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Publisher's Note

As we come to the close of 2018, we enter the season of thanksgiving. Our rich heritage of family, traditions and celebration of life are what makes Acadiana the special place we choose to live. Holidays are the time to celebrate all of the good fortune in our lives with the people we care about the most. Remember to enjoy what this special time of year has to offer. The gathering of families and friends, delicious food, festive decorations and hearts full of thanksgiving; we are so blessed! I also want to take this time to let all of you know how thankful I am for you, the reader, the advertiser and the builders who have been featured. It is my privilege to journal the builders of Acadiana.

This month's feature is a father and son duo. Donald Theaux and his son, Rocky collectively have over 70 years in the industry. Well respected among their colleagues, their attention to detail, fine craftsmanship and integrity are a few reasons for their established presence in Acadiana. It is my privilege to highlight their story.

Enjoy,
April Becquet

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Lafayette, La 70508
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Acadiana Builder is published bi-monthly. Subscription rates: \$24 per year; \$36 for 2 years; \$5.00 single copy. Advertising rates on request.

Publisher
April Becquet

Printed in the USA by
Seaway Printing

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America's Choice Builds Custom Homes by Family for Families

By Kathy Bowen Stolz

America's Choice Custom Builders is a family-owned business that believes in treating every customer like family. And just as family relationships are built on memories, builders Donald and Rocky Theaux want their customers to be in homes where they can proudly spend their lifetimes creating memories.

The Theauxs' goal is to earn their clients' trust and confidence every day and to improve the lives of the clients that have entrusted them with their homes.

"We have been granted a great responsibility that is authorized to us to make a positive impact on all who come in contact with us. We will always treat each other with respect and dignity as we hold each other accountable to the highest standard of excellence. We offer our clients a tremendous value without compromising integrity and are honored to be their builder," Donald stated.

"Integrity, quality and value set us apart from other builders in the Lafayette area," said Rocky Theaux, who



owns America's Choice with his dad, Donald.

Rocky added, "We will always be about quality. We're passionate about using the best products and materials, installing them with great care." Furthermore, he pledged that America's Choice will maintain clean, secure and safe job sites.

Donald said he demands the best quality in materials and workmanship. He believes quality construction is not a 40-hour-a-week job, but a lifestyle. He is always available for his customers and believes in keeping every customer as a friend for life.

"We will always listen to our clients and do our very best to meet their needs. A 'custom home' means a unique home for our clients and their families. We strive to offer unparalleled customer service and to create a 'wow experience' for each of our customers," Donald said.

"We offer free estimates, free consultations and guaranteed satisfaction. We are a service company, not a product sales company. We stand by our work."

Although the company name America's Choice may

Continued on Page 12





LOUISIANA'S NEW HOME WARRANTY ACT: PART 2

BUILDER BEWARE-THE SHEPARD CASE

By Fred W. Davis, J.D.,

In our last issue, we discussed the essentials of The Louisiana New Home Warranty Act ("NHW", or "the Act"). The Act outlines instances when a new home owner can seek legal remedies against builders for various defects. There are, however, several circumstances for which the builder will not be held responsible under the NHWA, unless the parties otherwise agree in writing.

In this article, we will explore some of the items excluded by the Act. We will also examine a 2015 court decision that offers a cautionary tale for home builders regarding potential caveats to the exclusions provided

within NHWA.

The builder's warranty, among other things, does not extend to:

- Fences, landscaping, all driveways and walkways, or any other improvement not a part of the home itself.
- After the first year, the concrete floor of a basement and the concrete floor of an attached or unattached garage that is built separate from a foundation wall or other structural element of the home.
- Any damage to the extent it is caused or made worse by any of the

following: any change of the grading of the ground by anyone other than the builder, or any employee, agent, or subcontractor of the builder.

- Dampness, condensation, or other damage due to the failure of the owner to maintain adequate ventilation or drainage.
- Loss or damage which does not constitute a defect in the construction of the home by the builder, or any employee, agent, or subcontractor of the builder.
- Any loss or damage to a home caused by soil conditions or soil



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movement if the home is constructed on land owned by the initial purchaser and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement.

- The law does not provide for breach of contract claims or negligence.

There is a peculiar Louisiana legal principle called "Redhibition". For purposes of this article and case review, we will use redhibition to mean that if a property has a defect

that diminishes its usefulness or value, a buyer/homeowner would be entitled to a reduction of price. The Act did not previously provide for claims in redhibition against a builder UNTIL the case of *Shepard vs Robinson Construction*, 170 So. 3d 387, (La. App 2nd Cir. 2015). The Shepard case held that under the NHTA, a builder must repair a drainage issue, even after closing, under the theory of redhibition if a builder's actions are what created the drainage issue on the property. Cost of repair of the defect determines the price to which the homeowner/buyer is entitled. A successful plaintiff,

as in the Shepard case, CAN also be awarded attorney's fees, which can be significant.

These are the basic Shepard facts: Debbie Shepard purchased a lot on which Robinson Construction built a new home. She noticed water pooling in the backyard every time it rained and notified Robinson, who offered to fix before closing. The problem was not fixed by closing and not addressed until Shepard had moved into the home several months later. Robinson installed three pipes in the back yard to alleviate the problem and reroute the water from the backyard, but

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instead made matters worse. After Robinson refused to do anything further, Shepard filed suit.

The drainage issue was present at all times during construction of the house, and continued through to after the time of closing and well after more neighboring houses had been constructed. Once Robinson finally addressed the issue, it actually made matters worse. The trial court found that Robinson failed to comply with building standards with regard to grading and drainage and that constituted a defect in the construction of a home. This entitled Shepard to a remedy under the NHPA. The appeals court agreed with the trial court finding that although the specific drainage issue does not necessarily come under the Act, the homeowner had a valid claim because the drainage issue is covered by redhibition.

Until Shepard, Louisiana courts interpreting the NHPA had not ruled against a builder under the theory of redhibition. This case, and the precedent it has now set, provides some valuable insight for builders. This is an especially pertinent insight when proper drainage of a property is a concern. Based on expert testimony, the court required Robinson to pay Shepard \$15,269.00 to repair the drainage problem which included removing the existing drain work,

removing the fence in the backyard to retrograde, regrading of the front and backyard, replacing irrigation after the grading, and re-laying soil in the front and backyards. Robinson also had to pay \$20,373.75 for attorney's fees incurred by Shepard.

As a result of the Shepard decision, builders must be particularly mindful of drainage problems associated with building new homes as the law has opened a pathway for disgruntled homeowners to seek to impose liability on builders, even though the original language of the Act would seem to exclude such issues.

Fred W. Davis, J.D., has practiced law and prepared notarial documents for more than 35 years. He is a Business Law Instructor at the University of Louisiana-Lafayette. He is also the owner of Pass My Notary, LLC, www.passmynotary.com, which publishes notary education workbooks and conducts seminars to prepare applicants for the state notary exam.

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New Home Sales Rise 3.5 Percent in August

Even as Affordability Concerns Persist

Sales of newly built, single-family homes rose 3.5 percent in August to a seasonally adjusted annual rate of 629,000 units after downwardly revised June and July reports, according to newly released data by the U.S. Department of Housing and Urban Development and the U.S. Census Bureau. These downward revisions suggest softness in new home sales activity this summer. However, on a year-to-date basis, sales are up 6.9 percent from this time in 2017.

“New home sales have ticked up in August, due to positive demographics and a strong overall economy,” said Randy Noel, chairman of the National Association of Home Builders (NAHB) and a custom home builder from LaPlace, La. “However, housing affordability remains a serious concern and builders must manage supply-side costs and stiff

regulatory hurdles to keep prices competitive.”

“Housing affordability has taken a toll on new home sales over the summer, and there could be market volatility in the months ahead as communities grapple with the aftereffects of Hurricane Florence,” said NAHB Chief Economist Robert Dietz. “Still, we expect the overall housing market to grow this year as demand continues to increase among millennials and other newcomers.”

A new home sale occurs when a sales contract is signed or a deposit is accepted. The home can be in any stage of construction: not yet started, under construction or completed. In addition to adjusting for seasonal effects, the August reading of 629,000 units is the number of homes that would sell if this pace continued for

the next 12 months.

The inventory of new homes for sale was 318,000 in August. The median sales price was \$320,200.

Regionally, new home sales rose 47.8 percent in the Northeast, 9.1 percent in the West and 2.7 percent in the Midwest. Sales fell 1.7 percent in the South.



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The advertisement for A PLUS INSULATION of LA features a background of white, fluffy insulation. On the left, there is a graphic of a red sun rising over a blue horizon with icicles hanging from it. The text is arranged in a clean, professional layout with contact information for Mike Ferguson. The services listed are in bold red text, and the congratulatory message is at the bottom in a script font.

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The advertisement for DON'S Exterminating Co. has a green and white color scheme. It features a large green beetle icon with a white 'X' over it, set within a circular frame. The company name is in a stylized font. The phone number and slogan are in bold green text. The owner's name is also in bold green text. A congratulatory message is at the bottom in a script font.

Continued from Page 7

confuse some newcomers to the Lafayette area, this custom builder is a local business. The Theauxs believe in keeping the business simple.

And their approach works! After working as a brakeman and conductor for Southern Pacific Railroad, Donald started the company 55 years ago when he was just 25. Using his initials, he first called the company DOT Real Estate and Construction, but he changed the name in the early 1990s to America's Choice Custom Builders.

The first house he built back in 1963 in Lafayette, which was for his family, was located just off Camellia Boulevard, west of River Ranch. It was 1,500 sq. ft., for which he paid \$21,000 for both the lot and construction. He noted that his payment was \$126/mo.

Like other long-time businessmen in the area, Donald Theaux has learned to weather the economic storms of the Lafayette area. "The economy was strictly oil-related until about 15 years ago. Now it's diversified, but the oil business still affects us."

America's Choice Custom Builders' focus is on all homebuyers who are stepping up or stepping down the





sizes of their previous homes. Drawing from the diversified local economy, those homebuyers are coming from the medical and professional fields instead of just the oil fields these days.

“We believe in quality, not quantity,” Rocky noted. “Our goal is to create homes that have the quality, craftsmanship and features found in much larger and more expensive homes.”

They usually have one or two houses in the Parade of Homes because the parade is a good way to get their company name in front of the public, even though many attendees are years away from building. Last year the company built a showcase, 4,360-sq.-ft. home featuring five bedrooms, a swimming pool and an outdoor kitchen for the Parade of Homes. This home was a big hit with attendees, Donald said.

Donald finds the competition of building for the parade – and next to other builders in a subdivision – makes for better quality homes. (Over the years America’s Choice has constructed homes in the majority of subdivisions in Lafayette.)

The company’s usual advertising over the years has been

just a sign on their sites and listed in the Multiple Listing Service (MLS). Both Donald and Rocky are licensed realtors, although they use their licenses only to sell their own products, not others' homes. Both are also certified builders.

Rocky's wife, Christie Theaux, is a real estate broker as well, Christie started Next Homes Cutting Edge Realty a few months ago after securing the local franchise.

Donald prefers construction over real estate. After 55 years of building and at age 80, he still loves seeing what materializes from an idea on a piece of paper, "You know the saying: 'Find something you like to do, then it's not work.'"

He was pleased when Rocky, now 42, joined the company 15 years ago. Rocky handles the majority of the building process, according to Donald, although they do collaborate on bidding and pricing of projects. "Now I know it [building] was in his blood."

Also in Rocky's blood is a love of boating. The family went cruising all over the East Coast in a wooden 57-foot Chris-Craft for a few years and currently the family keeps a 60-foot Sportsfish named "Reel Choice," in Destin, Fla., where they spend as much time as possible when their schedules allow.

And just as it in the business, the personal side of America's Choice Custom Builders is all about family.

.....
For more information, contact America's Choice Donald Theaux at 337-257-8323 or Rocky Theaux at 337-852-0409, amchoice@ymain.com or visit www.americaschoicebuilders.com. The company's office is at 107 Petrus Drive, Broussard, LA 70518.



Tax Reform Law Will Benefit Builders, Small Businesses



The landmark tax reform legislation took effect for the tax year starting Jan. 1, 2018. After significant improvements made during the legislative process, and due to the robust engagement efforts of NAHB and its membership, NAHB supports this final tax legislation.

The changes made to the tax code will help middle-class families, maintain the nation's commitment to affordable housing and ensure that small businesses are treated fairly relative to large corporations.

Highlights of Tax Reform Legislation

Supports Middle-Class Families
The legislation supports the American Dream of homeownership and strengthens opportunities for Main Street home builders to add much-needed housing inventory to the market.

- Retains the mortgage interest deduction and the deduction for second homes, but reduces the mortgage interest cap from \$1 million to \$750,000.
- Allows taxpayers to deduct up to \$10,000 of state and local taxes, including property taxes and the choice of income or sales taxes.
- Maintains existing law that allows home owners to exclude up to \$250,000 (or \$500,000 for married couples) in capital gains on the profit from the sale of a home if they have lived in the house for two of the last five years.

- Retains seven tax brackets, with rates ranging from 10% to 37%. This will provide tax relief for individuals and small businesses and represents a tax cut for most taxpayers.

Protects Affordable Housing Options

The new tax law retains private activity bonds (PABs), which will enable the Low-Income Housing Tax Credit to maintain its effectiveness as the most indispensable tool for the production of affordable housing. Without PABs, we would face the loss of more than 788,000 affordable rental units over the next decade.

Expands Economic Growth
NAHB economists predict that the new law will boost GDP growth over the next 10 years, while also rewarding work and promoting labor supply and wage growth.

Importantly, the bill helps address the housing market's severe inventory shortage with its reformed rule for businesses, allowing for greater investment and growth. This will help small builders buy land, obtain financing and build more homes over the next 10 years.

A healthy housing industry means more jobs and a stronger economy. Fully 15 percent of the U.S. economy relies on housing and nothing packs a bigger local economic impact than home building. In fact, three jobs are created with the construction of each new single-family home.

Small business provisions in the tax bill include:

- Retains existing carried interest rules, but assets must be held for three years.
- Allows most taxpayers with pass-through income to deduct 20% of that income based on wages or on wages plus a capital element.
- Provides real estate businesses a choice between the following:
 1. Limiting their interest deduction to 30% of net income without regard to depreciation, amortization, and depletion. This distinction makes the limitation less restrictive than one based on adjusted gross income.
 2. A 100% deduction for business interest, but with certain tradeoffs.
- Preserves the benefit for real estate investors to make tax-free exchanges of property, commonly referred to as "like-kind" exchanges.
- Gives the taxpayer the choice of taking 27.5- or 30-year multifamily depreciation, depending on how they elect to treat their business interest.

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WOTUS Confusion Abounds

But More Clarity Could Come Soon

Multiple legal challenges, combined with federal rulemakings in various stages, are complicating efforts to track the federal Waters of the U.S. (WOTUS) definition.

The number of states subject to the Obama Administration's 2015 rule, and those subject to the prior 1986 WOTUS definition, has shifted in just the past few months. On Aug. 16, the U.S. District Court for South Carolina halted the Trump Administration's Suspension Rule, which would have delayed implementation of the 2015 rule to 2020. As a result, the 2015 rule became applicable in 26 states, with the 1986 definition of WOTUS being applicable in 24 states.

However, on Sept. 12, the U.S. District Court for Southern Texas issued a temporary injunction against

the 2015 rule in Texas, Mississippi and Louisiana. Then, on Sept. 18, the U.S. District Court for North Dakota added Iowa to its list of states subject to an existing injunction. Now, the 2015 rule applies in 22 states, with the 1986 definition applicable in 28 states.

What will end this regulatory confusion? Additional rulemakings by EPA and the Corps hold the answer. The Office of Management and Budget (OMB) Semi-Annual Regulatory Agenda, updated this week, expects final nationwide repeal of the 2015 rule, and temporary replacement with the 1986 regulatory definition of WOTUS, to be finalized by March 2019.

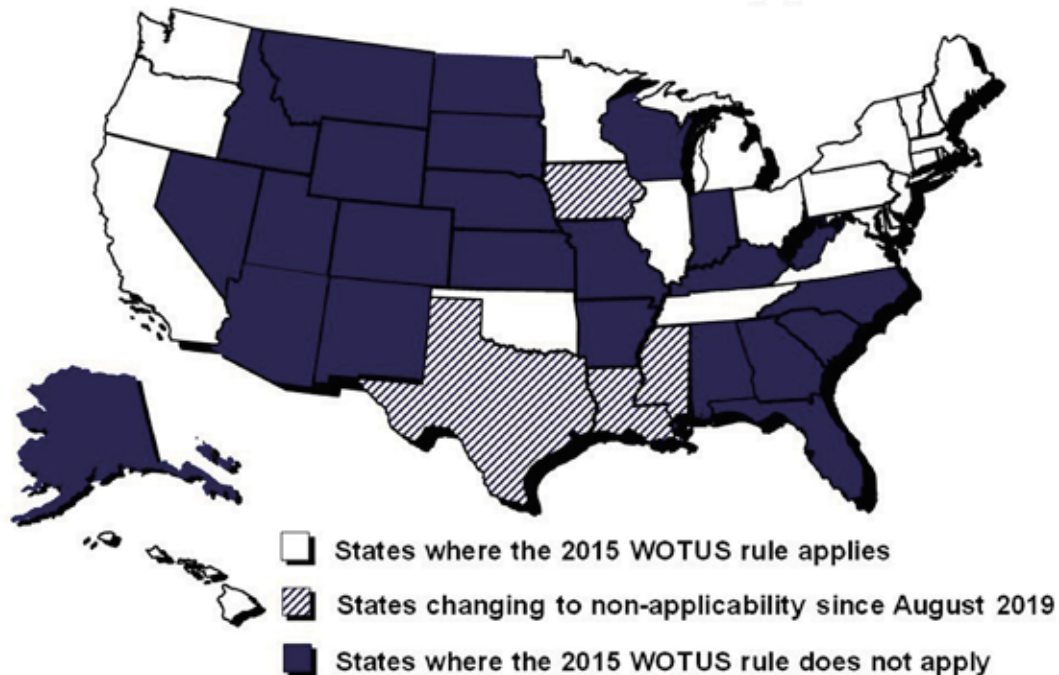
Also, according to the regulatory agenda, EPA plans to issue a Notice

of Proposed Rulemaking on a new WOTUS definition this month, with the final rule expected in September 2019.

Of course, the courts could also provide needed clarity. The U.S. Justice Department has appealed the Suspension Rule decision to the U.S. Fourth Circuit Court of Appeals. If the nationwide injunction were reversed, the 1986 definition of WOTUS would apply in all states until EPA repeals or replaces the 2015 rule.

NAHB continues to monitor all rulemakings and cases, and will keep members informed of WOTUS progress. For more information, contact Evan Branosky, 202-266-8662.

Which WOTUS Rule Applies?



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To learn more or for a quote, contact our General Liability representatives at 1-800-800-4007.



Builders Risk Insurance

The Louisiana Home Builders Association Builders Risk Program is available to residential builders and remodelers who are HBA members in good standing. Coverage may be purchased through appointed agencies who are also HBA members.

For more information about the program, visit www.HBABuildersRisk.com or contact Helmut Mundt at 855-442-2467 or helmut@hmia.com.

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