,000 from the Fund. In the event the total claims against a licensee exceed \$150,000, all claims are paid on a prorated basis. Up to \$50,000 of the \$150,000 limit can be paid through the accelerated process. Through that process, the licensee is generally notified of a claim and given 15 days to either satisfy it or appeal it. If they satisfy it, the case is closed. If they appeal it, the case is suspended pending the final outcome of the litigation. If the licensee does neither or fails to

respond to us, the Fund begins the process of paying that portion of the claimant's judgment that represents the consumer's actual and direct out-of-pocket loss. In the standard process, all claims are held until the end of the fiscal year. In the meantime, the Fund's administrator evaluates the claims to determine whether the Fund and the claimant can agree on an amount that reflects the claimant's actual and direct out-of-pocket loss. If agreement is reached, a stipulation agreement is executed. When the Department and a claimant cannot agree on an amount, the matter is decided by an administrative law judge at the Office of Administrative Hearings. Once the claim amount is determined, the claimant assigns their interest in the judgment (to the extent of the stipulated agreement) to the Department, and the claim is paid in the fall (after a review of all claims received in the fiscal year to ensure that claims are properly prorated in the event there are multiple claims against a single licensee which total more than \$150,000. The Department then pursues the licensee for collection of the amount paid to the claimant and if the licensee's license is still active (rarely the case), the payment from the Recovery Fund provides cause for the suspension or revocation of the license (the license is usually suspended or revoked by this time anyway).

4. What are the lessons learned in the regulatory process?

No response.

5. Are there new initiatives being considered in Minnesota?

Our Department is not considering serious new initiatives in licensing at this time, though we have had informal discussions with the Builders Association of Minnesota regarding a potential revamping of the licensing process and requirements. Specific proposals do not exist at this time.

6. What are the costs associated with Minnesota's contractor licensing?

If what you mean by "costs associated with Minnesota's contractor licensing" you mean the costs to the licensee, there is an exam fee of \$102, an annual license fee of \$100, and an Recovery Fund fee that is \$160 for licensees whose gross annual receipts are less than \$1,000,000, \$210 for licensees who gross between \$1,000,000 and \$5,000,000, and \$260 for those who gross over \$5,000,000 annually. If what you mean is what is the Department's budget for this program, I would need more time to put those numbers together as we roll the costs of license administration and enforcement together with the costs of running the regulatory programs for all of the construction trades we regulate. We do not break residential building contractor costs out from those of the other industries.

7. Complaint mechanisms? What enforcement powers exist? What is the interface to the Regulated Offices Complaints Board?

A description of the complaint process was provide as an exhibit. Also provided was a document that highlights the provisions of the four enforcement tools that exist: Notice of Violation, Stop Order, Administrative Order, and Licensing Order. These are all new enforcement tools that were enacted by the 2007 legislature to be used for conduct that occurred after December 1, 2007.

Exhibits Provided by the Minnesota Department of Labor and Industry:

BUILDING CONTRACTOR COMPLAINT FILING PROCESS

What authority does the Department have?

The Department has the authority to investigate complaints against contractors and take administrative enforcement action against contractors who are determined to have engaged in violations of the laws and rules over which the Department has authority. The Department does not have authority to make legally binding determinations on either party in cases of factual or contractual disputes, and cannot order contractors to make corrections, cancel contracts, or pay specific damages. These remedies are to be pursued through private, civil action (litigation, arbitration, mediation, etc.). Consumers who are successful in litigation against a licensed contractor may be eligible for compensation for their direct out-of-pocket losses through the Contractor Recovery Fund, which the Department administers as the consumer protection component of its contractor licensing program.

The Department cannot take action against a contractor based on workmanship complaints unless the contractor refuses to correct a violation of the State Building Code that has been documented by a certified building official or other municipal code enforcement official.

Who can I contact with questions about a contractor, remodeler, or roofer?

To get information on the complaint filing process, check a contractor's enforcement record, or ask general questions regarding the licensing and regulation of residential building contractors:

Construction Codes and Licensing Division
Tel: (651) 284-5069
Web site: www.doli.state.mn.us
E-mail: DLI.contractor@state.mn.us

Who can file a complaint?

- ▶ Consumers
- ▶ Building Officials/Inspectors
- ▶ Licensees
- ▶ Industry Representatives
- ▶ Attorneys
- ▶ Law Enforcement Agencies
- ▶ Any person who has a complaint against someone regulated by CCLD

How do I file a complaint?

- ▶ Complaints must be filed in writing.
- ▶ A downloadable complaint form can be found on our Web site at: www.doli.state.mn.us/pdf/rbc_21_bldg_cont_complaint.pdf

- ▶ Complaint must clearly identify the problem and the desired outcome of the complaint (what do you want the contractor to do?).
- ▶ Complaining party must attach copies of contracts, canceled checks or any pertinent documents or evidence to support the complaint.

Where do I file the written complaint?

Minnesota Department of Labor and Industry
CCLD - Enforcement Services Unit
443 Lafayette Road N.
St. Paul, Minnesota 55155

What violations can result in administrative disciplinary action against a licensee or unlicensed person?

The Department is authorized to take disciplinary action if the licensee, unlicensed contractor, or license applicant has:

- ▶ filed an application for a license which is false or misleading.
- ▶ engaged in fraudulent, deceptive or dishonest practice.
- ▶ is permanently or temporarily enjoined by the Court from engaging in or continuing in any aspect of their business.
- ▶ failed to reasonably supervise employees, agents, subcontractors, or salespersons, or performed negligently or in breach of contract so as to cause injury or harm to the public.
- ▶ failed to comply with any provision of the licensing law.
- ▶ been shown to be incompetent, untrustworthy, or financially irresponsible.
- ▶ been convicted of a violation of the State Building Code, or, if the work was performed in a non-code area, refused to correct a violation of the state building code as certified by a structural engineer licensed by the State of Minnesota.
- ▶ misused or converted client funds or failed to use the proceeds of any payment for the payment of labor, skill, material, and machinery contributed to the construction or improvement.
- ▶ forged lien waivers or has failed to furnish valid lien waivers to the person making payment.
- ▶ engaged in conduct which was the basis for a recovery fund payment and the payment has not been reimbursed.
- ▶ engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit.
- ▶ has had a judgment entered against them for failure to make payments to employees, subcontractors, or material suppliers, and all appeals of the judgment have been exhausted or the period for appeal has expired.
- ▶ if unlicensed, obtaining a building permit by the fraudulent use of a fictitious license number or the license number of another, or, if licensed, has knowingly allowed an unlicensed person to use the licensee's license number for the purpose of fraudulently obtaining a building permit.

What type of action can the Department take against a contractor?

- ▶ Deny a license applicant
- ▶ Issue Administrative Orders (to unlicensed contractors) requiring them to stop acting as a contractor until a license is obtained
- ▶ Censure a licensee
- ▶ Suspend a license
- ▶ Revoke a license
- ▶ Impose fines or penalties (up to \$10,000 per violation)

What is the Department unable to do regarding contractor complaints?

The Department cannot:

- ▶ Order a contractor to perform corrective work
- ▶ Order a contractor to cancel a contract or pay damages
- ▶ Impose settlements of contractual disputes

What happens once a complaint is filed?

- ▶ Investigative file is opened and assigned to an investigator.
- ▶ Complaint is logged into computer system and maintained indefinitely.
- ▶ Investigator receives and reviews file.
- ▶ If investigator determines that the complaint is outside the Department's authority, parties receive notification of this determination.
- ▶ If the complaint is deemed to be within the Department's investigative authority, the contractor is sent copy of complaint and must provide written response to investigator (usually within 15 days).
- ▶ Response from licensee is reviewed and investigator determines if additional information is necessary. Response of licensee may be sent to complaining party for comment and review.
- ▶ Investigator gathers available information from sources
- ▶ Once all available facts are gathered, investigator makes a determination if there is sufficient evidence of a violation of the law.
- ▶ If insufficient evidence is available to prove a violation, the file is closed. The complaining party and licensee are notified in writing of the conclusion of the investigation.
- ▶ If a violation of law has occurred, the investigator prepares an investigative memorandum detailing the investigation and recommends the appropriate administrative disciplinary action.
- ▶ If action is taken, the investigator notifies the complaining party, in writing, of the action taken, once the action itself becomes a matter of public record (after all appeals have run or been exhausted).

What type of authority does the Department have to obtain information during an investigation?

The Department is authorized under Minn. Stat. §326B.082 to obtain information through several methods:

- ▶ Conduct investigations within and outside of Minnesota.
- ▶ Request written statements, sworn or unsworn.
- ▶ Examine records: the Department has free access to all types of records and files of licensed or unlicensed persons and entities.
- ▶ Issue Orders to Appear or Orders for Report of Sales or transactions.
- ▶ Compel production of evidence by issuing subpoenas or requiring sworn statements.

How can a licensee resolve a disciplinary action recommended by the Department?

If the Department recommends a disciplinary action, the licensee can:

A. Enter into a Consent Order: A written agreement voluntarily entered into by the licensee and the Department, in which the licensee agrees to the terms of the action; or

B. Request a Hearing: If the Department issues a Licensing Order or an Administrative Order, the subject of the Order may request a hearing. If a hearing is requested, the Department's file is forwarded to the Attorney General's Office and a Notice of and Order for Hearing is issued and a hearing is scheduled. At the Hearing the licensee has the right to be represented by legal counsel and the Department and the licensee present their case to an Administrative Law Judge (ALJ).

After the Hearing, (usually within 30 days) the ALJ issues a report indicating whether or not the Department met its burden of proof. The licensee is notified of the ALJ's report and has 10 days to file exceptions. The Commissioner has the final decision making authority regarding appropriate sanctions.

Licensee has right to appeal final decision to the Court of Appeals.

ENFORCEMENT TOOLS EFFECTIVE DEC. 1, 2007

Notice of Violation

- ▶ May be issued to anyone who violates the applicable law
- ▶ Lowest form of enforcement
- ▶ For violations that need to be corrected but don't require a penalty
- ▶ Must state summary of facts and law violated
- ▶ May require corrections
- ▶ May be served on violator or posted at site of violation
- ▶ If thought to be in error, violator may request reconsideration
 - Written notice within 10 days

- Commissioner must respond within 15 days of receiving request
- Commissioner's response cannot be challenged and is final

Stop Order

- ▶ Requires subject to cease and desist from violative conduct
- ▶ Cannot include civil penalty
- ▶ If issued relative to condition on real property, may be served on property owner
- ▶ Must be served on person in violation or about to commit violation
- ▶ May be posted at location of violation or imminent violation
- ▶ Must describe act, conduct, practice, or condition, and applicable law
- ▶ Must provide notice of right to hearing
- ▶ Hearing request must be made within 30 days of issuance
- ▶ Hearing must be held within 10 days of Dept.'s receipt
- ▶ ALJ must issue report within 15 days of hearing
- ▶ Exceptions must be filed within 5 days
- ▶ Commissioner must issue Order within 15 days of ALJ report
- ▶ Time frames may be extended by mutual consent
- ▶ Violation of Stop Order constitutes contempt of court

Administrative Order

- ▶ May be issued to anyone who violates applicable law
- ▶ Only Order that can fine unlicensed person
- ▶ Can penalize and require correction
- ▶ Some/all of penalty may be forgiven if corrections made
- ▶ Must be served on violator
- ▶ May request expedited hearing within 30 days of issuance
- ▶ Hearing must be held within 45 days of request
- ▶ Respondent must receive 15 days notice of hearing
- ▶ Argument must be submitted within 15 days of hearing
- ▶ ALJ must issue report with recommended Order within 30 days of record close
- ▶ Exceptions be submitted to Commissioner within 5 days
- ▶ Final Order may be appealed to Court of Appeals
- ▶ If no hearing is requested within 30 days, Order becomes final and penalty is due and owing

Licensing Order

- ▶ Only issued against licensees and applicants
- ▶ Does not include corrective action
- ▶ May include cease and desist language
- ▶ Resp. must request hearing within 30 days of service of Order
- ▶ Hearing conducted pursuant to Chapter 14
- ▶ If no hearing is requested within 30 days, Order becomes final and penalty is due and owing
- ▶ Summary suspension allowed "when the safety of life or property is threatened, or to prevent the commission of fraudulent, deceptive, untrustworthy, or dishonest acts

- ▶ against the public"
- ▶ Hearing must be held within 10 days of request

8. Metrics -- number of licensees, specialties?

ACTIVE LICENSES (as of 1/14/08)

Residential Building Contractor	14,136
Residential Remodeler	328
Residential Roofer	113
Manufactured Home Installer	109
Certificate of Exemption	939

Contractors are licensed as either a residential building contractor or remodeler. A state license is required for contractors who offer work in more than one skill area; we do not require specialty contractors to be licensed at the state level (except for roofers). The only difference between a building contractor and a remodeler is that a remodeler can only work on existing homes while a building contractor can perform new construction as well as work on existing homes. As you can see, the vast majority of our licensees get licensed as building contractors rather than remodelers or roofers.

9. Have any studies been done on the benefits attributable to residential contractor oversight?

I am not aware of any studies that have been done to gauge the benefits of our licensing program. The consensus seems to be that the program has been a success and that consumers and the industry have both benefitted from it and will continue to do so.

2.7 MISSISSIPPI

There are 5,500 builders licensed by the Mississippi State Board of Contractors. A major failing is the weakness of regulation. Complaint processing is left up to cities and counties. An estimated 60 - 70 complaints are known to be in process. Some counties do not require inspections.⁴

Katrina's aftermath showed up inadequacy of laws. The Board has the power to revoke licenses or levy up to a \$5,000 fine. It has a staff of 15 including three investigators. It works with the State AG to pursue fraud cases.

1. What is the regulation philosophy for residential contractors?

To ensure competent builders.

4

Telecon with Charles Sharman, Branch Director, State Board

2. What was the driving force behind contractor regulation? When was it initiated?

Purpose to protect the general welfare of residents of the state against fraud and inexperience.

3. What benefits in consumer protection have been experienced?

Builders are held accountable for their work, or risk losing their license.

4. What are the lessons learned in the regulatory process?

Keep good records and make information available.

5. Are there new initiatives being considered in Mississippi?

Make residents more aware of builders and laws before they hire someone.

6. What are the costs associated with Mississippi's contractor licensing?

A \$50 residential application fee, \$100 residential annual renewal fee, \$200 commercial application fee, \$200 commercial annual renewal fee, \$50 name change fee, \$50 additional class fee, \$25 copy of license fee.

7. Complaint mechanisms? What enforcement powers exist?

We have complaint forms available on our website or we can mail them- we must have a completed complaint form before we investigate. We have the power to public or private reprimand and/or suspension of license and/or revocation of license and/or civil penalties from \$100 to \$5000. Our law also provides criminal charges, we are not set up to enforce them but our attorney general can pursue them if they so choose.

8. Metrics -- number of licensees, specialties?

We currently have about 5500 residential licensees and 6200 commercial licensees, we have residential roofing, remodeling and building, we have 6 major commercial classifications with hundreds of sub classifications under those six.

9. Have any studies been done on the benefits attributable to residential contractor oversight?

Not to my knowledge

2.8 NEVADA

The Nevada State Contractors Board licenses 17,491 commercial and residential contractors. It was created by the Nevada Legislature in 1941. The Board employs about 75 in its licensing, enforcement and administrative functions. Contractor examination is conducted by an independent testing organization.

A Residential Recovery Fund is funded by an assessment on residential contractors. It covers up to \$35,000 per case with a maximum of \$400,000 per contractor. The Fund represents a “last resort” after a contractor’s bond has been attached. The Fund is said to be very successful in making homeowners whole. Industry has been supportive and it has resulted in less civil litigation. The fund is administered by a staff of two plus a number of field investigators. The Fund is reported to require careful administration to prevent abuses via inflated claims.⁵

There are specific conditions. Fund eligibility is limited to owners of single-family residences who contract with licensed residential contractors for the performance of any construction, remodeling, repair or improvement. The owner must occupy the residence. A claimant must be able to show the Board that he/she has suffered a reimbursable loss which resulted from the conduct of a licensed contractor. A claimant may also request payment when they have sued the contractor in civil court and obtained a judgement which has not been paid by the contractor and remains unsatisfied.

2.9 NORTH CAROLINA

The Licensing Board for General Contractors is restricted to that function. It has existed since 1925. Licensing of electricians, plumbers and other specialties is handled by other boards. There are 30,000 licensed contractors, of which 9,250 are “residential”.⁶

North Carolina does not require insurance or bonding to become licensed as a contractor, although there may be local requirements. There are 31 classifications of contractor licenses. This is not believed to create an administrative burden or a burden on the contracting community because the classifications collapse into only three prime groups. Testing allows applicants to qualify for one of these prime groups and its associated sub-classes.

The Homeowners Recovery Fund (HRF) is a “last resort” after legal remedies have been exhausted. There are specific restrictions on claims, including that a licensed contractor must have been used. It is intended to partially reimburse claims. About 35 cases are heard by the Board each year; the Board establishes the amount of award. The cap is 10% of money in the HRF account. The Fund has not proven difficult to administer; less than one full time position is assigned. We are informed that it would be desirable to get reimbursement of the Fund by contractors as a condition of renewal.

All complaints by consumers are directed to the Board. Every complaint against a licensed contractor is investigated. Complaints against unlicensed contractors prompt remedial action. The

⁵ Source Dan Hammack, State Contractors Board

⁶ Telecon with Debbie Price, Administrative Assistant

Board has 19 employees, including six field investigators. Formal public education initiatives are not practiced. All licensed contractor are listed on the web site.⁷

2.10 OREGON

Residential contractor regulation in the State of Oregon is particularly relevant due to its geographic and demographic similarities and the fact that many contractors provide services in both states. Oregon residential contractor licenses require a 16 hour class and an examination. Licensing procedures are significantly modified as of July 1, 2008.

Information was received from Oregon's Construction Contractor Board (CCB) in response to the research protocol that was provided to it. The following response was prepared at the direction of the CCB Director⁸:

1. What is the regulation philosophy for residential contractors?

In 2002, CCB adopted the following mission statement:

"The Construction Contractors Board protects the public's interest relating to improvements to real property. The Board regulates construction contractors and promotes a competitive business environment through education, contractor licensing, dispute resolution and law enforcement."

CCB works to protect Oregon consumers' interests in contract performance and quality work in construction. CCB attempts to assure that the business environment remains competitive, and that construction workers are available, by not over-regulating the industry but enforcing the laws.

2. What was the driving force behind contractor regulation? When was it initiated?

The CCB was originally created in 1971 as part of the Oregon Department of Commerce. At that time, it was named the "Oregon Builders Board." It was created to regulate residential contractors (only) and to protect consumers. In 1987, the CCB became a separate agency. On January 1, 1990, it was renamed the Oregon Construction Contractors Board. The CCB now regulates all contractors - residential and commercial.

3. What benefits in consumer protection have been experienced?

AND

4. What are the lessons learned in the regulatory process?

CCB submits an Annual Performance Progress Report (APPR) to the Oregon legislature. In the report, submitted on May 30, 2008, CCB set forth the following objectives and performance

⁷ Telecon with Nancy Ruse, Asst. Secretary/Treasurer

⁸ Source: Kathleen Dahlin Policy Analyst, Oregon Construction Contractors Board

measures.

Objective (1): Improve public information about contractors.

Measured by number of customer contacts (website hits, telephone calls, inactive voice response calls, packets of mail requested, home show contacts, and speech contacts), (higher number is better):

- Target for 2002 - 03: 1,000,000 contacts; actual for 2002 - 03: 1,075,643 contacts.
- Target for 2003 - 04: 1,100,000 contacts; actual for 2003 - 04: 894,879 (below target).
- Target for 2004 - 05: 1,200,000; actual for 2004 - 05: 2,002,879.
- Target for 2005 - 06: 1,200,000; actual for 2005 - 06: 1,595,201.
- Target for 2006 - 07: 1,200,000; actual for 2006 - 07: 2,539,403.

Objective (2): Reduce the percent of contractors that file bankruptcy.

Measured by percent of contractors taking training and passing test who file for bankruptcy (lower percentage is better).

- Target for 2002 - 03: .175%; actual .113%.
- Target for 2003 - 04: .150%; actual .067%.
- Target for 2004 - 05: .125%; actual .052%.
- Target for 2005 - 06: .125%; actual .147% (above target).
- Target for 2006 - 07: .125%; actual .020%.

It was noted that, with regard to 2005 - 06, the spike in bankruptcy filings was likely due to a major revision in the bankruptcy laws that made it more difficult to file after October 2005.

Objective (3): Increase the awareness of homeowners about their rights and responsibilities under the laws administered by CCB.

Measured by survey questions assessing awareness of homeowners (higher percentage is better).

- Target for 2003 - 04: 50%; actual 32% (below target).
- Target for 2004 - 05: 60%; actual 29% (below target).
- Target for 2005 - 06: 60%; actual 41% (below target).
- Target for 2006 - 07: 60%; actual 43% (below target).

Although CCB has not yet reached the target for homeowner awareness, it began implementing a comprehensive Consumer Education Plan in 2006 and an advertising campaign in 2007. The results from those years indicate a significant improvement.

Objective (4): Reduce the repeat offenders who work without a license.

Measured by comparing the percent of persons who repeatedly offend by working without a license (lower percentage is better).

- Target for 2003 - 04: 7%; actual 8.43% (above target)
- Target for 2004 - 05: 6%; actual 10.65% (above target)
- Target for 2005 - 06: 5%; actual 14.59%
- Target for 2006 - 07: 5%; actual 8.03%.

In 2007, the legislature established an increased target of 20% for 2007 - 08 and 18% for 2008 - 09. This reflects the addition of the new Field Representative Section and its 11 investigator positions. The legislature anticipates that, initially, the increase in a field presence will increase the percent of repeat violators but that, over time, the percent should decrease.

Objective (5): Reduce the number of contractors that fail to pay final orders.

Measured by the percentage of contractors who fail to pay, in full, final orders issued by DRS (lower percentage is better).

- Target for 2002 - 03: .57%; actual .65% (above target).
- Target for 2003 - 04: .54%; actual .58% (above target).
- Target for 2004 - 05: .50%; actual .39%.
- Target for 2005 - 06: .50%; actual .41%.
- Target for 2006 - 07: .50%; actual .83% (above target).

Objective (6): Reduce the amount of time it takes to close an enforcement investigation.

Measured by the average number of days it takes to close an enforcement investigation (lower number is better).

- Target for 2002 - 03: 68 days; actual 57 days.
- Target for 2003 - 04: 64 days; actual 72 days (above target).
- Target for 2004 - 05: 60 days; actual 39 days.
- Target for 2005 - 06: 60 days; actual 38 days.
- Target for 2006 - 07: 60 days; actual 53 days.

Objective (7): Reduce the amount of time it takes to issue a DRS order.

Measured by days it takes from the time of complaint to time of final order (lower number is better).

- Target for 2002 - 03: 140 days; actual 133 days.
- Target for 2003 - 04: 130 days; actual 139 days (above target).
- Target for 2004 - 05: 120 days; actual 173 days (above target).
- Target for 2005 - 06: 120 days; actual 171 days (above target).
- Target for 2006 - 07: 120 days; actual 160 days (above target).

The legislature increased the target for 2007 - 08 to 160 days and for 2008 - 09 to 155 days. This increase was designed to accommodate the 30-day notice requirement that took effect in 2005 and the increased complexity of claims that resulted from imposing a \$50.00 processing fee.

Objective (8): Improve DRS customer service.

Measured by percentage of surveyed persons involved in DRS complaint processes who view DRS as providing excellent service (higher percentage is better).

- Target for 2002 - 03: 75%; actual 79%.
- Target for 2003 - 04: 75%; actual 80%.
- Target for 2004 - 05: 85%; actual 85%.
- Target for 2005 - 06: 85%; actual 87%.
- Target for 2006 - 07: 85%; actual 87%.

Objective (9): Improve licensing customer service.

Measured by percentage of surveyed persons satisfied with CCB's processing of license and renewal applications (higher percentage is better).

- Target for 2001 - 02: 89%; actual 95%.
- Target for 2002 - 03: 89%; actual 94%.
- Target for 2003 - 04: 89%; actual 93%.
- Target for 2004 - 05: 95%; actual 96%.
- Target for 2005 - 06: 95%; actual 96%.
- Target for 2006 - 07: 98%; actual 95% (below target).

Objective (10): Improve overall customer satisfaction with CCB.

Measured by percentage of surveyed persons satisfied with specific CCB's customer service features (higher percentage is better).

- "Overall": actual FY 2005 -06: 93%; FY 2006 - 07: 95.8%; target for 2007 - 09: 95%
- "Timeliness": actual FY 2005 - 06: 93%; FY 2006 - 07: 94.9%; target for 2007 - 09: 95%
- "Accuracy": actual FY 2005 - 06: 91%; FY 2006 - 07: 94.7%; target for 2007 - 09: 95%.
- "Helpfulness": actual FY 2005 - 06: 83%; FY 2006 - 07: 95%; target 2007 - 09: 85%.
- "Expertise": actual FY 2005 - 06: 91%; FY 2006 - 07: 95.6%; target 2007 - 09: 95%.
- "Availability of Information": actual FY 2005 - 06: 89%; FY 2006 -07: 93.7%; target 2007 - 09: 90%.

5. Are there new initiatives being considered in Oregon?

In 2007, the legislature adopted several new statutes. Most became operative on July 1, 2008. Some will not operate until 2010. The new initiatives are set forth below.

5.1 Creation of two endorsements for licensees. (ORS 701.081; 701.084). Under the old laws, there were five categories of licenses:

- General contractor (ordinary and residential-only)
- Specialty contractor (ordinary and residential-only)
- Limited contractor
- Licensed developer
- Inspector.

Under the new laws, there are two types of endorsements - residential and commercial. Within the residential endorsement, there are four classifications of license. Within the commercial endorsement, there are five classifications of license.

- Residential general contractor
- Residential specialty contractor
- Residential limited contractor
- Residential developer
- Commercial general contractor level 1
- Commercial specialty contractor level 1
- Commercial general contractor level 2
- Commercial specialty contractor level 2
- Commercial developer.

5.2 New bonding requirements. (ORS 701.081; 701.084).

Under the old laws (operative before January 1, 2008), the maximum bond amount was \$15,000. Under the new laws, the bond amounts have increased. The bond amounts for each endorsement classification are as follows.

- Residential general contractor - \$20,000
- Residential specialty contractor - \$15,000
- Residential limited contractor - \$10,000
- Residential developer - \$20,000
- Commercial general contractor level 1 - \$75,000
- Commercial specialty contractor level 1 - \$50,000
- Commercial general contractor level 2 - \$20,000
- Commercial specialty contractor level 2 - \$20,000
- Commercial developer - \$20,000.

5.3 New insurance requirements. (ORS 701.081; 701.084).

Under the old laws, the maximum insurance required was \$500,000 per occurrence. Under the new laws, the insurance requirements are as follows.

- Residential general contractor - \$500,000 per occurrence
- Residential specialty contractor - \$300,000 per occurrence
- Residential limited contractor - \$100,000 per occurrence
- Residential developer - \$500,000 per occurrence
- Commercial general contractor level 1 - \$2 million, aggregate
- Commercial specialty contractor level 1 - \$1 million, aggregate
- Commercial general contractor level 2 - \$1 million, aggregate
- Commercial specialty contractor level 2 - \$500,000 per occurrence
- Commercial developer - \$500,000 per occurrence.

5.4 Commercial contractor key employees. (ORS 701.050).

A commercial contractor applicant must demonstrate that its employees have a combined amount of experience. (Education may substitute for some of the experience.)

5.5 Contractors rehabilitating illegal drug manufacturing sites. (701.088).

Contractors rehabilitating drug manufacturing sites may post a letter of credit in lieu of a surety bond.

5.6 Not fit for licensure. (ORS 701.098(2); 701.102(2)(d)).

CCB may sanction a contractor if the applicant, licensee or owner, officer or responsible managing individual of the business, is not fit for licensure.

5.7 Key employee continuing education. (ORS 701.124).

Key employees of commercial contractors must complete a certain amount of continuing education. The law becomes operative on July 1, 2010.

5.8 General continuing education. (ORS 701.126).

All contractors must complete a continuing education program developed by the board. The law does not take effect until CCB establishes a date between 2010 and 2014.

5.9 Required written contract, contract terms. (ORS 701.305).

A contractor may not perform work on a residential structure with a contract price of more than \$2,000 unless there is a written contract. The contract must contain certain terms.

5.10 Offer of warranty - residential structure. (ORS 701.315).

A contractor that enters into a contract to construct a new residential structure must offer the

owner, or purchaser, a warranty.

5.11 Recommended maintenance schedule - residential structure. (ORS 701.335).

A contractor that constructs a new residential structure must provide a recommended maintenance schedule.

5.12 Warranty - commercial structure. (ORS 701.340).

A commercial general contractor level 1 or level 2 that constructs a new commercial structure must provide the owner with a two-year warranty of the building envelope.

5.13 Other changes - 2007 laws .

Other changes were made to the laws. The statutes were also renumbered in the 2007 edition of the Oregon Revised Statutes. However, the other changes generally relate to the new license endorsements, or are otherwise minor.

5.14 Legislative Concepts - 2009.

The CCB has also prepared a draft of new legislative concepts for the 2009 legislative session. These drafts have been submitted to the Governor's office for approval. If approved, they will go on to legislative counsel for drafting. The concepts (still in CCB's draft stage) are the following.

- ▶ Concept no. 91500-1: Clarification of definition of a contractor
- ▶ Concept no. 91500-2: Funds retained for collection of civil penalties
- ▶ Concept no. 91500-3: Increase threshold requirement for information notice
- ▶ Concept no.91500-4: Modification or clarification of final orders resolving disputes
- ▶ Concept no. 91500-5: Bond coverage limited to contractors' endorsement
- ▶ Concept no. 91500-6: Clarification of consumer protection laws

There was another concept, regarding licensing periods, that the agency has now rescinded.

6. What are the costs associated with Oregon's Construction Contractors Board (CCB)?

According to the 2009 - 2011 Agency Budget Request (which will be submitted to the Governor's office and, as revised, to the Oregon legislature), the CCB expects to expend the following amounts.

Expenditures:

Total Personal Services	\$10,721,105	
Total Services and Supplies	5,621,152	
Total Capital Outlay	50,524	
Proposed Expenditures		
2009 - 2011:		\$16,392,511

7. What are the complaint mechanisms?

Before filing a complaint with the CCB, a complainant must send a written notice to the contractor. The notice must meet the following criteria:

- It must be sent by certified mail 30 or more days before filing the complaint.
- It must state that the complainant intends to file a complaint with CCB.
- It must be sent to the contractor at the address listed on CCB's records.
- If the notice is mailed less than 45 days before the time limit to file a complaint runs, the time limit for filing the complaint is extended by 60 days from the date the notice was mailed.

After the pre-complaint notice has been mailed, and the 30 days have passed, a complainant may file a complaint with CCB's Dispute Resolution Services (DRS). There are different complaint forms. They are the following.

- Homeowner/Primary Contractor Complaint Form
- Subcontractor Complaint Form
- Material Supplier Complaint Form
- Employee Complaint Form

There are certain time limits within which a complaint must be filed. DRS reviews the complaint to make sure that it was filed within the time limit.

Each complaint is processed by a dispute analyst. In addition to determining that the complaint was timely filed, the dispute analyst will determine that the complaint is within the (substantive) jurisdiction of the CCB. Qualifying complaints include the following.

- A complaint that the property owner alleges breach of contract or negligent or improper construction work.
- A complaint that an employee alleges nonpayment of wages earned from construction.
- A complaint that a material supplier (or equipment rental company) alleges nonpayment for materials or equipment used in a construction project.
- A complaint by one contractor against another for breach of contract or negligent or improper construction work, or nonpayment for construction work.

If the complaint involves a residential structure (or possibly a small commercial structure), CCB may perform an investigation. If the complaint involves improper or negligent construction work, a field investigator visits the construction site and reviews the construction work. The field investigator attempts to help the parties reach a compromise settling their dispute.

If there is no agreed resolution of the dispute, the field investigator observes the alleged defective work and prepares a report recommending whether there should be repairs or whether the allegations are unfounded and the complaint should be dismissed. If the CCB recommends repairs, the law provides that the contractor must be allowed an opportunity to correct the defective work.

If the contractor fails to make the recommended repairs or to satisfy a settlement agreement, the dispute analyst may require the complainant to obtain repair bids from other licensed contractors. The dispute analyst may then issue a proposed order proposing that the contractor pay a certain

amount of money to the complainant. Alternatively, if there was no finding of breach of contract or defective work by the CCB, the dispute analyst may issue a proposed order dismissing the complaint.

If either party objects to the order, the agency will forward the matter to the Office of Administrative Hearings (OAH) to arbitrate the matter. If either party requests a contested case hearing instead, the matter will be sent to OAH to conduct such a hearing.

Following a contested case hearing, a party may appeal the decision to a committee of the CCB Board, known as the "Appeal Committee." (Presently, the entire board sits as the Appeal Committee). If still dissatisfied, the party may appeal the decision to the Oregon Court of Appeals.

If the complaint involves a large commercial structure (or sometimes a small commercial structure), the matter is determined by a court. The complainant sends the court judgment to the CCB for processing. There is no field investigation or arbitration for these complaints.

If the contractor does not pay a final award or order, the award or order is sent to the contractor's surety bond company to pay the complainant.

If CCB determines that it has jurisdiction of the complaint, it will request that the complainant pay a \$50.00 processing fee. If the complainant receives an award from the contractor, the \$50.00 will be included as owing from the contractor (or the surety company). No fee is charged for large commercial complaints.

The statutes that govern dispute resolution are ORS 701.131 to 701.180. The applicable rules are OAR 812-004-0001 to 812-004-0600; 812-009-0010 to 812-009-0220; and 812-009-0400 to 812-009-0440.

8. What enforcement powers exist?

CCB has two sections devoted to enforcement activities - the Enforcement Section and the Field Representative Section. The Enforcement Section reviews matters for potential enforcement actions and initiates administrative and judicial enforcement actions. The Field Representative Section consists of up to 11 investigators (together with a manager and administrative assistant). The investigators make job site checks and conduct other investigations to determine if persons doing construction work are complying with Oregon's laws.

CCB's civil enforcement powers are found in ORS 701.026, 701.098, 701.102, 701.106, and 701.992. In general, the agency may impose civil penalties, refuse to issue a license, refuse to renew a license, suspend a license, or revoke a license.

- ▶ CCB may impose a civil penalty against persons working without a license or against contractors hiring subcontractors or others when the contractor is licensed "exempt" (meaning the contractor carries no workers' compensation insurance).
- ▶ CCB may revoke, suspend, refuse to issue, or refuse to renew a license, and/or impose civil penalties for the following:
 - Violation of certain CCB laws.

- Violation of certain other laws.
 - Violation of CCB rules.
 - Knowingly assisted an unlicensed person.
 - Allowing the filing of a lien by wrongfully failing to pay moneys owed.
 - Working without a construction permit.
 - Working with other contractors without workers' compensation insurance.
 - Conviction of certain crimes.
 - Failing to pay for labor or materials.
 - Made bad faith or false complaints against contractors.
 - Engaged in dishonest or fraudulent activities.
 - Being unfit or not fit for licensure.
- ▶ CCB may immediately suspend a license if a licensee has no bond or insurance; hires employees without having workers' compensation insurance; engages in dishonest or fraudulent conduct; or fails to pay a construction debt.

In cases of serious law violations, CCB will seek civil court remedies through the Attorney General's office (Oregon Department of Justice). These may include injunctions or relief under Oregon's Unfair Trade Practices Act.

CCB also works with district attorneys in the state to prosecute theft or racketeering. In addition, the district attorneys have independent authority to prosecute unlicensed activity as a criminal misdemeanor. Also, it is a misdemeanor in Oregon to use a contractor's license number without authorization or to use a contractor's license number with the intent to deceive the public. (ORS 701.990).

9. How many persons, and of what specialties, does the CCB license?

As of June 1, 2008, CCB licensed the following number of persons in each category or sub-category.

- General contractors: 20,251
- General contractors, residential only: 5,693
- Specialty contractors: 9,367
- Specialty contractors, residential only: 4,153
- Limited contractors: 3,462
- Licensed developers: 365
- Inspectors: 218

Since the new license endorsements and classifications will not be issued before July 1, 2008, there are no statistics yet available for these licenses.

The law contemplates a two-year transition period during which the "old" category licenses will be phased out and the "new" endorsement licensees will be issued. By July 1, 2010, all Oregon contractors should be operating under one of the nine new endorsement licenses.

10. Have any studies been performed on the benefits from CCB oversight?

No.

2.11 TENNESSEE

The Tennessee Board for Licensing Contractors requires no bonding but mandates that contractors show a net worth of 10% of the value of contracts they hold. A requirement for general liability insurance is being introduced.⁹

Tennessee has dual licensing channels. The state license for all classifications (electrical, plumbing, mechanical, HVAC) requires a business / law as well as a trade exam. Nine counties, representing 50% of the population have opted to offer a Home Improvement license that allows contracts up to \$25,000 and requires no testing. This option was initiated to facilitate passage of the contracting laws.

Consumer education programs have been successful, although some confusion remains about the dual licensing channels.

2.12 UTAH

The Division of Occupational and Professional Licensing (DOPL) has operated a Lien Recovery Fund since 1994.¹⁰ Conditions require a written contract including notification and payment of the contractor's bill in full. The Fund may be accessed after court remedies have been exercised and a judgement issued.

A weakness stems from the rule complexity; homeowners do not understand requisite conditions. The fund was not modeled on other states.

An email request for further detail was not responded to.

⁹ Telecon with Joe Kraeske, Administrator

¹⁰ Telecon with Dave Ishihara, DOPL

2.13 VIRGINIA

The Virginia State Board for Contractors licenses 70,000 contracting businesses plus 38,000 tradespeople. Businesses specialties are not tracked.¹¹ Businesses have been regulated since 1938. Trades only since 1995. It is one of 19 boards that regulate 31 occupations in the state. There are no insurance or bond requirements. The state has a Transaction Recovery Fund that has a \$20,000 limit per claim and a \$40,000 limit per licensee per biennium. The Fund is a “last resort” after other channels are exhausted. There is an ADR process. It is reported that consumer education – active for 12 years – is the best remedy. There is a central (intake) section to receive complaints for all boards.

The Board receives 4,000 complaints each year. Of these, about 800 formal cases are heard. The 19 boards share 50 - 60 investigators. The complaint process moves from investigation to fact finding to a hearing by the full Board. The Board itself has a staff of 14. The state’s philosophy is to balance the regulatory burden on contractors with protection for consumers. The program is self-supporting and requires no general funding. The three contractor classes (A, B & C) are said to present little problem to administer.

¹¹

Telecon with Eric Olson, Board Director

3.0 OBSERVED BEST PRACTICES

The Best Practices noted among the 22 states that license residential contractors through examination are referenced by state. Details are provided in the Section 2.0 narrative.

3.1 ALABAMA

- ▶ Complaint Handling: Staff of 13 includes six investigators and two attorneys.
- ▶ Recovery Fund: In all, eleven states have some type of fund to reimburse consumers.

3.2 ARKANSAS

- ▶ “General” or “Prime” residential contractor must be licensed. Not required for subcontractors.
- ▶ Licensing promoted by Arkansas Home Builders Association
- ▶ Staff of 17 includes 6 field investigators, 5 of which are primarily engaged in uncovering unlicensed activity.
- ▶ Licensing requires four years of appropriate experience plus exam.

3.3 CALIFORNIA

- ▶ Four years of experience required, plus exam.
- ▶ Enforcement Division is one of three major components. State has a large agency structure.

3.4 HAWAII

- ▶ Emphasized that the key to regulation is enforcement.

3.5 MICHIGAN

- ▶ State requires 60 hours of training as a requisite to licensing.

3.6 MINNESOTA

- ▶ Investigators place priority on educating contractors in improving business conduct.

- ▶ Regulation promoted by Builders Association of Minnesota to simplify licensing previously done by cities and counties. Builders Association now collaborating with agency to revamp licensing processes.
- ▶ Contractor's Recovery Fund provides ample level of relief to consumers.
- ▶ State has very formal complaint handling process.
- ▶ State can discipline contractors. Extensive enforcement tools available.

3.7 MISSISSIPPI

- ▶ Suffers because complaint processing is left up to cities and counties.
- ▶ Board empowered to revoke license or levy fines. Staff of 15 includes three investigators.

3.8 NEVADA

- ▶ Residential Recovery Fund has been successful in reimbursing homeowner claims. Said to have industry support and worked to reduce litigation.

3.9 NORTH CAROLINA

- ▶ Board receives all complaints. All complaints against licensed contractors are investigated. Of 19 employees, six are field investigators.
- ▶ Complaints against unlicensed contractors prompt remedial action.

3.7 OREGON

- ▶ Annual Performance Report submitted to legislature addresses all critical performance metrics.
- ▶ Formal complaint resolution process with enforcement powers.

3.8 VIRGINIA

- ▶ Transaction Recovery Fund in addition to an ADR mechanism.
- ▶ Believe that consumer education is still the best remedy.
- ▶ State Board for Contractors is one of 19 individual profession/trade licensing boards for State. Share investigative staff.