

TENNESSEE HomeBuilder

March/April 2008

Official Magazine of the Home Builders Association of Tennessee

Inside this edition:

Speaker Pro Tem Rosalind Kurita
addresses Green Building Issues

Commissioner Leslie A. Newman

Tennessee Department of Commerce & Insurance (TDCI)

A New and Well Qualified Leader

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TENNESSEE HomeBuilder



March/April 2008



WHO WE ARE

The Home Builders Association of Tennessee (HBAT) is a not-for-profit trade association comprised of professional builders, developers and associated firms engaged directly or indirectly in home building, remodeling and light commercial construction.

MISSION STATEMENT

The Home Builders Association of Tennessee represents over 6,500 member firms as the Voice of the Housing Industry. We advocate housing affordability and availability through:

- Legislation
- Communication
- Education



In this edition of the Tennessee Home Builder, meet Commissioner Leslie Newman and learn more about important builder news and legislative issues.

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THE VALUE AND IMPORTANCE OF MEMBERSHIP

When you joined a local Home Builders Association, you became a member of both the Home Builders Association of Tennessee and the National Association of Home Builders. That makes you part of an associational family of more than 247,000 members.

In an economic downturn, every member must realize the importance of being involved on the local, state and national level. Your voice counts, and as President, I realize that involvement in hard economic times is extremely important for our future recovery.

Today, the HBAT is better positioned to address legislative issues than ever before. Our staff in Nashville, and the leadership of the association, is constantly monitoring the progress of legislative issues that can ultimately affect the health and welfare of the Tennessee building industry. Issues such as workers' compensation, metal theft, new development fees and taxes, storm water and a vast array of regulatory issues are just a few of the concerns that keep your association on constant alert. Serving as a "united" voice, we can accomplish so much to enhance and protect the industry that supports our livelihood and serves as a catalyst for the economy of our entire country.

As members, we enjoy benefits such as the HBAT-SIT workers' compensation program. We have specialty, discounted insurance, working with partners such as

Builder's Mutual and 2-10 Home Buyers Warranty. We also have affinity programs, a member rebate program, educational and networking opportunities, member advantage, awards opportunities, free publications and many other benefits that add to the value of being a member.

On the national level, the NAHB serves as our voice with the Federal Government and works to educate members of Congress and promote the building industry through public and media relations. In 2007 and 2008, interest rate cuts have been encouraged, and we are currently reaping the benefits of some of the lowest interest rates since the 1980's. The NAHB has been promoting a media campaign in major publications such as USA Today, emphasizing the importance of stimulating and stabilizing the housing industry throughout the United States.

There are a wide range of educational programs through the NAHB University of Housing where you can enhance the value of your services by obtaining professional designations and continuing education. The issues covered in these programs are up-to-date and deal with information that can give you an advantage in today's competitive market. You can find out more by logging on to the NAHB website and looking over the University of Housing information.

In last month's article, I talked about a vision of turning up the heat in this association from 211 to 212 degrees – the



HBAT President James Carbine

boiling point of water. That one small factor can give us the ability to provide more support, benefits and opportunities to our members than we've ever done before. Last year, David Parson's had a goal to unify our voice and create a stronger team. I want to carry on this vision, along with my challenge to move our association forward to better represent the members of the HBAT.

Take advantage of the benefits and opportunities at every level of your membership, and let's all decide that we are all going to be involved like never before. Tough times, if viewed from the right perspective, can create patience, more efficient business practices, creative solutions and a time to prepare ourselves for the better times ahead of us. Let's all work to make a better association for ourselves and the future of the Tennessee building industry.



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Environmental Responsibilities and Economic Realities

A Common Sense Approach to Green Building in Tennessee



Today, environmental issues can be as sensitive and emotionally charged as the discussion of religion and politics. Thank goodness we live in a

country where differences of opinion are accepted, celebrated and encouraged. But no matter what your opinion is about the environment, you can be sure that you will be affected by legislation and regulations concerning environmental issues from now on.

What is Green Building?



Green Building has been defined as a system of design and construction

practices that promote a healthy environment and protects our natural resources. The concept of Green Building goes beyond environmental concerns of the past. It is a system that incorporates environmental considerations into every phase of the home building process. Green building brings together a vast array of practices and techniques to reduce any negative impact that our industry has on the environment and human health. These techniques pay very close attention to resource consumption, pollution emissions and renewable resources.

Building materials typically considered to be “green” include plant materials such as bamboo and straw, lumber from forests certified to be sustainable, recycled stone, recycled metal and other products that are non-toxic and reusable. Other ideas deal

with optimizing heating and cooling systems and products such as energy efficient appliances and windows.

NAHB Leadership in the Race to be Green

The question arises when we try to determine the best way to promote the idea of being environmentally conscious when building a home. Fortunately, the National Association of Home Builders has been at the forefront of environmental leadership for many decades. When energy prices soared in the late 1970’s, NAHB was the first organization to step forward and introduce voluntary energy guidelines for new residential construction, and energy efficiency of new housing has more than doubled in the last 30 years. Today, with the introduction of the brand-new NAHB National Green Building Program and the Model Green Home Building Guidelines, our industry has launched market-driven Green Building into the mainstream. You can even become a Certified Green Professional (CGP) with a designation from the NAHB University of Housing, beginning its first certification program at the 2008 International Builders’ Show in Orlando. There is a tremendous amount of excellent information on these programs at a new, evolving NAHB website area. Go to www.nahb.green.org to find out more.

Going Green in Tennessee



In the realm of Tennessee politics, we have seen encouraging and positive environmental legislation from legislators such as Senator Rosiland Kurita. Senate Bill 116 passed through the Senate in 2007 and is now making its way through the House.

Currently, residential builders are required to meet the 1992 International Energy Conservation Code requirements. The 1992 Energy Policy Act mandated



*Susan Ritter, HBAT
Executive Vice President*

that all states must review and consider adopting the national model energy standard. Since then, new model energy codes have been developed and in 1998 the first International Energy Conservation Code (IECC) was released. This 1998 IECC was followed by the 2000 IECC with its 2001 supplement and the 2003 IECC with its 2004 supplement. The latest version of the IECC was released in early 2006.

If SB116 is enacted, the bill will require Tennessee builders to meet the 2003 standards, while encouraging them to “voluntarily” meet the 2006 regulations. This would be a favorable situation and the HBAT is in support of this legislation.

Future editions of the Tennessee Home-Builder magazine will have additional articles promoting Green Building practices and discuss legislative issues that affect home builders. Environmental issues “will” gain momentum in the future, and the job of the Home Builders Association of Tennessee will be to make sure proposed solutions about these concerns make sense both environmentally and economically for the homebuilding industry throughout Tennessee.

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Governor Bredesen's

STATE OF THE STATE ADDRESS

A "Back to Basics Budget"

Legislative Review

*Steven Cates, Chair
Governmental Affairs
Committee*



On Monday, January 28, 2008, Governor Phil Bredesen delivered his sixth State of the State address. While giving credit to Tennessee's diverse economy for the fiscal soundness that our state is enjoying relative to many others, the Governor, at the same time acknowledged that our national and state economies are weaker than they have been in recent years. For this reason, the Governor's speech focused on how the budget he is presenting this year is a "back to basics" budget, aimed at adjusting for an expected revenue shortfall of \$180 million dollars. The Governor said of his budget, "It is realistic for the times; it is honestly balanced; it does not call on reserves, and it calls for no new taxes."

The Governor asked most departments in state government to cut their budgets for 2008-2009, mainly by increasing their reversion targets. This is the amount that the departments are asked to return to the State's general fund at the end of the year. Often, much of this money is due to the department not immediately filling positions when someone quits or retires, or when the department simply spends less on programs than it estimated. The total FY 2008-2009 budget is a 0.61% decrease over last year's budget, with conservative budget growth of 0.38% in state funding.

The Governor specifically stated that

he would not raid the state's rainy day fund "absent some dramatic change in circumstances" and in fact, intends to continue to "grow the fund."

Major improvements in this year's budget are primarily in the areas of Education, Job Creation, Safety/Crime Prevention, Energy and Conservation and Health Care.

• **Education**

(Including Pre-K) \$287 million

Including, \$25 million to fund up to 250 new Pre-K classrooms; \$5.3 million to increase retention of HOPE Scholarships by adjusting the required GPA for scholarship recipients to 2.75; and \$27 million to establish an endowment to provide need-based financial aid to 15,000 more Tennesseans who want to go to college

• **Job Creation Rural Development**

\$37.6 million

Including, \$29.3 million for an economic development jobs package

• **Safe Communities**

(Law Enforcement) \$41.9 million

Including, \$1.3 million for a new TBI lab in Knoxville and \$1.3 million for DNA analysis under the Johnia Berry Act of 2007

• **Energy and Conservation**

\$34.5 million

\$5.6 million for the UT Biofuels Center and \$4 million for the state's alternative fuels initiative and \$10 million for the Heritage Conservation Trust Fund

• **Home & Community Based Care**

(Health Care) \$ 20.7 million

Including, \$12 million to expand home and community based health care services

Governor Bredesen, having a background in the health care field, is once again leading the charge on reforming health care in Tennessee. If enacted, his new health care initiative, the "Long Term Care Community Choices Act of 2008," will restructure the part of TennCare that deals with long term care. The Governor stated that this is the year he wants to fulfill his promise to expand "alternatives to nursing homes for our elderly and disabled residents." His budget appropriates 12 million dollars to do so. The proposed restructuring will focus on making it easier for the elderly and disabled populations to stay in their homes and receive TennCare funds to pay for in-home and community based care, instead of being forced into nursing homes in order to be eligible for having the state pay for these services.

In my opinion, we are fortunate to have a Governor with a business background, who understands the importance of conservative budgeting, especially during these uncertain economic times. The hands-on, conservative leadership of Governor Bredesen continues to make Tennessee a great place to do business and a great place to call home. A strong, stable economy in our State, ensures that there will always be a new generation of home buyers in need of the services that HBAT members provide.

What Builder/Employers Must Know About the New I-9 (Employee Verification)

It is a document that by law every employer is required to complete to verify the identity and work authorization of every new employee.

▶▶ What is new about the Form I-9?

The Department of Homeland Security has changed the old Form I-9. The new Form I-9 eliminates five documents that previously were accepted as verification of identity and work authorization. These documents are:

- Certificate of U.S. Citizenship (Form N-560, or N-561)
- Certificate of Naturalization (Form N-550 or N-570)
- Alien Registration Receipt Card (Form I-151)
- Unexpired Reentry Permit (Form I-327)
- Unexpired Refugee Travel Document (Form I-571)

▶▶ Can I continue to use the old form?

No. The grace period for using the old form expired 12/26/07. Using the old form now can result in fines of \$100-\$1,100 per occurrence.

▶▶ Should I redo the Form I-9's for my existing employees?

No. The new Form I-9 is to be used only for new hires. The old Form I-9's filled out for current employees should not be discarded or redone.

▶▶ What should I do with blank old Form I-9's in my filing cabinet?

Throw them away so that they are not used by accident.

▶▶ Where can I get the new Form I-9?

The new Form I-9 can be downloaded from the U.S. Customs and Immigration Service website: www.uscis.gov.

NAHB members can directly download the new Form I-9 at: www.nahb.org/newI9form.

For more information contact David Crump at 1-800-368-5242 ext. 8491, or dcrump@nahb.com.

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A New and Well Qualified Leader



In January of 2007, Governor Phil Bredesen appointed a new commissioner over the Tennessee Department of Commerce and Insurance. Leslie A. Newman is now at the helm, and she has already proven to be a competent and innovative leader. Commissioner Newman is a native of Dallas, Texas and has an impressive list of accomplishments in both her educational and professional endeavors:

- Bachelor of Arts – John Hopkins University
- Juris Doctor Degree – Washington University School of Law
- Attorney with the Municipal Technical Advisory Service of the University of Tennessee, Institute for Public Service
- Metropolitan Nashville Department of Law as Associate Metropolitan Attorney
- President of the Tennessee Municipal Attorneys Association (1998-99)
- Member of the Nashville and Tennessee Bar Associations
- President of the Friends of the Library for Nashville

- Appointed to the Tennessee Advisory Commission on Intergovernmental Relations
- Serves on the Board of the Nashville State Community College Foundation

Since land use and zoning are important issues to home builders, it is important to note that from 1980 to 1985, Commissioner Newman served as Assistant to the County Counselor for St. Louis County, Missouri. Ms. Newman's past legal experience also includes working as in-house counsel for a land use and zoning consulting firm in Dallas, Texas, from 1985 to 1989. From mid-2000 until early-2003, Newman chaired the Land Use and Zoning and the State and Local Government subgroups as a member of the Nashville law firm of Waller Lansden Dortch & Davis, PLLC.

The Department of Commerce & Insurance

Originally established by the Tennessee General Assembly in 1878 as the Bureau of Insurance, the department has evolved to become one of the most important government agencies in the state of Tennessee.

The department describes itself and its duties as follows:

This diverse agency protects the interests of consumers while providing fair, efficient oversight and a level field of competition for a broad array of industries and professionals doing business in Tennessee.

The **Division of Consumer Affairs**, in concert with other state and federal agencies, is charged with the enforcement of the Tennessee Consumer Protection Act and mediates or otherwise resolves more than 6,000 consumer complaints per year. The division also coordinates the department's consumer education efforts.

The **Division of Insurance** regulates the 1,600 insurance companies and 90,000 agents that contribute more than \$14 billion dollars to the state's economy.

The **Securities Division** regulates brokers-dealers, agents, investment advisers and investigates fraud.

The **TennCare Oversight Division** monitors the financial condition and timely payment practices of the health maintenance organizations (HMOs) and behavioral health organizations (BHOs) that contract to provide services to 1.4 million TennCare enrollees.

The **Division of Fire Prevention** includes the state's building and safety codes enforcement operations, arson and explosives investigations, and offers training for volunteer and career firefighters and codes officials through the state's new Fire Service and Codes Enforcement Academy.

The **Division of Regulatory Boards** houses 22 boards and commissions that enforce professional standards of conduct and statutory mandates for industries ranging from architects and engineering to contracting, cosmetology and accounting.

The department also assists law enforcement through specialized training and investigative work.

Administratively attached entities include the **Commission on Firefighting Personnel and Standards Education**, which sets criteria for standards for fire service personnel.

As a by-product of this wide-range of professional services, the Department of Commerce and Insurance collected more than \$385 million in fees and premium taxes in fiscal year 2001-2002, second only to the Department of Revenue. The department's total operating budget for that fiscal year was \$63 million.

The Tennessee Home Builder magazine had an opportunity to interview Commissioner Newman. Here is the conversation:

Q In what ways do you see your department impacting the home building industry in Tennessee?

A The TDCI impacts homebuilders in two important respects: First, by licensing contractors, plumbers, and electricians under the auspices of the Contractor Licensing Board and architects and engineers under the Architects and Engineers Board. Those regulatory boards are responsible for setting minimum licensing and continuing education standards for members of these trades and professions. Secondly, the Division of Fire Protection promulgates, by rule and regulation, the minimum building, fire and electrical standard codes for the State of Tennessee.

Q Please describe the mission of the CHAMP program and how it serves as a bridge between consumers and contractors.

A CHAMP, the Contractor/Homeowner Accountability Mediation Program, since its inception in 2005, has mediated over a thousand complaints filed with Consumer Affairs or referred by the Board of Licensing Contractors.

The purpose of CHAMP is to mediate disputes between the contractor and homeowner, saving the homeowner the cost of repairs, and saving both contractor and homeowner the cost of litigation. Even though there is no way to measure the total savings for consumers through the CHAMP Program, it is estimated that thousands of dollars were saved through this process. This program assists consumers who need help when their complaint against the contractor is not of a regulatory nature—that is, the Board does not have regulatory jurisdiction over the matter.

Q How do our members go about obtaining copies of updated rules and regulations regarding contractor licensing?

A Copies of TDCI rules and regulations may always be accessed through the Department's website at <http://tennessee.gov/commerce/boards/contractors>. There is a wealth of information on this site that advises contractors and those in the home improvement program about what's happening at the Department, recent Contractor Board news, rules and regulations, information about continuing education and other resources for licensees.

Editors Note: Currently there is a bill before the 105th General Assembly that requires the department to notify all license holders of changes in statutes, rules, policies and guidelines.

Q Currently, your department is in the process of adopting a statewide building and fire code. Please tell our members why you believe the adoption of these two codes is beneficial to Tennessee.

A These codes are used to guide construction so as to improve building safety and reduce risk to safeguard the public and protect property.

Typically, codes set requirements for sanitary facilities, electrical, lighting, ventilation, building construction, building materials, fire safety, plumbing and energy conservation. Adoption of the most up-to-date national codes combined with an active code enforcement program assures that public safety and property protection is maintained to the greatest possible extent. Our modern building and fire codes are the result of an evolutionary process of building and fire disasters that have occurred over the centuries. Clearly, over the past 100 years or more, there have been enormous gains in the quality and quantity of construction regulations and fire prevention practices. As a result,

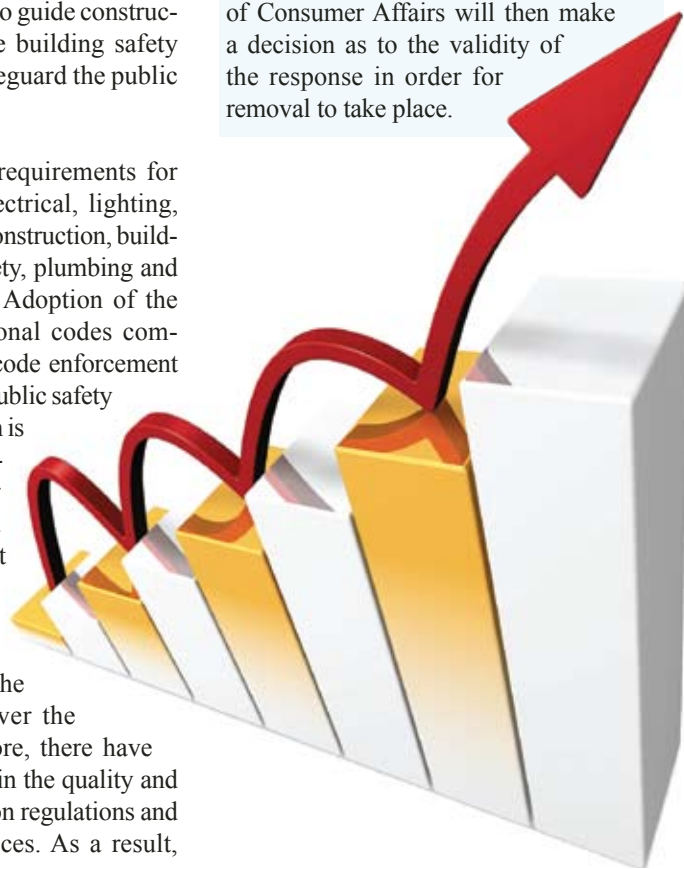
buildings being constructed with today's codes and/or standards are safer, both structurally and from a fire protection point of view.

The Tennessee Home Builder magazine would like to sincerely thank Commissioner Leslie Newman for her time and assistance in developing this article. ❖

Staying Off the Problem Contractor List

Once a complaint is received in Consumer Affairs, an attempt is made to bring the consumer and the contractor together in hopes of resolving disputes through mediation. A contractor is placed on the "Problem Contractor List" only if they fail to respond to the Division regarding the complaint or if the contractor says that they will act on the request and then fails to do so.

The way to be removed from this list is for the contractor to put in writing the reasons they did not respond. The Division of Consumer Affairs will then make a decision as to the validity of the response in order for removal to take place.





Tips from
the National
Association
of Home
Builders

Speed Up the Sale of Your Home in a Slow Market

Trying to sell a house during the winter months in a down market can be difficult, but there are several things you can do to improve its marketability. By expending a bit of effort before it goes on the market, you can ensure that your home presents well, stands out from the crowd and doesn't turn off potential buyers so that you can sell quickly...and at the best price.

Tone Down Personality

Your bookshelves may be filled with Pulitzer-Prize winners and your collection of Americana figurines may reflect your personal interests, but to home buyers, it looks busy and cluttered, and may distract them from truly seeing your home's unique architectural features and spacious rooms. Also, consider whether family pictures help or hinder a sale; future homeowners may not be able to look past your kids' smiling faces plastered all over the walls and see themselves building their own future in your home.

Since you hope to move soon anyway, go ahead and box them up and put them

in storage in advance of the open house or showing.

While that red accent wall opposite the lime green fireplace perfectly ties in with your ultra modern furniture, a potential buyer at your open house may be turned off immediately and decide that the entire house doesn't reflect their style. Consider painting walls a neutral color such as beige or taupe.

Don't Burden the Buyer with Repairs

If there are problem areas in your home, get them fixed before the showing. When prospective buyers tour the house and see leak stains on the ceiling or peeling paint, they will also see future work and assume that bigger maintenance and repair issues are lurking behind those small problems.

This is particularly true in kitchens and bathrooms, which are often the two rooms that make or break a sale. The expenses you incur on the front end sprucing up your home will be cheaper than the profits you could lose by having to lower the price to meet buyer demand.

Maximize Exposure

Lastly, take advantage of new technology to find unique ways to market your house. Use YouTube.com, a video sharing Web site, to introduce yourself and your house for free. Take home shoppers on a virtual tour and tell them about its uniqueness and strengths from a first-person point of view.

Use Internet social networking sites such as Facebook or MySpace to create a Web link with a profile of your home. Include pictures and a description of your home's features. E-mail the link to your friends and ask them to forward it on to their network of contacts.

Be sure that you are using traditional marketing techniques to your best advantage. When photographing your home for promotional purposes, invest in a wide-angle lens for your camera so that rooms appear bigger and in proportion when they are displayed on Internet home listing sites or in marketing flyers. If you decide to create a virtual tour, look for professionals who will be able to film and upload your video using the best techniques and technology.

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Workers' Compensation the Real World



The problem is further developed because the term “employee” is defined by the statute in general terms, left open to interpretation – known generally as the seven factors:

- the right to control the conduct of the work;
- the right of termination;
- the method of payment;
- the freedom to select and hire helpers;
- the furnishing of tools and equipment;
- self-scheduling of working hours; and
- the freedom to offer services to other entities.”

T.C.A. § 50-6-102(11).

Specifically in the context of construction, which was carved out by the legislature in T.C.A. §50-6-113, the Tennessee Supreme Court has held that the responsibility for workers’ compensation benefits was expanded beyond the traditional employer-employee relationship. The Court holds that in the context of construction, the relationship should be viewed as one of principal and intermediate contractors and subcontractors. Further, the court notes that the intent of the statute was to insure, as far as possible to all workers, payment of benefits when they are injured in the course of their employment.

Tennessee Code Annotated Section 50-6-113 passes coverage from contractors who may not have coverage to those contractors above them, whether intermediate or principal contractors, who do have coverage. Specifically, and most importantly, the Court notes that this section prevents an employer from contracting out normal work simply to avoid liability for workers’ compensation.

A “principal contractor” is one who undertakes to perform work for another and hires subcontractors to do certain portions of the job. Those subcontractors may use their own employees, or contract out portions of the work to other

individuals and then become “intermediate contractors.” Even if the intermediate contractor, or the subcontractor’s workers are independent contractors, the principal will still remain ultimately liable under workers’ compensation should the worker be injured on the job. Why is the principal ultimately liable? The Supreme Court succinctly summarized when it said because (1) it protects workers of uninsured subcontractors, and (2) the principal can carefully choose who it does business with and require appropriate workers’ compensation coverage.

If the court has essentially changed the construction exception to apply to all “workers” on the job, then it is time for the law to catch up. If you are the top dog on the job, you contracted directly with the owner and are being paid by the owner, then you do not have to purchase workers’ compensation for yourself, but you do for every worker below you. If you contract with another contractor, either the principal or the intermediate contractor, then either you must provide the insurance for yourself, or you will be included in the premium of the contractor above you.

The bill introduced will keep contractors from avoiding paying for workers’ compensation for their workers by subcontracting the work out to “independent contractors.” The purpose of our bill is to provide Tennessee courts with guidance in applying the law and the ability to apply it consistently.

How will subcontracted work affect your premium calculation? Here are the rules:

- a) If complete payroll records of the subcontractor’s employees are furnished to the carrier, then the actual payroll paid will be used in calculating the premium.

—Continued on the next page

The goal of SB1748/HB1645, was simple:

To ensure that everyone working on a construction job for someone else be covered by workers’ compensation.

To accomplish this, the worker either provides his own insurance coverage, or the person above him does. Simple premise, or so we thought.

The argument or debate arises over who should be included in a workers’ compensation premium, especially in the construction classes. TCA 50-6-113 requires any person engaged in the construction industry, whether principal contractor, intermediate contractor or subcontractor, to carry workers’ compensation insurance. The law further requires that the same principal, intermediate or subcontractor to be liable for compensation to any employee injured.

Your Workers' Compensation Self-Insured Trust

The Home Builder's Association of Tennessee has been fortunate to have an excellent workers' compensation program to offer as one of our top member benefits. As a result of the insolvency of several Self-Insured Trusts in Tennessee, we felt that it was necessary to give our membership a report on the excellent health and secure status of The HBAT's Self-Insured Trust.

In 1995, after two years of detailed evaluation and study of the workers' compensation insurance industry, your Homebuilder's Self-Insured Trust opened its doors. The Trustees at that time, as they do today, made it their firm commitment that we would have a stable workers' compensation insurance market while providing competitive rates to our members. The Trustees were committed not to cheap rates, but to safety, financial stability and sound business practices. The Trustees operate under the principle that we will take only safety conscious companies with a low accident history. The Trust is not for every company. We are a big family operating on sound financial and business practices.

The Trustees run a very conservative operation. We believe that there is strength and safety in a strong financial cash position. The State of Tennessee Department of Insurance, as a result of other Self-Insured Trusts experiencing financial difficulties carefully scrutinizes our operation. We have just completed a six month audit of our Trust by the State. We are still awaiting the final results.

Our membership has grown to 1,213 member companies with an annualized premium of 11 million dollars. We have 28 million dollars in assets with 17 million dollars in financial reserves. Our annualized premium has dropped, and I am happy to report that as a result of the March 2006 reduction, our rates are 45% below current Risk Pool rates as approved by the State of Tennessee.

Our claims incurred continue to be below the industry average, thanks to our emphasis on loss prevention through our loss control consultant, John Hilbrandt, and your concerns for a safe work place. Our seminars allow you to obtain OSHA certification. For the last three years, we have had a loss ratio below 50%. Our Excess Insurance Carrier reports that we have incurred 51% fewer claims than our peers since our inception.

As a result of better than average claims results, we have returned \$3.5 million to our members in the form of dividends and have over \$12 million in reserve to distribute in the future. We have submitted a request to the State Insurance Commissioner to approve another \$1 million dividend.

We enjoy a healthy relationship with our sponsor, the Home Builders Association of Tennessee. The Executive Committee of the HBAT and its Executive Director, Susan Ritter, testifies and lobbies effectively on Capitol Hill to pass legislation beneficial to our Trust.

Jackson Downey
HBATSIT Chairman

—Continued from page 18

Workers' Compensation in the Real World

- b) If complete payroll records are not furnished and the subcontract price does not reflect a definite payroll amount, then the full subcontract amount will be counted as payroll.
- c) If complete payroll records are not furnished but documentation of a specific job shows that a definite amount represents payroll, then that amount will be used as payroll in calculating the premium subject to the following minimum amounts:

- If the job is for labor and material, then not less than 50% of the contract price will be used as payroll.

- If the job is for labor only, then not less than 90% of the contract price will be used as payroll.

- If the job is piece work, then the entire amount paid to pieceworkers will be used as payroll in calculating the premium.

So, if you do not require your subcontractors to provide their own workers' compensation insurance, then it is in the principal contractor's best interest to have detailed records on payroll, labor and materials paid to the subcontractor.

If the subcontractor carries workers' compensation insurance on his workers, but not himself, then the principal contractor will still be required to pick up the individual subcontractor's payroll, but not any workers under that subcontractor.

If you need to know what the loss cost multiplier is for your company, or what the loss cost for your client's classification is, you may visit our website at http://www.insurors.org/members/tech_wc.asp.





In each issue of the
Tennessee HomeBuilder
magazine, we ask
important legislative
questions concerning
issues that affect the
building industry. This
month, we asked Speaker
Pro Tem Rosalind Kurita
about Green Building in
Tennessee:

In Their Own Words

The Green Building issue has gained more attention than ever before. How do you see environmental issues affecting the building industry in Tennessee?

Response from Speaker Pro Tem Rosalind Kurita



America's addiction to fossil fuels is hurting our economy and environment. As a Tennessee State Senator, I am working to solve our addiction with responsible policies that grow our economy and protect our land, air and water. Building our homes with Green Building methods is an important piece to this puzzle that can help us all breathe easier and add some extra cushion to our pocketbooks.

By declaring our independence from foreign energy sources, building our buildings more efficiently, and getting serious about the research, development and installation of new and innovative technologies, we are all reducing our addiction to fossil fuels. But the reality is that we have a long way to go.

For years, the home building industry has led the way by working closely with government and concerned citizens to make our homes more energy efficient and comfortable while saving homeowners hundreds of dollars a year. It will be these types of partnerships between business, government and concerned citizens that will ultimately accomplish our goal of a cleaner environment.

As we work together to develop more programs like Green Building, the policies we create must be a balance between being environmentally friendly, providing affordable housing and not over burdening Tennessee's industry. Today I feel that I am in a position to raise the level of concern for these important issues and look forward to creating a clean energy future for Tennessee that creates jobs, preserves the environment and protects our national security.

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Did You Know

NAHB NEWS

Sandy Dunn, 2008 President of NAHB



Sandy Dunn owns and operates B.J. Builders, Inc., which specializes in single-family, entry-level homes and was founded by her father more than 50 years ago. She is a second-generation home

builder from Point Pleasant, West Virginia, and is the 2008 President of the National Association of Home Builders. It is an important accomplishment to become president of NAHB, but Sandy has also made history by becoming the second woman to hold this position.

Sandy is a problem solver whose business philosophy hinges on successful communication. She believes in listening to everyone's concerns to gain a solid understanding of an issue and identify solutions that satisfy the main objective. Over the years, she has managed to successfully balance running her own business with keeping up-to-date on the concerns of regional, statewide and national home building organizations.

Home building and politics are a way of life for Sandy, as her family has always embraced both pursuits. Her father chaired the Republican Party in Mason County, West Virginia for 40 years and

served in the state senate. One of her brothers has also been a state senator, and her other brother has had an extensive political career culminating in his election to the governorship of Kentucky.

Sandy herself has served four years on her city council, and has been actively involved in the NAHB federation at all levels for nearly 30 years. As early as 1976, her fellow builders recognized her commitment to the building industry by naming her Builder of the Year of her local HBA. She was elected president of the Home Builders Association of Greater Charleston (West Virginia) in 1987 and rose to president of the (state) Home Builders Association of West Virginia in 1991 and 1992. In 1997, the state association awarded Sandy the Henry E. King award, the highest honor given to a builder in the state of West Virginia.

On the national front, Sandy has held a wide range of leadership positions throughout NAHB, including chairmanships and participation on six major committees. She served as an NAHB National Vice President in both 1988-89 and 2000-01, was named National Representative of the Year in 1998, is a BUILD-PAC trustee and has achieved the status of NAHB Senior Life Director.

The Home Builders Association of Tennessee would like to congratulate Sandy on this great and historic honor!



2008 NAHB MEMBERSHIP CAMPAIGN

Join us for an overland membership journey in search of tomorrow's leaders. Grab your khakis, bush jackets and pith helmets - we're going on *The Big Hunt*.

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NEW PARTICIPATION PRIZE STRUCTURE THIS YEAR: Participating recruiters will receive prizes for recruiting one, two or three+ new members in May. Why? So *every* member can participate and be recognized for it. Maybe they can't get three new members, and maybe they can't get two... but everyone can get ONE!

Please use this new prize structure to encourage every member to participate in your National Membership Day drive this May.

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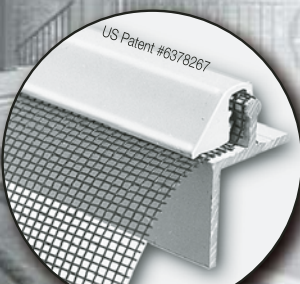
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March/April 2008

NEW PRODUCT REVIEW

New Products from the 2008 International Builders Show

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alternative to gas and wood fireplaces. Optiflame electric fireplaces with

patented flame technology provide the ambiance of a real fire without the high installation cost, location constraints or the safety and liability concerns of combustion fireplaces. Since they use no combustion, they produce no carbon monoxide or greenhouse gases, making them the only true 'green' fireplace option. See why Optiflame electric fireplaces are the builders' choice.

For the James Bond Fans Fingerprint Recognition Door Locks



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solutions (NBS) is a leading world provider of fingerprint door locks. Our fingerprint locks are under worldwide patents and can meet any market's demands. "BIOLOCK" is a high quality product reasonably priced and can benefit users in residential, commercial and industrial markets.

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For the HiTech Builder – FLIR's New ThermoCAM



FLIR's new ThermoCAM® B400 is packed with features, including simultaneous infrared and visible images, touch screen technology, and insulation and moisture alarms. The 1.3 mega pixel B400 also boasts FLIR Fusion, which enhances the value of an infrared image by allowing you to overlay it directly over the corresponding visible image in real-time. The overlay function can be easily adjusted to suit any application such as electrical surveys, building diagnostics and mechanical inspections.

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- Single-family builders
- Multi-family builders
- Remodelers
- Developers
- Land planners
- Architects and designers
- Energy raters, home inspectors, utilities staff
- Product manufacturers and suppliers

Green Tip for March/April 2008

During the cold winter months, excess humidity can also damage a home's walls by creating localized cold spots, which eventually trap and condense moisture as it tries to leak out. However, equally as important, is humidity management within the structure during the periods when air-conditioning is heavily used.

To reduce the risks, an increasing number of builders and homeowners are choosing to:

- **Install moisture and vapor retarders.** Investigate alternatives to traditional wall and ceiling insulation, such as expanding spray foam, that provide an integral vapor retarder that works well in the winter and during the summer. One has to be careful when installing moisture and vapor retarders, which are designed to keep humidity from seeping into cavities. These products – which are usually thin, flexible membranes – have traditionally been installed on the warm side of the wall. However, with the popularization of central air-conditioning systems, the “warm” side of the wall switches from season to season.
- **Create a protective raincoat just underneath the exterior cladding material of the home.** Houses aren't perfect, and eventually cracks will occur in the brick, siding, stone or stucco, which will allow moisture, outside air and pollutants in. To prevent damaging moisture infusion and infiltration, a combination of building felt and commercial grade building wrap can be used to create a weather barrier underneath a home's wall cladding.



MTSU Team Places Third in National Home Builders Contest

Middle Tennessee State University's Construction Management Technology team placed third out of thirty-four teams at the National Association of Homebuilders (NAHB) Four-year Student Competition.

Team members were Andrew Creighton - Team Leader, Pensacola, Fla.; Christy Burns, Franklin; Robert Busteed, Murfreesboro; Kristofer Gingrow, Valdosta, Ga.; and Timothy Stevens, Pleasant View, Tenn.

The Land Development/Residential Building Construction Management Team from the Department of Engineering and Industrial Studies developed a proposal for Windermere Berkshire Park Community located in Orlando, Fla. Berkshire Park has 192 single-family homes on 62 acres. Family homes range in size from 1,708 to 3,608 square feet.

The project manual included market analysis, demographics, scheduling, estimating, infrastructure, plans for 192 single family homes, cash flow and a management approach for the project. The students presented it to a panel of industry judges representing Centex Homes, Opus West Corporation, Pulte Homes, and TruBuilt Homes. The international show was attended by 100,000 plus builders and associates from around the world.



"The proposed project manual for the Windermere Berkshire Park Community that the team put together showed teamwork and dedication, which are major requirements in the Construction Program and industry" said Dr. David Hatfield, Construction Management Technology programs director and professor.

"Our Construction Management Students have once again earned our respect and pride in their accomplishments. Their third place performance is a great example of teamwork; not only within the

student team, but with our industry advisors and faculty as well. Our students, faculty and industry advisors all deserve recognition for successfully competing with other programs across the nation year after year." said Dr. Walter Boles, chair of the Engineering Technology and Industrial Studies Department.

The team has been competing for 10 years. During seven of those ten years the team has placed within the top 10 schools.

MTSU's Construction Management program is affiliated with the Rutherford County Home Builders Association, Home Builders Association of Tennessee and the National Home Builders Student Association.

Source: The Daily News Journal –
Murfreesboro, TN



Members of MTSU's award-winning Construction Management Technology team include, from left, Kristofer Gingrow, Robert Busteed, Christy Burns, Timothy Stevens, and Andrew Creighton.

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LOCAL HAPPENINGS

BURL YOUNG AND TERRY COBB HONORED AS NAHB LIFE DIRECTORS



Burl Young has been a familiar face and loyal member of the Home Builders Association of Tennessee. Until his recent retirement, Burl represented “Sears

Contract Sales” as an Associate Member. He has served in many leadership positions over the years and has been very involved in the Home Builders Association of Middle Tennessee.

As an additional honor to his outstanding leadership and loyalty, Burl has been named as a Life Director of the National Association of Home Builders.



Terry Cobb has also been elected as a Senior Life Director of the National Association of Home Builders. Terry is a past president of the Home Builders

Association of Middle Tennessee (1990) and serves as the Metro Codes Director for Davidson County.

To become a Life Director, individuals must be recommended by their local association, serve as a voting director for ten or more years, attending two meetings of the Board per year. Up to five years service as an alternate director may be counted provided they have attended two meetings of the Board for each of those five years.

We congratulate Burl and Terry on this prestigious honor!

LOCAL BUILDERS AWARDED CERTIFIED GRADUATE BUILDER (CGB) DESIGNATION



Knoxville, TN – Michael Dulin of Ethics Construction Company, LLC, Timothy F. Neal of Fairfax Development, Inc., and Fred Trainer of F. E. Trainer Construction recently became one of the select group of 2,000 professional builders nationwide who have earned the Certified Graduate Builder (CGB) designation, identifying these builders as one of the building industry’s top professionals. Earlier recipients of this designation include Wayman Skelton of Wayman Skelton Homes, who also holds the designation of Graduate Master Builder (GMB).

Administered by the National Association of Home Builders (NAHB) University of Housing, the CGB program is sponsored locally by the Home Builders Association of Greater Knoxville (HBAGK).

CGBs earn the building industry’s premier professional designation by successfully completing an intensive series of nine six-hour courses. The CGB curriculum incorporates training by leading building industry practitioners and academics on a range of topics, including business management, emerging technologies and market trends. After earning CGB credentials, program graduates are required to maintain their designation through completion of an additional six hours of training annually.

LOCAL ASSOCIATES OF THE YEAR

Clarksville/Montgomery Co HBA

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Harvill, Ross, Hogan & Ragland

Johnson City Area HBA

Randy Humphreys and Wayne Lewis
GreenBank

Rutherford Co HBA

Brian Rust

84 Lumber

Maryville/Alcoa HBA

Tony Cooke

Anderson Lumber Company

Memphis Area HBA

Harold Byrd

Bank of Bartlett

Ocoee Region BA

Tim Wilcoxon

Cleveland Plywood

HBA of Middle TN

Jennifer Earnest

Mission Stone & Tile

HBA of Greater Knoxville

Robert Campbell

Robert G. Campbell & Assoc. L.P.

HBA of Greater Kingsport

Connie Salyer

Blue Ridge Properties

HBA of Southern TN

Karen Flores

Cornerstone Community Bank



ASK THE ACCOUNTANT

Worker Classification?

by Bob Bellenfant



In January of each year, homebuilders are scrambling to obtain information to prepare 1099's for their workers. What I refer to as 1099's

is actually U. S. Treasury Form 1099 – *Miscellaneous Income*. It is a multi-use form for several types of payments from prizes and awards to nonemployee compensation. Nonemployee compensation is the section that relates to payments made to a variety of workers paid by a homebuilder that are not employees. They could be a carpenter, bricklayer, plumber, or a roofer and so on. The common thread is that homebuilders are making payments for services to a non-corporate entity. I believe the government is assuming that corporate taxpayers keep better records or at least do a better job at reporting income than non-corporate taxpayers. Non-corporate entities include proprietorships, partnerships, limited liability companies and individuals.

Many homebuilders consider it a big task to accumulate the information necessary to issue the 1099's. The real challenge is defending the homebuilder's position that, in the case of individuals and some proprietorships, the workers are independent contractors and not employees. This area of worker classification is full of minefields that can make the best record keepers cringe. The Internal Revenue Service relies primarily on 20 common-law factors but also include certain revenue rulings and IRS training manuals in determining employee versus independent contractor status. A safe harbor exists for some occupations where worker classification has been established by court cases, prevalent industry practice and prior tax audits. A homebuilder can be fairly well assured that his payments to an entity that has an established business

presence, employees, business telephone listing and files local business taxes is an independent contractor. For payments to individuals, especially those who seem to work on every house that you build and do not have a *business presence*, would be viewed as payments to employees, or wages. The State of Tennessee is also interested in worker classification. Salaries and wages to employees are subject to Tennessee Unemployment Tax. Although the tax is not usually as high as federal employment taxes, it funds the claims of unemployed persons and is an important source of revenue to state government.

Individuals receiving 1099's for non-employee compensation are typically subject to self employment tax in addition to federal income tax. Self employment tax is 15.3% of income derived from self employment. An employee pays 7.65% medicare and social security and the employer matches the employee's contribution for a combined 15.3%.

Historically, Form SS-8 – *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* can be filed with the IRS to ask the government to determine a worker's classification. It has been my experience that the IRS has an inclination to classify most individuals as employees based on SS-8 information. The new worker receiving a 1099 is usually surprised by the self-employment tax. The IRS has a new tool to identify a misclassified worker. The worker can file Form 8919 – *Uncollected Social Security and Medicare Tax on Wages* with his individual income tax return taking the position that he or she is an employee and responsible only for an employee's share of social security and medicare taxes. I believe this form will create a whole new series of challenges to worker classifications.

A homebuilder risks having an adverse decision on worker classification that could cause a significant assessment in employment taxes for more than one

year. It is likely to spread to other years if independent contractor status cannot be defended by the homebuilder. My advice is to review the 1099's and your workers. If you have individuals on those 1099's that perform only labor tasks, you use them routinely and they do not provided their services to others; be prepared for a challenge to their status as an independent contractor. They might be an employee.

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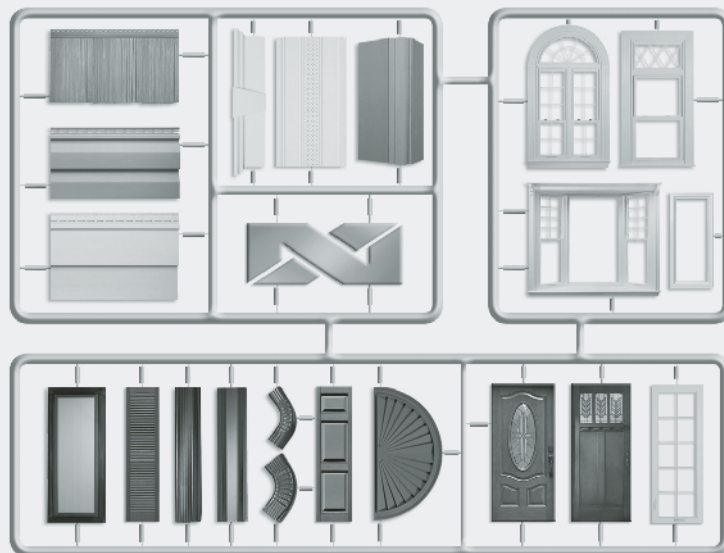
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