



HOUSING JOURNAL

Voice of New Mexico Home Builders Association Since 1970

Volume 47 Issue 1

January-February 2017

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2017 LEGISLATIVE Road Trip!

- Diana Lucero Named NAHB Associate of the Year
- Sustainable Building Residential Tax Credit Electronic Submission Available Soon
- Reviewing 2016 NMHBA Efforts and Accomplishments
- 2016 IBS Window & Door Product Profile - Articulating Cap Sill Never needs Adjustment



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Graphic Design - The Graphics Station
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Printing - Marketing Strategies
505-883-5400



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On The Cover



Fill 'er Up! Join New Mexico Homebuilders Association's annual trek to the Roundhouse in Santa Fe. Talk to legislators encouraging them to vote for laws favoring the homebuilding industry. Be a part of the legislative session by participating and making your voice heard.

See details on page 7.

Membership Statistics

	Oct	Nov
Central New Mexico	692	690
Eastern NM	90	91
South Eastern NMHBA	90	89
Lincoln County	115	116
Las Cruces	325	324
Southwestern NMHBA	53	55
San Juan County	147	145
Santa Fe Area	438	443
Otero County	<u>119</u>	<u>120</u>
Total	2069	2073

2017 NMHBA Meeting Calendar

February

- 10 Building Issues Committee Meeting @ NMHBA Office 8:30-9:45 am
- 10 Board Meeting @ NMHBA Office 10 am -3 pm

March

- 1 NMHBA Board Meeting @ Albuquerque Marriott
- 1 NMHBA Legislative Dinner Meeting @ Albuquerque Marriott
- 2 NMHBA Member Bus Trip to the Roundhouse

May

- 12 Building Issues Committee Meeting @ NMHBA Office
- 12 Government Affairs Committee Meeting @ NMHBA Office
- 12 Board Meeting @ NMHBA Office

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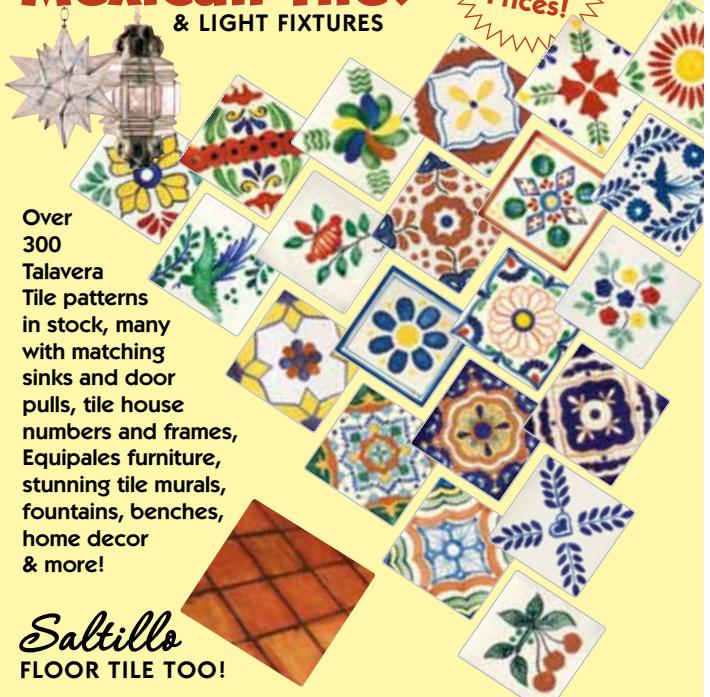
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A Message From The PRESIDENT



Let's Fill the Bus

The new year always brings hope in the home building industry that this year will be better than the last. I believe that builders and the many supporting trades are an optimistic bunch. Many of you have just returned from the 2017 IBS (International Builders Show) where you found new ideas and products, and gathered with some of the greatest Americans around. While products are available across the globe, the American home is truly the best of "Made in America."

Steve Hale

When our CEO and Executive Vice President Jack Milarch returned from IBS he relocated to Santa Fe for the 60-day legislative session. Jack and Randy Traynor do the heavy lifting for our association at the legislature and return the investment of our dues many times over. Best of wishes and luck (yes, luck does play a role in Santa Fe) to them both.

But Jack and Randy can't do it alone. For years NMHBA has chartered a bus to Santa Fe for our industry members to meet with the legislators, see how the legislature works, and to have an influence on the legislative process by advocating, in person, for our industry.

The bus trip is one of the three member meetings put on by NMHBA. The night before the bus trip we have a dinner meeting in Albuquerque and Jack lays out what has happened at the legislature to date and gives us valuable information for our visit. What legislation we are supporting is important, and so is the legislation we feel should not see the light of day. Already we have one such bill you will find out about at the dinner meeting. A personal visit with our representatives is very important. They listen to their constituent's concerns and can put a "face" to the impact of the legislation they are considering. They also appreciate our gratitude for understanding the hard work they do; don't forget to thank them.

Many special interest groups are also there in Santa Fe. We must have matching support and not let our concerns go unknown and unheard. For people that do not run a business, their view of our industry may be very short-sighted. Adding regulation may seem like a good idea to correct one issue but the end result is usually added expense and/or other adverse effects with no benefit to either the consumer or industry. Think of the commercials for prescription drugs. They help one thing but have a long list of side effects. Small business is the life blood of our country. ***We need to let our representatives know how their legislation is affecting our industry and the health of New Mexico.***

This year the bus trip is in early March. It is planned for just after the last day Bills can be dropped (you will learn about that at the dinner meeting). We start out the day early with coffee and breakfast burritos, travel to Santa Fe with narration by Jack about the process and generally go in groups to meet with legislators. I have enjoyed all the years I have attended. You may schedule a meeting with your legislator, attend committee meetings or watch the process from the viewing area. Shy? Don't worry, just team up with someone or a group to head around the capital. Lunch is on our own and there are great restaurants and cafes within a block or two of the capital. There will be plenty to talk about in your group. We load up usually around 2:00 p.m. and are back in Albuquerque by 3:00, so there is time to head home the same day. If you have never done this before you will really appreciate all you will see and learn that day. It's an amazing process, although some may use a different adjective. ***The best support you can give your industry will happen on this trip! ALL MEMBERS AND THEIR GUESTS ARE WELCOME. Let's fill up the bus!***





Jack C. Milarch, Jr.

A New Mexico Contractor's Responsibilities

There has been considerable discussion around the NMHBA meetings recently in regard to details of what a New Mexico contractor's required responsibility is, and is not, especially when it comes to completed projects. It seems like a good time for an article on this topic.

As I have listened to various contractors describe what they believe their responsibilities are, I hear a great variety of opinions. Some are more right than others, but most contractors don't seem to have a good understanding of this topic. There are many reasons for this. One of the difficulties with this subject is that a contractor's required responsibilities varies greatly from state to state. This means that what you hear at a seminar on this topic, for instance at the International Builders Show, may be accurate somewhere, but not necessarily for New Mexico.

This topic can quickly get into a convoluted discussion of codes, warranties, contracts, latent defects, and other legal details. As such we could go on for volumes detailing every jot and tittle of a thousand relevant laws, rules, and court cases but that isn't my intent with this article. Let's cover some basics of a New Mexico contractor's responsibility without going too far down that rabbit hole.

Warranty Requirement - At the office we sometimes get calls asking "what warranty is a contractor required to give on the finished construction?" These calls come from both customers and contractors. The basic New Mexico requirement is simple - None. While that is the strict answer with regard to a typical written, time-based warranty, (as in "guaranteed for one year against defects") you should assume that your finished product is expected to be appropriate and fit for the purpose intended. Therefore, a roof should not leak, a heating system should keep the house warm, and so on. And if push comes to shove, the legal system will usually hold a contractor to this "suitability" standard.

Many states have a legal requirement for a third party warranty, usually with standards for numerous construction details. For instance such details might include how much a cracked slab would need to displace vertically along the crack before it must to be replaced by the contractor. Mandated third party warranty requirements are often part of a package of state laws giving contractors protection from the destructive construction defect litigation firestorms that have occurred elsewhere. Part of these "deals" also require the contractor to provide a full-fledged warranty with a set of standards. These mandated warranties are often fulfilled by the builder procuring a product like the 2-10 Home Buyers Warranty. But, in New Mexico currently, there is no legal requirement for a warranty at all -- third party or not. A New Mexico home builder is free to give the buyer a piece of paper that says "I offer no warranty on this home" although I am not suggesting you do that!

Code Compliance – Another often-debated requirement is code compliance. New Mexico contractors are required to produce and deliver code-compliant construction at a minimum, and both the state contractor licensing processes and the court systems have teeth to back up the requirement. There are numerous building codes (plumbing, electrical, general, energy, etc.) To make thing more complicated these codes often vary by local jurisdiction. The contractor is expected to know the details of all this. The contractor, and not the inspector, is held responsible for code compliance. The code compliance question gets difficult because there are many different scenarios for trouble. What if there is a failure of some component, and investigation shows the installation was not accomplished in a code-compliant manner? Or what if the component/installation was originally code compliant, but subsequently failed, how long should it have lasted? Is it

a manufacturing defect or is it an installation defect? Was failure related to lack of maintenance by the homeowner? Or maybe it was discovered not to have been code compliant originally, but no actual failure has occurred?

Code-related complaint handling over the years by CID has largely been a matter of policy-of-the-moment. As different governors and Construction Industries Division Directors have come and gone, practices in regard to code enforcement, especially in regard to how long a particular feature should “last,” and which contractor is responsible for failures, have varied tremendously. The most common interpretation over the years has been that construction should function and be code compliant for at least one year after the certificate of occupancy is issued. CID has often required a contractor to fix a discovered code violation within the one year time frame, whether or not the violation resulted in actual failure.

In regard to which contractor is responsible for a failed component, CID has usually followed the theory that the licensed contractor whose work created the code violation is the responsible party. For instance, if the failed component is plumbing done by a licensed plumbing contractor, then that plumbing contractor (but not the Journeyman who actually did the installation that failed) will be held directly responsible. The general contractor will usually not be held responsible for faulty work of a licensed subcontractor even if the work was done on a general contractor’s job site. This interpretation often frustrates the public and the courts as they look for the “deep pockets” urban legend leads them to believe every general contractor has.

Problems with construction that do not involve code dictated details (such as sloppy workmanship) are usually ignored by CID, however the contractor shouldn’t take much comfort in this. The court system often takes a broader view of a contractor’s responsibility than does CID. This isn’t surprising because customers and courts seldom understand the nuances of building code compliance at all. It is my observation that courts often make rulings based on the consequences of a building failure, whether or not the failure had anything to do with the building code.

Code Compliance Bond - New Mexico contractors are required to have a code compliance bond as a condition of their license. This bond was created by the legislature, at a past CID Director’s urging, specifically to provide the buyers of construction services with up to \$10,000 to fix non-code-compliant construction. But, once again, details of how a buyer perfects a claim against this bond have been scarce and variable over time. As it has been explained to me by code officials, from CID’s point of view the main value of this bond is to threaten a contractor with a “bond call” in order to get that contractor to do what CID’s complaint department wants them to do. Successful bond “calls,” where someone actually gets money from the bond carrier, are rare, often due to CID and the Attorney General’s office taking too much time for their investigation and internal processes.

General Liability Insurance – This is another often misunderstood detail of the construction business in New Mexico. New Mexico has no legal requirement for contractors to carry general liability insurance coverage. However, I always tell contractors that I believe they would be foolish not to have a good contractor-specific GL policy. But, once again, state law doesn’t require it. New Mexico is a bit unusual in having no requirement for such coverage. People accustomed to doing business somewhere besides New Mexico are often shocked by this revelation. Even if the contractor has liability coverage, some things like foundation settlement or mold infestations are often excluded. Construction GL coverage is quite complicated and my advice to contractors is for them to do business with an insurance agent who is an expert with a deep knowledge of contractor operations and available coverages. Be aware there are many all-too-common traps and gaps for the unwary contractor.

A New Mexico contractor must shoulder many responsibilities. Some of these responsibilities must be directly assumed, and some can be shared with others via contracts and insurance coverage. It’s all about risk management and the successful contractor must possess a working knowledge of a wide variety of the risks and responsibilities associated with working construction in New Mexico.



NEW MEXICO HOME BUILDERS ASSOCIATION
Board/Committee Meeting and Dinner
March 1, 2017

Special Guest Speaker at Board: Rep. Jason Harper will present options for replacing Gross Receipts Tax with Sales Tax & Income Tax Credit

Where: Albuquerque Marriott
2101 Louisiana Blvd NE
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Room Rate - \$139.95 + tax/night single
Call: Jasmin M. Noorullah-Wright
Ask for the NMHBA rate
(Cut off date March 1, 2017)

When: Wednesday, March 1, 2017

1:00 p.m. – 5:00 p.m. Board/Member Meeting
6:00 p.m. – 9:00 p.m. Legislative Dinner

No. of people attending: _____
No. of people attending: _____ x \$30 = \$_____

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Plan Now to Join our Annual Roundhouse Visit

March 2nd is our trip to the Roundhouse to visit with our New Mexico Senators and Representatives.

Contact your legislators now! Then call their appointment secretaries at 505-986-4300 to make appointments for March 2, 2017 from 8:30 a.m. through 1:00 p.m.

- Go as a group! That makes it more fun and easier!
- Use this opportunity to encourage your legislators to vote for laws that favor the home building industry.
- During the Legislative Dinner the prior evening, our CEO will brief you on what you need to know to be comfortable talking to your legislators.



Yes, you really CAN make a difference!

**Social/ Dinner & Briefing at Albuquerque Marriott on March 1, 2017,
the evening before the Round House visits.**

Schedule for March 2, 2017

- 7:00 a.m. Meet at New Mexico Home Builders for coffee and breakfast burritos.
Board the bus @ 7:25 a.m.
- 7:30 a.m. Depart Albuquerque for Santa Fe.
- 8:30 a.m. Arrive at Roundhouse for visits with legislators.
- Lunch** Make lunch reservations with your legislator or on your own
If you are not familiar with Santa Fe we can help you find a good place to go.
- 2:00 p.m. Re-board bus.
- 2:30 p.m. Depart Santa Fe for Albuquerque.
- 3:30 p.m. Arrive back at NMHBA.

Please fax or email this form if you are planning to attend.

Name: _____

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Visit <https://www.nmlegis.gov/> for information regarding the legislative session.

*Questions? Call Melanie @ NMHBA
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Email back to melinda@nmhba.org or fax to 505-344-3103

Diana Lucero Named NAHB Associate of the Year

The National Association of Home Builders (NAHB) presented its prestigious Associate of the Year Award to NMHBA Associate Vice President, Diana Lucero of New Mexico Bank & Trust in Albuquerque at its awards ceremony on January 10th, in conjunction with the International Builders Show in Orlando, Florida.



Diana chairs the NAHB Associates Committee and has served on the NAHB Board of Directors for 11 years. She has been active on numerous committees and has coordinated events and fundraisers for NMHBA and the HBA of Central New Mexico. In 2014, she was inducted into the NAHB Society of Honored Associates, and 2012, NAHB honored her with the Bill Polley Advocate of the Year and the Certified Graduate Associate of the Year awards.

The NAHB Associate of the Year and Society of Honored Associates Awards recognize associate members who have distinguished themselves by their outstanding contributions to the home building industry on the local, state and national levels.

Each state is invited to submit one nomination for the NAHB Associate of the Year award. Nominations are accepted from state presidents, executive officers, or NAHB state representatives. Nominees may also be made by a majority vote of the Associates Committee. In this case, the nominee has to meet additional criteria to be eligible.

A panel of five judges, including a past NAHB president, National Area Chair, Membership Committee Chair, past NAHB Associate of the Year and past Associate Members Committee Chair, select up to five outstanding entries. They judge nominees in the following categories:

Nominees are judged in the following categories:

- Association and Membership Activities
- Local Association Activity
- State Association Activity
- National Association Activity
- Industry Accomplishments
- Civic Responsibility

The most outstanding associate is named Associate of the Year. Up to four of the remaining top finalists are inducted into NAHB's prestigious Society of Honored Associates.



JUST A NOTE TO ALL MEMBERS...

Make sure your Local HBA has your correct contact information (including address, phone number, and email address). NAHB and NMHBA, as well as your Local HBA, use this info to send you information that could be important for your business.

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Sustainable Building Residential Tax Credit Electronic Submission Available Soon

Energy, Minerals and Natural Resources Department (EMNRD) is completing an online form allow builders to submit their Sustainable Building Residential Tax Credit (SBTC) Tax Credit Application and required documentation electronically. Builders must provide contact information along with documents in PDF form that contains all the required and signed documentation for processing the application.

SBTC forms are located at the EMNRD website at <http://www.emnrd.state.nm.us/ECMD/FORMS/forms.html>.

There are three steps to electronically submit the application and documentation necessary to apply for the SBTC:

Step 1

Create and upload a combined PDF document that contains the all required documents listed below.

1. Completed and signed copy of the SBTC Application Form - Residential.
2. Proof of ownership: copy of a warranty deed, property tax bill, or ground lease in the applicant's name, for the address of the sustainable residential building.
3. Proof of the rating system certification by an eligible verifier or Energy Star home manufacturer, showing the date and level of certification achieved.
4. For Energy Star manufactured home, a copy of the Energy Star Installation Checklist, with serial # and the home's square footage.
5. For LEED-H or Build Green New Mexico, provide the following:
 - Copy of the final certification review checklist that shows the points achieved for both energy efficiency and water efficiency, and square footage of the home.
6. For the Home Energy Rating System (HERS), provide the following:
 - HERS Certificate; • Source Report; • Performance Summary.
7. Completed and signed copy of the RPD-41382 Tax Credit Approval Form. This will expedite processing the tax credit through the NM Taxation and Revenue Department.

Step 2

Fill in your contact information and project information in the online form.

Step 3

Click a button to submit.

Contact EMNRD at (505) 476-3320 for the exact date the online form will be available.



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GREEN TIP OF THE MONTH



January 1st 2017 Restarts the New Mexico Sustainability Building Tax Credit

If you are certifying a home under the new (Since 2015) Build Green NM program and are at the Silver level or above, your home will likely qualify for the New Sustainable Building Tax Credit. This new tax credit will run through 2026 and offers a tax credit of \$3 / sq ft or more for up to 2,000 sq ft. Projects may be certified now but cannot be submitted to the State of NM before January 1, 2017. To find out the specifics contact Build Green NM and check this link to NM Energy and Minerals for all the information.

<http://www.emnrd.state.nm.us/ECMD/CleanEnergyTaxIncentives/SBTC.html>

Contact us Today:

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Program Director
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Reviewing 2016 NMHBA Efforts and Accomplishments

The New Mexico Home Builders Association has had its challenges in 2016, but also its accomplishments, and it is appropriate that we give you a report on our progress.

2016 started off with **success in the Legislature** with the passage of the Work Comp Drug & Alcohol Bill. SB214 (Candelaria) *Workers' Compensation Benefits & Intoxication* passed and was signed into law by Governor Martinez. Businesses need to have a policy on drug and alcohol use in their employee manual to be able to take advantage of the protections included in SB214. Employers should consult with their work comp carrier for guidance on what to include in their policy. [The December 2015 issue of the *Housing Journal* included an article on what employers might want to include in their policies.]

HB283 (Larrañaga) *Unemployment Compensation Contribution Rates* also passed and was signed into law. This bill recalculated the Unemployment Insurance rates employers pay, giving credit for a long history of paying into the system without having claims. The bill was developed in large part because of NMHBA lobbying efforts with the Department of Workforce Solutions and Rep. Larrañaga. We were a big part of analyzing the crisis and making recommendations for potential changes. NMHBA was one of the few business groups who presented an actual member who was affected by the crisis. Skip Mead became the “face” of the issue, which was a big help in getting state employees and legislators to understand how the law would perform in the “real world.” Things are getting better with the implementation of HB283.

Air ambulance transports between hospitals cost every business with work comp as rates climb to cover the exorbitant fees being charged for these services. HM78 (Rodella) *Study Air Ambulance Transports* was a Memorial that also passed the 2016 session. While it elevated the issue of why companies charge insurance companies \$55,000 for an air ambulance transport that would cost anyone off the street \$7,200, this remains a problem in search of a solution. It is an ongoing effort that we will continue to be involved in until something changes.

After a long period of heavy involvement with the Construction Industries Division (CID) staff, NMHBA was active in assisting the **adoption of the 2015 structural building codes** in November. The New Mexico versions of the International Residential Code, International Building Code, International Existing Building Code, the New Mexico Earthen Building Code, and the New Mexico Historical Earthen Building Code became effective November 15, 2016, and builders may use either the 2009 NM codes, or the 2015 NM codes through June 30, 2017. On July 1, 2017 only the new 2015 codes may be used for obtaining a building permit.

The Building Issues Committee **began reviewing the Residential Chapters of the 2015 International Energy Code** in September 2016 to draft code amendments to present to CID General Construction Bureau Chief, Martin Romero in Spring of 2017.

After a year of review, the NMHBA Board voted to **modernize and streamline its Bylaws and governance structure**. A big thanks goes out to 2016 NMHBA President Pat Bellestri-Martinez for spearheading this effort.



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Lobbying Tax Deduction for 2017 NAHB and NMHBA Dues

In 1993, the U.S. Congress enacted the Omnibus Budget Reconciliation Act that contained provisions affecting trade associations. The Act provided that taxpayers will no longer be able to deduct from their federal income taxes any portion of the association dues attributable to that association's "lobbying activities" as an ordinary and necessary cost of doing business.

For 2017, NAHB estimates that the non-deductible portion of **national** dues — the portion that is applicable to lobbying — is 19%. Thus, for a member who pays their NAHB dues of \$182.00 in 2017, 19% or \$34.58 will not be eligible for deduction as a business expense. Similarly, for an affiliate member who pays their NAHB dues in 2017, 19% will not be eligible for deduction as a business expense.

For 2017, NMHBA estimates that the non-deductible portion of **state** dues—the portion that is applicable to lobbying is 9.3%. Thus, for a member who pays their NMHBA dues of \$145.00 in 2017, 9.3% or \$13.46 will not be eligible for deduction as a business expense. Similarly, for an affiliate member who pays their NMHBA dues of \$20.00 in 2017, 9.3% or \$1.86 will not be eligible for deduction as a business expense.

For additional information on NAHB lobbying tax deductions, contact Tracy Spatz at 800-368-5242, ext. 8152.



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2016 IBS Window & Door Product Profile

Articulating Cap Sill Never needs Adjustment

During the 2016 International Builders Show close to 300 entries in nine categories were received in the 2016 Best of IBS Awards. 27 industry and media judges considered a lengthy list of criteria in order to select the 2016 finalists and winners. The Z-Articulating Cap Sill (Z-AC) from Endura Products was selected as the Best Window & Door Product.



According to Endura Products, the Z-AC can solve door problems before they start because the sill features a built-in gasket that seals out water with no caulk necessary. They also claim the Z-AC never needs adjustment because its articulating cap has a “living hinge” and redundant spring assemblies that compensates along the width of the opening to overcome variations in margins between the door and the sill. The Z-AC also solves problems where there is no corner pad or trouble in the strike zone.

The IBS Judges commented “This could save contractors significant money by reducing call-backs and customer complaints” and “Best new product designed to resolve many door sill problems. For both new and existing problems, Z-AC is very affordable and innovative.”

The Z-AC is available online from various sources for under \$50 for a 36” door in 2”X6” construction.



You don't have to brag when
**you're in
good company.**



NMHBA members can receive exclusive discounts for New Construction Home Warranty Service Agreements from 2-10 Home Buyers Warranty® (2-10 HBW®).

2-10 HBW provides extended warranty coverage beyond the typical one-year manufacturer's warranty on major home systems and appliances on homes that are less than 3 years old.



For more information on this member advantage, visit 2-10.com/nahb, or contact Michael Elman, Risk Management Specialist
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