

Housewrecked

Serious hidden defects plague many newer homes. Here's how to avoid trouble.

Last year, consumers bought more than 1 million new homes in the U.S., a near record. Average sale price: \$250,000. But a *CR* investigation has found that increasingly, buyers are discovering that their new dream home has serious defects and that they have more consumer protections for a fickle \$20 toaster than for a flawed investment-of-a-lifetime.

In Oregon, a family built a semicustom home for \$66,000 on a lot they owned only to discover mold in the walls four months later. Home buyers in Newark, N.J., found crumbling concrete, falling bricks, and flooded basements within months of moving into a recently built condominium complex. An Oklahoma couple says they face \$60,000 in foundation and roof repairs for a house they bought new three years ago for \$127,000.

And it's not just new-home buyers who are getting stuck. One Upper Saddle River, N.J., couple is paying \$375,000 to repair water damage to a five-year-old home that they bought for \$1.4 million (see [Synthetic stucco](#)).

Our investigation, which included dozens of interviews with homeowners, builders, inspectors, industry representatives, government officials, and lawyers, found those defects and more in many new or young homes. Faulty foundations, serious moisture intrusion, and shoddy framing are often at the root of problems, which manifest themselves as gaping cracks, rotting walls, and windows and doors that don't close right. Often, though, they show up months or even years after the buyer has moved in and the builder has moved on.

No one seems to be documenting the extent of the problem, yet many experts agree that construction-defect lawsuits are rising nationally. Add to that a sharp increase in toxic-mold lawsuits. Mold is often associated with moisture intrusion.

Alan Mooney, president of Criterium Engineers, a consulting-engineering firm based in Portland, Maine, with offices in 35 states, estimates that seriously defective new homes account for 15 percent of all new-home construction, or 150,000 new homes a year. "That's a huge number," Mooney says, adding: "I don't think many of these houses will last 50 years."



CRUMBLING EXTERIOR

HOMEOWNER Ricardo Cardona, 34, an engineer and treasurer of the Society Hill at University Heights III Condominium Association, of Newark, N.J.

PROBLEM Cardona and other owners say that shortly after moving in, they found

Mooney and others identify several contributing factors. Builders are under pressure to keep costs down so homes are affordable and profitable. Demands for energy efficiency and environmentally sound products mean that homes today are more complicated to build. During the building boom that began in the 1990s, demand has sometimes outstripped the supply of qualified laborers and quality materials.

Home builders acknowledge isolated problems, but they deny that the rate of defective homes is on the rise.

"We don't see that there is a systematic or endemic problem," says David Jaffe, staff vice president for construction liability and legal research at the National Association of Home Builders, whose members, most of them small contractors, are responsible for 80 percent of residential construction. "We're always striving to improve the quality of homes," Jaffe says.

Some home-building officials and others blame lawsuits on bounty-hunting lawyers and homeowner associations.

"The real core of the problem is a migration of trial attorneys to construction defects as a lucrative new practice area," says Clayton Traynor, senior staff vice president of the builders' association.

But many homeowners say they went to court because builders ignored their repeated complaints or they had nowhere else to turn. Municipal building departments are often too busy to keep up with required permits and inspections, much less investigate problems. State and federal governments have few explicit consumer protections for homeowners.

All of which makes it imperative for home buyers to be vigilant before they sign a contract or go to closing.

"People are willing to pay for Jacuzzis and marble counters, when they should be more concerned about the quality of the house," says Betsy Pettit, architect and president of Building Science Corp., an engineering, forensics, and consulting firm based in Westford, Mass.

CR Quick Take

A *CR* investigation involving extensive interviews with home buyers, building-industry representatives, inspectors, and others has found that thousands of consumers, faced with serious defects in their new or young homes, have spent millions on repairs. The fast pace of construction during today's building boom is a cause, experts say.

- Fifteen percent of new homes have serious problems, some inspectors say. That's 150,000 new homes a year. Many only show up months or years after moving day.

- Your best defense: Hire a real-estate lawyer and a building-inspection engineer. A few key clauses in your contract and inspections during construction can save grief later.

- For information on what to do should you discover problems, see [How to prevent trouble](#) and [If you think you have a problem](#).

crumbling concrete, poor drainage, and loose brick facades that now must be held in place. In a partial settlement, the builder agreed to fix some problems and to reimburse the association \$20,000 for previous repairs.

Photos by Tom McWilliam
beams could be to blame.

NINE WARNING SIGNS

Serious defects often present themselves in telltale ways. If you see one or more of the following problems in your home, hire an engineer to investigate. (See [If you think you have a problem.](#))

- 1. Deep cracks in the foundation or basement walls.** They can be signs that the foundation was laid on a poorly compacted base or poorly graded soil.
- 2. Sagging floors or leaning walls.** A shifting foundation or structural problems with support beams could be to blame.
- 3. Windows and doors that never sit well in frames or close properly.** House-framing problems may be at issue. If the beams, studs, and joists weren't correctly sized or assembled, the whole house may not hang together well.
- 4. Cracks in interior walls.** Wide cracks could signal a foundation problem. Generally, though, fine cracks are cosmetic, the result of normal aging.
- 5. Water damage.** Warning signs include mold, rot, and insect infestation in exterior walls; staining, swelling and discoloration on interior walls; and a musty odor. Possible causes: improperly installed roofing, no flashing around penetrations and joints, no moisture barrier in a climate that requires it, lack of a drainage space behind brick or siding, poorly installed windows and doors, holes in siding, and trapped water-vapor condensation from heating and air conditioning.
- 6. Flooding, sewer and drain backups, and switched hot and cold water.** Flooding and backups may result from poorly graded land or faulty sewer and water-main connections. Switched spigots may signal improperly installed plumbing.
- 7. Excessive heating or cooling bills.** Rooms that don't get warm or cool enough can be another signal that air ducts may be leaky or improperly connected.
- 8. Shorting or dead outlets.** The electrical system may be installed incorrectly.
- 9. Lack of required permits.** This indicates that building authorities have not performed the required inspections.

Why the problems? Many experts point to the country's 10-year housing and real-estate boom. The top 100 U.S. home builders together sold an estimated 1,000 new homes a day in 2002, or one-third of all new-home sales.

That pace strained production. While home builders nurture the image of painstaking traditional craftsmanship, most new homes today are produced as if on an assembly line. Building affordable homes means being acutely aware of time and costs. Those builders that are public companies have the added pressure of shareholders to satisfy, industry executives and former employees say. Builders are completing homes in 90 to 120 days. A decade ago, the range was 120 to 200 days, according to one industry study.

FEW CHECKS AND BALANCES

State and federal officials offer uneven help for home buyers with serious housing defects. In 20 states, no state building code exists, and in many rural and new suburbs there isn't even a local one.

Even where building codes do exist, many local governments have lax enforcement. Home buyers can't assume that officials have protected them by performing the required inspections. Building-department officials say they are understaffed and underfunded, and can't keep up with permitting and code enforcement in areas where hundreds of new homes are being erected at a time.

In suburban Cincinnati, for example, the Enquirer newspaper reported this past June that in one county alone, at least 750 houses built between 1993 and 2001 lacked certificates of occupancy, which are supposed to prove that a home has been inspected and is safe to live in.

In New Jersey, state and county prosecutors have launched fraud probes into allegations that building officials in one county falsified reports on hundreds of homes in several large developments that were never inspected. Homeowners had long complained of faulty construction and poor sewage and storm-drainage connections.

Concerning home-warranty programs, which builders provide buyers to warrant certain home systems, only 10 states regulate the programs or post bonds to secure performance. They are Arizona, Colorado, Connecticut, Florida, Maryland, Massachusetts, Mississippi, New Jersey, Oklahoma, and Oregon.

And 23 states don't regulate home inspectors. Some states have contractor-licensing boards; others do not. Licensing requirements also differ among states.

Governments have little incentive to make consumer protection a priority, say homeowner activists and government-watchdog groups. "Construction defects are a very political thing, and everyone wants to dance around that," says Elizabeth Owen, executive director of the National Association of Consumer Agency Administrators, whose members are consumer-agency officials across the U.S. Builders, developers, and real-estate companies are among the most influential political constituencies, and often heavy campaign contributors. And new housing helps swell tax rolls.

Consumer-affairs departments and state attorneys general can investigate home-building fraud, but they usually don't give such investigations high priority unless there are many victims. Local Better Business Bureaus take complaints, but can't force builders to make repairs.

At the federal level, the Consumer Product Safety Commission regulates few housing components, and the Federal Trade Commission hasn't filed suit against a builder for defective construction in more than a decade. Starting in the late 1970s, the FTC sued several big builders, including Kaufman and Broad Home Corp., the corporate predecessor to KB Home, one of the nation's largest production builders. Whether the subsequent consent decree is being honored is an ongoing issue.

"Major structural damage that could have been avoided by reasonable steps beforehand was defined as an unfair or deceptive trade practice," says Thomas Stanton, a former FTC official. Stanton says the lawsuits were meant to prod the home-building industry to reform itself. Since then, he says, "things seem to have gone in the wrong direction."

In this vacuum of oversight, ad hoc groups such as Homeowners Against Deficient Dwellings, www.hadd.com, and Homeowners for Better Building, www.hobb.org, have taken the lead in the battle for home-buyer protections. On their Web sites, dissatisfied home buyers swap information about builders and remedies and call for better laws.



FAULTY FOUNDATION

HOMEOWNERS Cindy Schnackel, 47, an artist, and her husband Brian, 37, a software engineer, of Edmond, Okla.

PROBLEM In 2001, a year after buying a new house for \$127,000, the Schnackels say deep cracks formed in the floor and the brick exterior. An inspector noted a poor foundation, roof, and grading. **The repair bill: \$60,000.**

Photos by J.D. Merryweather Photography

REPERCUSSIONS

Construction-defect and related lawsuits and claims have drastically affected the cost of insurance.

Homeowners-insurance premiums are soaring, in part because of water-damage and mold-related claims. Premiums rose 20 percent in some areas in 2000 and 2001 and 10 to 15 percent in 2002. They are expected to have risen up to 10 percent in 2003. In Texas, some insurers stopped writing new policies when the state tried to impose price controls and to mandate mold coverage. The situation threatened to slow sales of new homes in Texas when potential buyers couldn't get coverage because lenders wouldn't extend credit on uninsured collateral. Similar problems have been reported in California and elsewhere.



Liability insurance for builders and subcontractors also has skyrocketed in the last few years, with recent annual premium increases of more than 400 percent for some contractors. The



HIDDEN MOLD

HOMEOWNERS Renee Haynes, 41, a homemaker, her husband Paul, 44, a pilot, and their sons Michael and Liam, of Sandy, Ore.

PROBLEM In 2002, four months after moving into their semicustom \$66,000 house on land they already owned, the Hayneses say they discovered mold throughout the walls. They have moved out, citing allergy-related problems. Repair costs: \$70,000, their lawsuit says.

Don Marr Photography

who don't check the claims history in the home's Automated Property Loss Underwriting System (A-PLUS) report or Comprehensive Loss Underwriting Exchange (CLUE) report could find out too late that they must pay huge premiums to insure it.

Lenders could also suffer if shoddy construction problems multiply, and the effects could ripple throughout the economy. Banks and federally chartered institutions that buy bank mortgages, including Freddie Mac and Fannie Mae, with \$3.3 trillion in mortgage-backed securities, could end up with a significant inventory of reduced or worthless collateral. Consider the case of one New Jersey homeowner who in 1995 paid \$278,000, including a \$150,000 mortgage, on a property recently reassessed at just \$90,000 because of serious structural defects.

While mortgage lenders require real-estate appraisals as a condition of lending for a mortgage or equity loan, they generally don't require a property inspection that would reveal defects that could undermine its value.

THE FUTURE

Consumers Union believes that home buyers deserve a better system to prevent serious housing defects and a fair way to resolve disputes and to compensate consumers for shoddy work. These steps would be a start:

Expand quality initiatives. The NAHB Research Center last year launched the National Housing Quality Certified Builder Program, to match its Certified Trade Contractor program. "The goal is to improve quality," says Dean Potter, director of quality programs at the center. Five builders are participating in the trial program, which monitors on-site practices and results. "Satisfied customers don't sue," Potter says. "We have to do something to improve the perception of quality in our industry to reduce the likelihood of lawsuits."

Certification programs are also appearing for manufacturers and installers. Such programs should be expanded.

Improve government oversight. States and municipal governments could better enforce codes by ensuring that building departments are adequately staffed. Homeowner groups also want "lemon" laws similar to those that protect new-car buyers from defects. And federal officials should survey new-home buyers to determine the extent of serious problems.

Require inspections for loans. Lenders should require independent inspections, not just appraisals.

Be proactive. Consumers should never buy a house without first hiring a real-estate attorney and a home-inspection engineer. As Jim Banks, the former construction supervisor, says, "If you don't think that you can afford them, you need to think twice about whether you can afford a house."

increases became so high in California and Nevada, for example, that some builders and insurers withdrew from those states, and others slowed the pace of condominium building because they believed condo associations were especially litigious, say insurers, builders, and lawyers.

Builders have responded swiftly to those developments by trying to stamp out new lawsuits. They started including mandatory-arbitration clauses in many new-home contracts, requiring homeowners to take disputes with builders to an arbitration panel rather than to court, and to abide by the panel's decision.

Builders say arbitration is faster and cheaper than litigation. But homeowner and consumer groups, including Consumers Union, the publisher of *Consumer Reports*, say arbitration panels may be stacked in favor of industry and deprive citizens of their constitutional right to a jury trial. The outcomes may also be sealed, meaning the public can't learn about serious issues.

Resale buyers are not bound by arbitration clauses because they were not a party to the original contract. In part to keep these buyers from suing over defects, builders have successfully lobbied states to pass "right to cure" laws. These require builders to be given a chance to fix defects before homeowners can sue.

Eighteen states have passed such laws in the last two years, and legislation is pending in at least two others. But homeowner groups complain that right-to-cure laws create unfair obstacles to justice. For example, if, after abiding by a right-to-cure law, a homeowner still wants to sue, he may not be able to if the statute of limitations has expired. In any case, no one we spoke to said they sued their builder without first trying to get repairs made.

Computer databases that track the claims history of a house are another development in the property-insurance industry that could have an effect on the resale housing market. A house with many claims may be difficult to insure or sell without major repairs. Prospective buyers

How to prevent trouble

Research your builder. It's not enough to scan a builder's Web site. If the company is publicly traded, check its Securities and Exchange Commission filing at www.sec.gov/edgar.shtml. Look for clues to its financial health, including bankruptcies and large liabilities. Consult your local Better Business Bureau and the one where the builder is headquartered for a complaint history. Get a list from your builder of all subcontractors to be used, and check them out with the BBB, too. Check for builder complaints at your state consumer-affairs department or attorney general's office. Browse homeowner chat groups at www.hadd.com and www.hobb.org. Most important, talk to residents of other housing developments by the same builder.

Hire an experienced real-estate lawyer. An experienced residential real-estate attorney should review your contract before you sign it, and also the home warranty. Make sure the purchase contract includes clauses that protect you. Such clauses should state that materials must be installed according to manufacturer instructions, that you must approve changes in materials, that you have the right to have an engineer inspect the home at key stages of completion (foundation, framing, installation of plumbing and HVAC systems, roofing, and walk-through), and that the home will be completed before closing. (Attorney fees vary. In the New York City area, the cost is \$650 to 1 percent of the purchase price.)

Hire a qualified home inspector. Preferably, the inspector should be an engineer or architect. Buyers of new houses should monitor construction with their home inspector at each stage of completion so errors can be corrected promptly. Buyers of older houses should have a thorough inspection of all structural and mechanical systems (plumbing, air conditioning, heating, and the like). The inspector should have insurance against liability errors and omissions. The National Academy of Building Inspection Engineers, www.nabie.org, and the American Society of Home Inspectors, www.ashi.org, can make a referral. NABIE members are prohibited from taking payments from real-estate brokers. (Cost for a visual inspection: \$350 to \$500 for a 2,500-square-foot home less than 50 years old.)

If you're considering buying an existing home, check the insurance-claim history by asking the seller to provide you with a copy of the CLUE or A-PLUS report.

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