

The News of the Home Builders Association of West Florida

CORNERSTONE

November 2015

BIG CHANGES FOR CONSTRUCTION DEFECT CLAIMS

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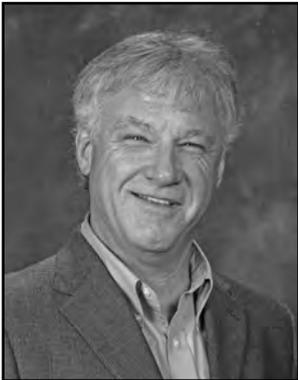
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*The official magazine of the
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Home Builders Association of West Florida

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THE CHENEY'S AND SLUDERS ARE THE GIFT THAT KEEP ON GIVING TO THE HOME BUILDERS ASSOCIATION

This past September and recently at the October, two longtime members of the Home Builders Association hosted a Membership Meeting. These two companies, Mathes Lighting and Lamp and Gene's Floor Covering, respectively, are family owned and operated.

Founded in 1972 by the late Jerry Mathes, Mathes Electric Supply Company started with 4 employees and \$75,000 worth of inventory. Now with over 5 million dollars in inventory, Kim Cheney has kept her father's spirit and life's work alive by keeping the same standards and systems in place. One key factor for the overall success is the longevity of its employees who average over 20 years with the company. Mathes has six locations from Pensacola to Daphne and Foley, Alabama, that is made up of its electric supply business and its lighting and lamp showrooms. Mathes Electric is a leader in the LED industry with its Energy Solutions Team. By working with Gulf Power's energy audit team, Mathes can work to save businesses thousands of dollars with LED technology. Jerry Mathes built his business on the foundation of treating people with respect, and his legacy continues today.

Gary, Cindy, Kevin and Kyle Sluder of Gene's Floor Covering hosted the HBA in October with the Auxiliary Council Auction. "My dad loves to cook and help out," said Kevin Sluder. "He gets more enjoyment out of seeing people eat the food than he does anything else. It makes him happy to see others happy."

Gary started working for his late father, Gene, when he was a student at Escambia High School. Gene Started the business in 1965, two years prior to his Naval retirement. "This has been a good business for my family," said Gary.

With members like Kim and John Cheney and Gary and Cindy Sluder, the HBA is in good hands for many years to come. Thank you all again for your efforts.



From left, Cindy, Kyle, Gary and Kevin Sluder of the family-owned Gene's Floor Covering.

President's Message



"With members like Kim and John Cheney and Gary and Cindy Sluder, the HBA is in good hands for many years to come."



Longtime HBA members Kim and John Cheney of Mathes Lighting and Lamp have been great supporters of the HBA for many years.

BIG CHANGES FOR CONSTRUCTION DEFECT CLAIMS

BY STEPHEN MOORHEAD AND JAY FRAISER

New legislation has been signed into law by Governor Scott that will have considerable impact on how construction defect claims are administered in Florida.

The legislation, signed into law by Governor Scott after receiving overwhelming support in the House and Senate, took effect October 1, 2015. Chapter 558, Florida Statutes was initially enacted in 2003 with the intent to guide potential construction defect claims through a mandatory pre-litigation process before a lawsuit can be sustained in Court.

A person alleging a construction defect must provide written notice to the contractor, subcontractor, supplier or design professional believed to be responsible for the defect. The claim must provide details of the alleged defect and allow the construction professional to review and respond to the claim and/or cure the defect.

The first significant revision to Chapter 558 adds additional components to the written notice requirement. A claimant is now required to provide the written notice to the construction professional's insurance provider, in addition to the construction professional. Also, language has been added directing the parties to attempt to resolve the claim through "confidential settlement negotiations." Confidential settlement negotiations are not defined. These two changes serve to bring the insurance provider into



the beginning of the pre-litigation process potentially increasing the likelihood of a speedy resolution of the alleged claim.

There are other significant changes to Chapter 558. The language of Section 558.004(1)(b) was also amended to require the claimant to specify the nature and location of the alleged defect so that the construction professional can conduct a thorough initial review and response. Section 558.004(1)(6) states: "Based upon at least a visual inspection by the claimant or its agents, the notice of claim must identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect

without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice." It is important to note that the amendment clarifies that this additional detail can be based upon the inspection of the claimant only. Finally, the law was also changed to require that mandatory written response by the construction professional contain at least one of the offers of settlement specified in Section 558.004(5)(a)-(e).

The amendments to Chapter 558 bring a more detailed and effective method to the existing construction defects pre-litigation process. A claimant is required to more accurately detail the potential defect on the front end allowing the parties to more thoroughly review and resolve a claim without the costs associated with drawn-out litigation.



Stephen R. Moorhead, General Counsel for the Home Builders Association of West Florida, is one of the founders of McDonald Fleming Moorhead and is currently the managing partner. He is a sixth generation Floridian and a long-time resident of Pensacola, having graduated from Woodham High School. He obtained his bachelor's degree in accounting from Auburn University and his Juris Doctorate from the Cumberland School of Law at Samford University.



John "Jay" Fraiser. Jay joined McDonald Fleming Moorhead in 2015. He is admitted in Florida, Georgia, Maryland and the District of Columbia and practiced for over 10 years in Atlanta before moving to Pensacola. Jay's primary focus has been in the field of real estate development and litigation, including condominium and community association litigation and general servicing.

HBA

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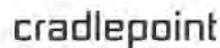
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- Dec. 3** **Installation Banquet/December GMM**
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Fixing Credit Woes Key to Boosting Housing Recovery

NAHB Chairman Tom Woods, First Vice Chairman Ed Brady and Immediate Past Chairman Kevin Kelly stressed the need to fix credit problems for home builders and home buyers in order to boost the recovery during today's New Hampshire Housing Summit at Saint Anselm College in Manchester.

Participating in a panel on expanding access to credit, Woods noted that while acquisition, development and credit conditions have improved somewhat in the aftermath of the Great Recession, the issue is still a major headache for many NAHB members.

"Historically, home builders get money from community banks," said Woods. "They were decimated by the recession, and many sold out to regional banks. Regional banks don't typically make loans to builders and developers."

Meanwhile, many of the community banks that have been the key source of production credit for smaller building companies are so bound by regulatory restraints that they are stuck on the sidelines.

Hispanics, a growing demographic, have a strong desire to become home owners, but are facing regulatory obstacles, according to Gary Acosta, CEO of the National Association of Hispanic Real Estate Professionals.

"Access to credit is at the top of that list," said Acosta. "Many Hispanics have small businesses, but it is difficult to get a loan if you are a self-employed individual. We need new ways to evaluate income."

"If you don't have an hourly job or traditional salary, we don't have an avenue for you to purchase a home,"

added Ronald Phipps, president of the National Association of Realtors. "If you are self-employed, good luck."

Brady, who moderated the forum, stated that a revamped housing finance system is needed to make a real difference.

With Fannie Mae and Freddie Mac in the eighth year of conservatorship, the nation is overdue for comprehensive reform that will provide adequate and reliable credit to home buyers and protect access to rental housing, he said.

In a separate session on accessing private capital to build affordable housing, Kelly said "there is no better tool than the low income housing tax credit. Without it, we would be up the creek without a paddle."

Part of the challenge of doing purely tax credit deals is the fact that wages have remained flat, Kelly added. "Tax credit rents are predicated on the median income for a particular area. We have been in a period of wage stagnation. I have not been able to raise rents in those areas for five years."

Noting that he has had to add \$5,000 to \$6,000 in hard costs due to overly stringent code requirements, Kelly said these rising costs have forced him to produce fewer affordable housing units.

Courtesy of NAHBNow





Court Rejects Minnesota Fire Sprinkler Mandate

A Minnesota code requirement that all new single-family homes larger than 4,500 square feet be constructed with automatic fire sprinkler systems was declared invalid on Wednesday by the state Court of Appeals.

The Builders Association of the Twin Cities had filed a lawsuit after the compromise decision by the state's department of labor and industry to require the sprinklers only in larger homes. The lawsuit was supported with amicus briefs from the Builders Association of Minnesota and NAHB, which awarded both the state and local HBAs a grant from the Legal Action Fund for assistance.

"After making a careful and searching inquiry of the record, we conclude that the 4,500-square-foot threshold for one-family dwellings is arbitrary and not supported by substantial evidence in the record," the court said.

In its decision, the court cited the testimony of the state fire marshal, who said he supported mandating sprinklers in all homes — and the lack of evidence that "phasing in" sprinkler system requirements from larger homes to smaller ones was an effective balance of safety and cost.

The state did not "provide support for the implicit determination that a one-family dwelling over 4,500 square feet is the tipping point at which the life-safety benefits of sprinkler systems outweigh the costs. Why is it not 4,000 square feet or 3,000 or 5,000? Respondent has not provided us with an answer to that question," the court said.

California and Maryland are now the only states that require fire sprinkler systems to be installed in all one- and two-family homes and townhouses. Since the mandate first became part of the model international residential code, more than 40 states have either modified the code to make them optional or passed legislation rejecting mandates.

NAHB continues to support state and local jurisdictions that promote the continued use of smoke alarms: Ensuring every home in the United States had at least one working smoke alarm would save around 890 lives each year. This benefits low-income families living in older housing stock and not just those who can afford a new home with fire sprinklers.

NAHB members can download fact sheets, studies and other tools on the Fire Sprinkler Resources page. For additional information, contact Dan Buuck at 800-368-5242 x8366.

Courtesy of NAHBNow

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Unveiled marketing tools
 for membership recruitment to expand business contacts and leadership opportunities.

Pushed for solutions to the property and builders' risk insurance crisis while continuing to promote creation of federal and regional catastrophic loss funds.

Formed a Commercial Builders Council
 to help residential builders diversify into this lucrative market.

Partnered with the Florida Green Building Coalition to create uniform, cost-saving green building standards.

Protected our future by endorsing pro-housing, pro-business candidates for cabinet and legislative positions.

Persuaded the Corps of Engineers
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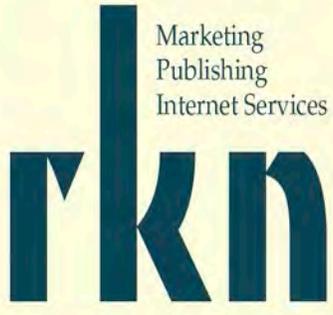


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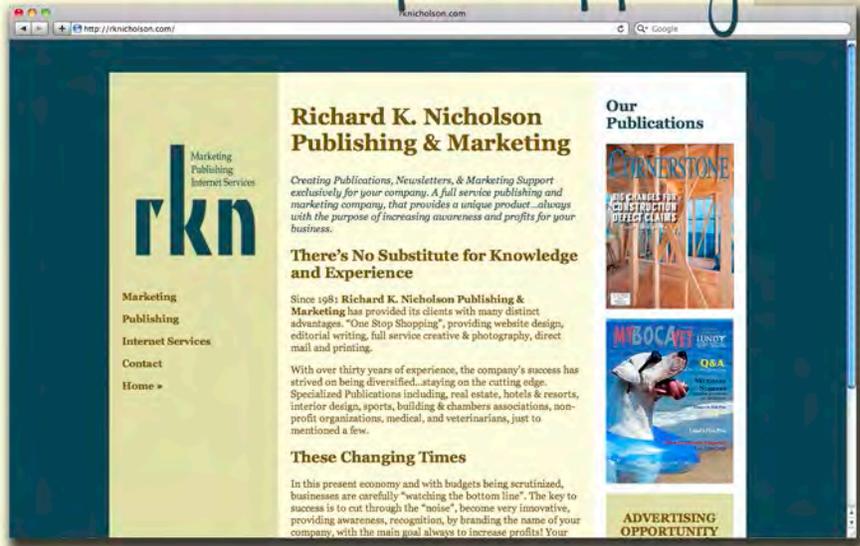


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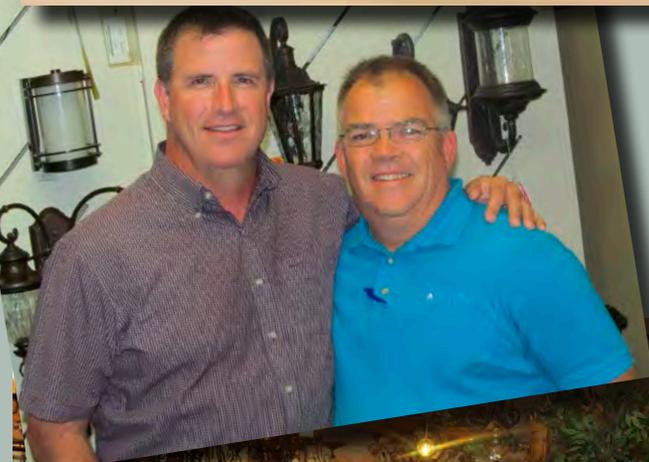
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SEPTEMBER MEMBERSHIP MEETING

The September Membership Networking Meeting was hosted by Mathes Lighting and Lamp. Kim and John Cheney and their team welcomed over 100 members to their renovated showroom located on Creighton Road in Pensacola. The meeting was complete with John's great smoked ribs and chicken that were a tremendous hit. The HBA appreciates your hospitality very much.

Top Right: Longtime HBA members Kim and John Cheney of Mathes Lighting and Lamp have been great supporters of the HBA for many years. Kim serves on the HBA Board of Directors and John is always lending a helping hand at HBA functions.



OCTOBER MEMBERSHIP MEETING

Once again, the Sluder family opened up its doors and welcomed over 150 members to the Gene's Floor Covering / Auxiliary Council Membership Networking Meeting. The Auxiliary Council put on a show with its great auction items, and Gary, Cindy, Kyle and Kevin Sluder put on a display of culinary delights where the family motto is, "If it moves, we cook it!"

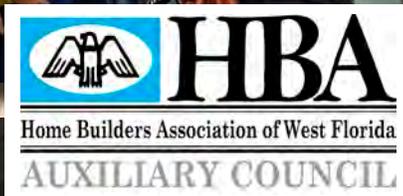
The Auxiliary Council, led by Angie Cooper of Gulf Power, did a great job in obtaining auction items for the event. Because of their efforts, the Council raised over \$13,000 to benefit local agencies for the betterment of children.



From left, Cindy, Kyle, Gary and Kevin Sluder of the family-owned Gene's Floor Covering.



Auxiliary Council members Shelia Billingham of Fairway Mortgage, and Donna Gambrell of Brightway Insurance worked hard on obtaining auction items.



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4. They serve on committees and councils gaining valuable networking opportunity while helping to advance the association's mission.
5. By doing so, you increase the value proposition for all membership in our HBA.
6. They are strong supporters of local and state PACs and BUILD-PAC.
7. They are a major source of non-dues revenue through sponsorships, advertising, etc.
8. As industry partners, they are a valuable resource for business and management tips.
9. They are heavily invested in your business success: You win, they win!
10. Why wouldn't you do business with a member?



CFPB Announces Crackdown on Marketing Service Agreements

The Consumer Financial Protection Bureau (CFPB) on Oct. 8 issued a bulletin providing the mortgage industry guidance regarding marketing service agreements.

“We are deeply concerned about how marketing services agreements are undermining important consumer protections against kickbacks,” said CFPB Director Richard Cordray. “Companies do not seem to be recognizing the extent of the risks posed by implementing and monitoring these agreements within the bounds of the law.”

The bulletin stated that “any agreement that entails exchanging a thing of value for referrals of settlement service business likely violates federal law, regardless of whether a marketing services agreement is part of the transaction.”

The agency added that it “intends to continue actively scrutinizing the use of such agreements and related arrangements in the course of its enforcement and supervision work.”

As it relates to home building, marketing service agreements usually involve an arrangement in which a builder performs certain promotional services on behalf of a lender. In turn, the builder expects the lender to provide builder-provided referrals with a full line of competitive products and a commitment to providing excellent customer services. The lender then pays the builder an agreed-upon recurring fee for marketing and advertising services.

Builder affiliate relationships involve a mortgage company or settlement

service provider that is a wholly owned subsidiary of a builder.

Marketing service agreements and builder affiliate relationships provide builders with cost savings and increased efficiencies in the settlement process.

NAHB Files Amicus Brief

In a recent case involving the same statutory provision at issue here, CFPB brought an enforcement action against PHH Corp., charging that its affiliated mortgage reinsurance programs violated the section of RESPA that prohibits kickbacks and referral fees.

In an administrative appeal, CFPB Director Cordray expressly declined to follow HUD prior interpretations and court opinions on the subject. Rather, Cordray issued a decision that, if upheld, will have sweeping ramifications for a number of business practices, including marketing services agreements and builder affiliate relationships.

CFPB's position in this and other recent enforcement actions foreshadowed the Oct. 8 bulletin, and were the impetus for lending organizations such as Wells Fargo to abandon the use of marketing service agreements.

PHH appealed to the D.C. Circuit, which issued a stay of the enforcement action pending its review.

NAHB joined the Mortgage Bankers Association and other groups and filed an amicus brief in this case. The brief educated the court about the widespread ramifications of CFPB's actions on multiple industries, including the home building industry, and the agency's failure to follow the required process to change its regulatory position.

For more information, contact Steve Linville at 800-368-5242 x8597.

Court Ruling Suspends New EPA Water Rule

NAHB on, October 9, 2015, commended the U.S. Court of Appeals for the Sixth Circuit for enacting a nationwide stay on Environmental Protection Agency (EPA) regulations that dramatically expand the definition of “waters of the United States” under the Clean Water Act.

“We applaud the court for taking this action to suspend EPA’s water rule,” said NAHB Chairman Tom Woods. “NAHB has been working diligently on the legislative and legal fronts to overturn this rule that raises housing costs, tramples states’ rights and adds unnecessary regulatory burdens to small businesses.”

As required by law, EPA failed to consult with state and local governments, confer with business stakeholders, comply with regulatory requirements or produce an accurate cost-benefit analysis.

“The EPA had said the new definitions were needed to bring clarity to the regulations. We fought back

in hearings, written testimony and comments, and finally, a lawsuit – because these new rules did nothing but muddy the waters – confusion that would lead to costly permitting delays and hamper our nation’s economic recovery,” Woods said in a letter to members announcing the decision.

In its ruling, the Sixth Circuit stated: “A stay temporarily silences the whirlwind of confusion that springs from uncertainty about the requirements of the new rule and whether they will survive legal testing. A stay honors the policy of cooperative federalism that informs the Clean Water Act and must attend the shared responsibility for safeguarding the nation’s waters.”

So while the federal courts figure this out, the agencies will have to use their previous definitions. For the time being, EPA and the Army Corps of Engineers must prove that a water is jurisdictional before automatically sweeping it into their regulatory nets.

“Our members want to protect the nation’s waters, but we need clear rules,” Woods said. “Today’s court decision is a step in the right direction.”



Courtesy of NAHBNow



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Americans Spent \$150 billion on Home Improvements and Repairs in 2013

By ROSE QUINT ON SEPTEMBER 28, 2015

If one wanted to understand the characteristics of the housing stock in the US, including its size, composition, physical conditions, home improvements, characteristics of recent movers, and housing costs, the American Housing Survey (AHS) would be the place to go. The AHS is conducted

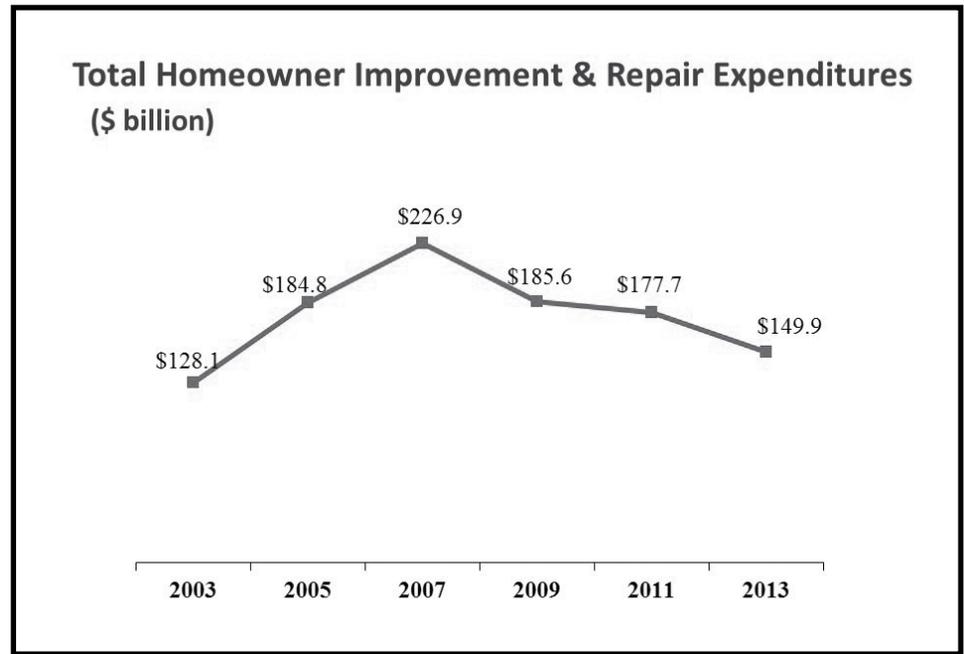
every other year by the Census Bureau and sponsored by the Department of Housing and Urban Development (HUD). This post will focus narrowly on data showing that American homeowners have significantly cut down on the amount of money they spend improving and repairing their homes.



NAHB

According to NAHB analysis of the most

recent data, home owners spent about \$150 billion on home improvements and repairs in 2013. That was 34% less than in 2007 (\$227 billion), 19% less than in 2009 (\$186 billion), and 16% less than in 2011 (\$178 billion). In the 10 years included in this analysis, total homeowner remodeling expenditures have only been lower once: in 2003, when they were \$128 billion.



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Multifamily Gains Push Housing Starts Up 6.5% in September

Led by a jump in multifamily production, nationwide housing starts increased 6.5% to a seasonally adjusted annual rate of 1.206 million units in September from an upwardly revised August reading,

according to newly released data from HUD and the Commerce Department.

Multifamily starts rose 18.3% to a seasonally adjusted annual rate of 466,000 units while single-family production edged up 0.3% to 740,000 units.

“Although our builders are gaining confidence in the housing market, they remain cautious about adding too much inventory,” said NAHB Chairman Tom Woods.

“Despite the modest month-over-month differentials in single-family production, this sector has shown gradual improvement throughout 2015,” said NAHB Chief Economist David Crowe. “Since January, single-family starts are up 11% and we anticipate a similar pace for

the rest of this year.”

Combined single- and multifamily starts rose in three of the four regions in September. The Northeast, South and West posted respective gains of 23.4%, 0.6% and 25.4%. The Midwest registered a 12.2% loss.

Single-family permits edged down 0.3% to a rate of 697,000 while multifamily permits fell 12.1% to 406,000.

Regionally, the Midwest, South and West posted respective permit losses of 5.1%, 6.8% and 6.2%. The Northeast rose 8.3%.

Courtesy of NAHBNow



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NAHB Keeps the Wheels Turning

A strong housing industry is key to our nation's economic recovery. And when lawmakers and bureaucrats try to chip away at your profits with wrong-headed or just plain expensive rules, NAHB is here to make sure that you aren't regulated out of business.

Here's what we've been working on so far this year.

These dollar values represent the **savings per housing start** a typical builder will see as a result of select NAHB advocacy victories in 2014. Some members will experience more of these benefits than others, depending on location and market segment.

Learn more at valueofnabh.org

\$1,281

Farm Bill generates additional home building and remodeling.

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EPA drops post-construction stormwater rule.

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U.S. Supreme Court Clean Air Act ruling benefits multifamily builders.

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Keeping costly provisions out of building codes saves construction costs.

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Homeowner Flood Insurance Affordability Act saves business for builders and remodelers.



HBA of West Florida

Installation Banquet / December GMM

Thursday, December 3, 2015

Hilton Garden Inn - Airport {1144 Airport Blvd.}

11:00 a.m. to 1:00 p.m.

Cost: \$25 per person Dress: Business Attire

Photographer will be onsite for Professional Photos. *Separate Registration Form*

Sponsorship Form

Being a sponsor of the 2015-2016 Installation Banquet will provide you with business-building recognition as well as show your support to the Home Builders Association of West Florida. Sponsorships must be paid in full when registering to be a sponsor. If you need an invoice generated for payment purposes please contact: Vicki at vicki@hbawf.com or (850) 476-0318.

Deadline for Sponsorship is November 23rd!

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**Please email the names for the attendees included with the sponsorship package to vicki@hbawf.com

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In construction, a spike is a steel object that is essential to making a building strong. As in construction, the HBA of West Florida sees a Spike as someone that works to keep our association strong. Spikes work on the recruitment and retention of members in addition to keeping members active with the association. Anyone is eligible for Spike status. On Spike credit is awarded for each new member recruited and an additional credit is awarded for that new member's renewal on or before their anniversary date. If you help to retain a member, you are eligible to receive a half point for each member.

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