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HEADLINE: Crooked contractors leave clients in shambles in Texas

BYLINE: By Purva Patel

BODY:

Kathy and Terry Dahlke are slowly piecing their home back together, four years after a **contractor** left a \$43,000 remodeling job unfinished.

The **contractor** said he ran out of money, although he had been paid in full, and left behind an unfinished garage, unstable staircase and shoddy kitchen, among other uncompleted jobs.

Although they got an indictment against the **contractor** for misusing their money, the Dahlkes haven't recovered a dime.

"I feel like I have zero rights," said Kathy Dahlke, 47. "And when it came down to it, I didn't have any."

Consumer groups say many homeowners find themselves in the Dahlkes' position because criminal cases are hard to make, the civil route can be frustrating, especially when clever contractors can file for bankruptcy to get out of their obligations, and few licensing requirements exist to help consumers find reputable contractors.

"I think our whole system has failed us," said John Cobarruvias, head of the Texas chapter of Homeowners Against Deficient Dwellings, a consumer education group. "They steal money from people, and it's a crime. But the homeowners don't have any recourse."

Not so, say builders.

Texas consumers have more safeguards than ever before, they argue, pointing to the recent creation of the Texas Residential Construction Commission.

Yet consumer advocates argue for stronger protections that some other states offer, including performance bond requirements, a guaranty fund for victims and more-extensive licensing.

The need for such changes isn't unfounded.

Consider:

--The state attorney general's office received about 750 complaints about contractors in the last two years.

--The Better Business Bureau of Metropolitan Houston has received some 4,200 complaints in the past three years.

--The Harris County district attorney office's consumer fraud division reports receiving more complaints about contractors than any other profession since Tropical Storm Allison struck the city in 2001.

Some deceptive contractors bid a lowball price on a project. Once homeowners accept, they find that either the contractor keeps asking for more money or disappears with the down payment.

Many cash checks immediately so investigators can't trace the money and bring theft or misappropriation of funds charges, prosecutors say.

The Dahlkes eventually got a criminal indictment against their contractor.

The remodeler's attorney says the contractor did not commit fraud but instead miscalculated and took on more than he could handle.

The indictment was thrown out on appeal when the court ruled that contractors have no fiduciary duty to homeowners under state statute.

That's a law even some in the industry say needs to be examined.

"It's a deficiency in that statute," said John Krugh, general counsel for Perry Homes and a commissioner for the Texas Residential Construction Commission. "I think it needs to be looked at, and something needs to be done for people in those situations."

The Dahlkes are now pursuing the case in civil court but worry they won't be able to get their money back because the contractor has filed for bankruptcy.

The couple has since cashed in Kathy Dahlke's 401(k) to complete the work and is still repaying the home equity loan they had taken out to pay the original contractor.

"Financially, this had ruined me," Kathy Dahlke said. "We're rebuilding, but this means I probably won't ever retire."

To make matters worse, say consumer advocates, not only can consumers lose their money, but they can lose their homes.

That's because under Texas law, if a subcontractor or supplier doesn't get paid, homeowners can be liable and find a lien on their home, even if they didn't directly contract with the supplier or subcontractor.

That's what happened to Brenda Wilson. The contractor she hired to remediate her mold-ridden Spring Branch home in 2002 failed to pay some of his subcontractors, and one of them put a lien on her house.

She thought about suing the contractor but worries she won't recover anything because the contractor has few assets.

"It's just throwing good money after bad," said Wilson, 41. "The subcontractors deserve to get paid, but I've already paid my contractor. There has to be some other checkpoint in place where you know your subcontractor is getting paid."

Such scenarios are commonplace. And consumer advocates say Texas law wields little power over fraudulent contractors.

For one thing, not all general contractors have to be licensed.

Some -- air conditioning contractors, electricians and plumbers -- must be licensed by the state.

And some contractors must now register with the newly formed Texas Residential Construction Commission, but that doesn't entail showing any proficiency in the trade and excludes many smaller contractors.

There's no performance bond requirement either, mostly because builders say that would raise the costs for consumers.

A bond is an assurance by an insurance company that a contractor will pay all subcontractors, laborers and suppliers that may potentially place a lien if they're not paid.

The Texas property code says contractors must keep funds for jobs valued above \$ 5,000 separate from other funds.

But as the Dahlkes' case shows, that law protects subcontractors and suppliers -- not homeowners -- because

the homeowner is not a beneficiary of that fund.

And if a contractor does some work or just shoddy work, it's hard to prove theft, said Russel Turbeville, a longtime prosecutor with the Harris County district attorney's office. Prosecutors have to prove criminal intent, which usually requires more than one victim.

"It's just horrible when you see all these people's lives destroyed," he said. "But the law makes it hard to prosecute these types of complaints. Mostly they're regarded as civil because they're partial jobs. For a good crook, the whole idea is to make it look civil."

Contractors say the creation of the Texas Residential Construction Commission last year is a step forward because it could help homeowners find legitimate contractors.

Pushed by builders, the commission handles disputes between homeowners and builders and registers builders and contractors that do projects valued at \$ 20,000 or more.

Consumer groups say the new law leaves out too many smaller contractors and allows just about anyone to register. But the industry argues the law would give builders more incentive to fix problems and avoid costly arbitration and litigation.

A builder only has to be over 18, a citizen or admitted alien and trustworthy, as judged by the commission. There's no requirement to show any proof of insurance or other liability protection.

"You ought to have minimum insurance, some accountability," said Cheryl Turner, a consumer attorney in Dallas.

"Otherwise we're giving away protections to an industry that hasn't shown itself worthy of deserving these protections."

Other states have implemented bonding requirements or created guaranty funds to protect consumers. Washington, for example, demands that general contractors obtain a \$ 12,000 bond that consumers can pursue claims against in court.

California requires all licensed contractors to have a bond with a surety company or deposit \$ 7,500 with the state.

Utah makes contractors carry \$ 300,000 in insurance before they can register, and North Carolina includes an exam in its residential contractor licensing process.

Some states, such as Florida, have a construction guaranty fund that will reimburse consumers up to \$ 25,000 if they have received a judgment or final order against a state licensed contractor in civil court for certain violations.

Some consumer advocates have pointed out, however, that a more practical approach would require higher bonds or reimbursement amounts if a consumer is to recover anything substantial.

Builders say they didn't want the \$ 20,000 project threshold, but it was changed by lawmakers.

And other conditions, such as bonding and guaranty funds, were left out because they could add to the cost of a home and because they didn't intend them to be included.

"We did not advocate and the Legislature did enact a law that did those things," said Scott Norman, vice president of governmental affairs for the Texas Association of Builders. "We wanted something that would result in better houses being built, not a barrier to entry for other people into this industry."

But that angers consumers like Terry Dahlke, 57, who would like to see more changes.

"So what's it take now to be a contractor? A pickup truck and a saw?" he said.

"The state offers no protection against fraudulent contractors."

HOW TO PROTECT YOURSELF:

Check their background

--Ask for references that go back several months or even years.

--Check out the work in person.

--Check out the contractor's record with the Better Business Bureau of Metropolitan Houston at 713-868-9500 and the Texas attorney general's office at 1-800-621-0508, and check the courts for any lawsuits or judgments against the contractor.

--Look for membership in the National Association of the Remodeling Industry, which lists local member contractors on its Web site, www.remodeltoday.com, and at 1-800-611-NARI.

--You can now call the Texas Residential Construction Commission at 877-651-8722 to check some contractor registrations and any complaints filed since Sept. 1, 2003.

--Ask if the contractor is insured against claims covering workers' compensation, property damage and personal liability in case of an accident. Then verify the insurance coverage.

Negotiating the deal

--Get a written estimate. Estimates should all be based on the same building specifications, quality of materials, labor and time needed to complete the project.

--Specify the payment schedule and put oral promises into the written contract. The contract should include what the contractor will do, when the work will start and when it will be completed, as well as the cost to make changes, service charges and material costs. Get and keep copies of everything you sign.

--Don't cave to pressure. Any reputable contractor will give you time to think over the decision and won't harass you.

--The down payment should be no more than one-third of the total contract price. Be suspicious if you're asked to pay for the entire job in advance.

--Ask for proof of a construction account. The law requires contractors to deposit your payments at a financial institution to make sure they're used for your project only.

--Remember, it's the contractor's responsibility to get all required permits.

--Don't sign any document with items left blank or anything you don't understand, especially credit check applications. Sometimes the form is a binding contract.

When it's done

--Wait to sign a completion certificate for the job until after it has been inspected by local building authorities and properly completed according to the contract.

--Get any product warranties from your contractor so you can be prepared if there's a defect or a recall in the future.

If something goes wrong

--Protect yourself from liens against your home in case the primary contractor doesn't pay subcontractors or suppliers. You can add a release-of-lien clause to the contract or place your payments in an escrow account until the work is completed.

--If there will be a lien on your home, make sure a notary witnesses your signature. It should be a warning flag if the salesperson does not have a notary present.

--Don't be embarrassed to make a report if you are a fraud victim. Holding back protects the con artist. Report any scheme to the state attorney general's office and to the police.

Source: Better Business Bureau and Texas attorney general's office

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