

National Home Service Contract Association

Annual Regular Board Meeting

The Spruce Point Inn

Boothbay Harbor, ME

Thursday, June 17, 2021 ver 6/28

10:00 AM EST

Member Roll Call:

2-10 HBW

AFC Home Club

American Home Protect

America's Preferred Home Warranty

Fidelity National Home Warranty

First American Home Warranty

HomeGuard Home Warranty

Home Warranty of America/Direct Energy

Old Republic Home Protection

Jacqui Crockett

Randy Reis

Corinne Maples, (*THSCA President*)

Phil West

Lorna Mello, Adrienne Giacalone

Andy Hand

Robert Hessling (*CHSCA President*)

Michael Longoria, David Schotz

Gwen Gallagher, Frank, Caballero

Jim Mullery

Indicated in advance will be absent: (via Zoom video)

Cinch Home Services

Universal Home Protection

Sloane Levy

James Imhoff

Staff:

Art Chartrand, NHSCA Executive Director & Counsel

Joy Moore, NHSCA Manager

Travis Moore, Sr. Legislative & Regulatory Counsel

Guests Onsite:

Pierce Haley, Serlin Haley

Guests via Zoom:

David Parker, Longbow Partners, TX Lobbyist

Mike Belote, California Advocates, CA Lobbyist

John Sande, Argentum Partners, NV Lobbyist

Scott Shorter, Concera Media

Note: During the **NHSCA Membership** meeting, bylaw amendments were unanimously voted in to establish an eleven (11) member voting Board of Directors; elect new officers; establish an Affiliate member classification [See attached Affiliate summary dated June 1 as presented prior to vote]; and hired a new executive director effective July 1, 2021, in the person of Pierce Haley. [See **Membership** minutes of this same date.]

It was announced that Rodney Martin has stepped down. Hand and Crockett, as the newly elected President and VP, made brief presentations on the goals and mission of the NHSCA and a summary of recent accomplishments. The plan is to explore these issues even further tomorrow morning. This will include the pre-meeting discussion and plans for the newly adopted NHSCA affiliates.

Chartrand reviewed the relationship between the NHSCA and Chartrand Legal Management Inc. and disclosures regarding his representation and work for the Association. Crockett reviewed the accomplishments of the NHSCA. Chartrand noted his appreciation for the officer's participation. He mentioned how a major role of association managers was not only knowing when to act but knowing when not to; not overreacting and taking a calm steady at the helm

approach to any issue. Following was an extended discussion with the new Exec and transition plans.

Convene Regular Board of Directors Meeting (opened ZOOM meeting)

Call to Order – New President, Andy Hand

10:AM Eastern time the Board of Directors meeting was convened.

Treasurer's Report – Hand

Fund Balances

The balance as of June 1 in the general fund account is \$87,790.87. The state fund account balance is \$62,966.27 with \$85,521.81 in the reserve fund making the total balance in the state fund \$148,488.08.

State Fund

The reserve stands at \$85,521.81 allowing the Fund to be ready to pay for immediate state needs. The balance of the non-reserve fund is \$62,966.27. We are paying off Nevada and Arizona lobbying efforts currently as most firms bill in arrears. Last year, the NHSCA adopted a new set budget assessment program. This is summarized in the meeting binder. It calls for a set assessment of \$15,000 for all national and regional members to be adjusted next year. Local members will be assessed in arrears.

General Income and Expense report, June 2020 to June 2021

Total income for the year was \$231,975 with expenses of \$215, 565.79.

NHSCA Proposed Budget

Hand summarized the budget. While the budget indicates a potential operating deficit of \$80,200 for the year, but with \$87,700 on hand at present allows continued operations at the budget level for one year. The plan is to offset this with increased income from adding new members and income from the new affiliate membership dues, which are not included yet in the proposed budget. While of noted concern, Hand mentioned there was no reason to panic and we should stay the course and re-evaluate quarterly.

A motion to approve the treasurer's report which includes the general and state fund accounts, assessment of member and adoption of the NHSCA proposed budget was made by Reis and second by West. The motion passed unanimously.

Chartrand noted that the NHSCA's cooperative office provides multiple state of the art offices in the Kansas City area available for members.

Market Data Collection Reports

Revised data collection reporting forms were prepared by Gwen Gallagher and passed out at the meeting. Chartrand noted the new reporting forms are more reflective of reality. After extensive review of the history and need for data collection among the NHSCA, a motion was made by Mullery and second by Crockett to accept the new forms which include one for whole home (3 or more systems/appliances) and one for limited part home (2 or fewer systems/appliances.) The motion passed unanimously. We will begin collecting these new reports for Q2 which will include year-to-date data as it always has.

Chartrand noted members may want to consider a bylaw change later to make data submission a condition to join the NHSCA in the future. Industry-wide data is critical for dealing with regulators, legislators and the media and incumbent on us as the leaders in home warranty to collect it. No individual member data is ever disclosed.

Monthly Call Summaries

The summary for the April and May 2021 monthly call is included in the meeting notebook. Chartrand reminded members, following the calls, a summary is emailed to each member and posted under the member log-in area of the website. Calls are set for the first Thursday of the month at 3 pm CST though occasionally adjusted for conflicts. Members are encouraged to make use of all the NHSCA website resources, non-member directory, compliance chart and state research and their paid subscription by NHSCA to BillTrack 50.

Corporate Business

No other bylaw amendments proposals.

NFP Organizational Liability Coverage continues to be in effect 2021-2022 offered by State Farm. The Declaration Page is available if anyone wants a copy. All Board of Directors are covered. The cost has remained the same as last year at \$1403.

The NHSCA tax return 990 was prepared by API Partners and e-filed.

Membership

A current member contact list was included in the meeting binder. Moore requested members contact her with any additions or corrections.

State Assessment Forms

Moore distributed state assessment reporting forms for members to complete and return to her. Companies with states that have 100 contracts or more in force are assessed for lobbying efforts in that state and pay membership dues accordingly. States with less than 100 contracts will be listed on the website.

New member solicitation

Chartrand will be working with the new executive director Haley in targeting new members. Identified top prospect companies are covered in the budget report in the meeting binder.

Accreditation

Home Warranty of America & HomeGuard Home Warranty were both recommended by Chartrand Legal Management to be approved as accredited members of the NHSCA. A motion to accept the recommendation and approve the accreditation of HWA & HGHW by Gallagher and second by Maples. Motion passed. A framed certificate will be sent to each. All NHSCA members have been accredited except for two companies and they are currently in the works. Chartrand noted the goal is to have states *require* home warranty companies to be accredited by the NHSCA. It can be done but will take years or even decades to accomplish.

National Meeting & Expos

Texas Association of REALTORS Expo is September 11, 2021, in Houston, Texas. Chartrand and Moore will plan to attend as scheduled.

It was decided to research hotels and venues in Monterey, CA for the 2022 annual meeting. If anyone knows of properties in California let staff know. Other recommendations were Santa Fe, Taos New Mexico and Kohler, Wisconsin. Gallagher suggested staff research the American Club Resort Hotel in Kohler.

Communications

Google Analytics – Scott Shorter, Concera Media

Analytics for May 2020 – May 2021 are in the meeting notebook.

Shorter suggested the Association post some new releases this year and members create backlinks to the NHSCA and vice versa to help the SEO ranking.

Affairs of States-Summary Attached

California – Mike Belote
Texas – David Parker
Arizona - Chartrand
Nevada – John Sande
Oklahoma – Chartrand

Next monthly call is September 9, 2021.

Motion to Adjourn by Mello and second by Maples.

Follow-up meeting held on Friday, June 18 at 9:00 AM with NHSCA Affiliates

Advisory Council Presentation – Randy Whitehead

The actual proposal for affiliate membership was in the meeting binder. Chartrand noted this is another way to provide revenue and help with the NHSCA's ongoing operations. The proposed membership fee for an affiliate member is \$2500. This was presented prior to the vote at the Membership meeting the prior day.

John Sessions with Encompass provided 'goodie' bags for all the meeting attendees. Chartrand thanked both NSA & Encompass for their sponsorships.



Proposal
Affiliate Membership Level
June 1, 2021

Introduction

To further advance the National Home Service Contract Association's purpose to "*Nurture the home service contract industry and its use by the public nationwide,*" it is proposed that the NHSCA board expands membership to include 'Affiliate' members.

NHSCA would benefit from the contributions of Affiliate entities aligned with NHSCA's mission. Introducing Affiliate membership would also help fund the association's ongoing operations.

In general, the objectives of affiliate membership would be to:

- Serve, strengthen, influence and improve the home service contract industry
- Provide external voice and perspective
- Contribute to and support NHSCA within the industry at large
- Promote NHSCA products and services

Proposal Overview

The NHSCA Board is encouraged to create an affiliate membership level:

Affiliate Member – A business that can assist association members with relevant goods or services, is committed to the long-term growth of NHSCA, supports members with best practices, and markets its relevant goods or services. All affiliate members must agree to adhere to the NHSCA code of ethics. Affiliate members do NOT have association voting privileges. Affiliate members are members of the NHSCA Advisory Council.

Annual fee: \$2,500

Note: Some strategically aligned entities have the potential to enhance the association's value and further position it for growth. Examples include Real Estate, Insurance and Regulatory professionals. The Board may invite these entities to join the association as an Advisory Board Member and waive the associated membership fees.

Affiliate Member Benefits

- Is recognized as an Affiliate Member on the NHSCA website.
- Authorized to display the NHSCA Affiliate Member logo.
- Eligible to attend and participate in annual NHSCA symposiums and general meetings. (Registration, booth and sponsorship fees may be required). Excluding NHSCA Board meetings.
- Is a member of the influential NHSCA Advisory Council.
- Participates in making strategic recommendations and influencing decisions for the home service contract industry.
- Access to NHSCA member list with contact details.

3 A

Affairs of States

Brief updates of active states in recent months.

CONFIDENTIAL NHSCA MEMBERS ONLY

Arizona

Marcus Osborn & David Childers, Kutak Rock

On February 9th, Arizona Governor Doug Ducey signed SB 1049 Insurance: Omnibus (*Livingston*). The bill included several legislative provisions that did not get passed last session due to the COVID-19 pandemic, including our home warranty service contract language omnibus bill (HB 2403 from last year). These changes provide additional consumer protections and clarity with regards to coverage.

The bill updated the definition of “consumer” to now include the “lessee” along with the buyer, owner, lessor, or seller. This was an original drafting oversight.

SB 1049 updated the definition of “consumer product” to allow for more household systems to be covered under a service warranty contract, like washers, driers, HVAC equipment, etc.

The bill updated the definition of a “service contract” making it easier for home warranty companies to indemnify their customers for various consumer products rather than making repairs. Additionally, these changes specify that repairs to roof leaks are included.

A corporation other than a manufacturer or seller in connection with a consumer product, that qualifies under the statute’s financial exemptions, must currently submit a financial statement to the Arizona Department of Insurance, prepared by an independent auditor. This legislation no longer requires the burdensome independent audit to be conducted when submitting the financial statement.

The bill changed the required financial holdings exemption to a net worth of \$25 million from \$100 million. The current \$100 million figure was an arbitrary number selected in 1993 as part of a model law.

SB 1049 required service warranty companies to expressly disclose in their contracts, if preexisting conditions are not covered. Under the bill, a service warranty company can only exclude preexisting conditions that were either known to the contract holder or would have been known by a visual inspection, operation or testing of the covered property; however, a trailer bill introduced later in the session by SCIC, HB 2443 Service Contracts; Preexisting Conditions (*Nutt*), modified this language. It removed the requirement that a service contract disclose that it may exclude preexisting conditions only if the conditions were either known or would have been known by visually inspecting, operating or testing the covered property. It clarifies a service contract, as part of the disclosure requirement, must clearly indicate whether preexisting conditions

are covered or excluded under the terms of the service contract. It specified that a service company may continue to use any service contract form approved by the Department before the effective date of this act, unless and until the company submits a new service contract form for approval after the effective date of this act.

Finally, the bill stipulated that in the event of a contract cancellation, any administrative fee assessed by the service warranty company cannot exceed \$75 or ten percent of the purchase price of the service contract; however, the fee cannot exceed the amount of the refund due the service contract holder.

California

Mike Belote, California Advocates, Inc.

The following is a brief recap of California activities on behalf of NHSCA for 2020-2021. In general, the California Capitol continues to be officially open, but functionally closed, as legislative staff continues to work from home and public access is severely limited. A partial reopening of the Capitol is scheduled for June 15, the same day that colored “tiers” are ending in California. Although the tiers will be eliminated, questions remain about the obligation of employees to wear masks in the workplace, and the obligation of employers to provide N95 respirators to unvaccinated employees. There may be more clarity on these points in the next two weeks.

Legislative activities include the following:

- Monitoring and evaluating the more than 2500 bills introduced for the 2021 legislative year and evaluate potential significance for NHSCA members;
- Identifying seven bills of potential importance to NHSCA members on subjects including autorenewal, service contracts, coverage for sewer lateral repairs, licensing of home inspectors, and modifications to the Insurance Holding Company Act.
- Conducting a special Zoom session on California issues, including an in-depth review of AB 390 on autorenewal. This bill appears likely to be enacted in 2021, with an effective date of July 1, 2022. NHSCA members will be covered by the provisions in the bill, which will cover disclosure of autorenew features, notification prior to renewals, and special provisions for cancelling the autorenew feature in contracts.
- Clarifying that AB 1221 (Flora) relating to service contract cancellations, is a noncontroversial measure sponsored by the service contract association to clear up ambiguities in the law relating to cancellation.

Relating to non-legislative matters, we also reached out on behalf of NHSCA to Debbie Ferrier and Neil Kalin of the California Association of Realtors to discuss modifications to the home warranty provisions in the CAR standard form purchase contract. Based upon our discussion, Ms. Ferrier and Mr. Kalin indicated that they would reflect our views in further meetings with the CAR Standard Forms Committee. The outcome of those discussions is uncertain at this time.

As always, thank you for the opportunity to work with NHSCA, Art, and Joy, on behalf of the industry. We would be happy to answer any questions which arise at the annual meeting.

Nevada

John Sande, Argentum Partners

- SB 381 was introduced on behalf of the National Home Service Contract Association by the Senate Committee on Commerce and Labor and sought to address some long-standing issues between the industry and the Division of Insurance, including:
 - deduction of claims paid during the contract term should a policy be terminated early
 - imposition of a reasonable cancellation fee
 - clarification that NHSCA members do not sell “emergency service contracts” and should not be considered as such
- After a contentious hearing, we were ultimately able to reach consensus with the Insurance Commissioner, but our efforts were derailed by industry members who didn’t feel the measure went far enough, namely the SCIC.
- With that said, we believe the industry can proceed with the deduction of claims paid upon early cancellation of a contract, as well as imposing a cancellation fee due to existing communication and rulings from the Division
- We are currently working with the Division to clarify contractual language requirements regarding emergency services, but the Division has been clear that our failure to pass this bill due to industry meddling requires them to proceed with current statute.
 - Various member organizations are now getting communication from the Nevada DOI mandating the inclusion of emergency service language
 - Had the industry aligned behind SB 381, this would not be an issue and members would be able to clearly state in their language that they do not provide emergency service contracts. **(SEE DEPUTY STOSIC NOTE BELOW)**
 - There is a path to passage of these provisions in 2023, as is a path to writing a new chapter in statute that specifically addresses home service contracts, but industry consensus will be vital to the success of these efforts

[On June 4, 2021 to NHSCA Lobbyists:]

Dear Matt,

I hope you have had some rest after the session ended. I am sorry it has taken me this long to respond to you, however I asked our P and C section to provide me with all of the information and history they could find regarding emergency service contract language requirements. It took a while for staff to gather some of the information, since this law has been in place for over two decades.

What I have found is the language you send me, which is highlighted in red below, is generally the standard language that has been required in home service contracts for many years. The following link takes you to the Nevada service contract providers' filed contracts pages ([Service Contract Provider Search \(nv.gov\)](#)). I have reviewed several policies, and the "emergency service" and "repairs will commence within 24 hours after the report of a claim language" was included in the contracts I reviewed.

As you will see in NAC 690C.110 as shown below, the requirements for the essential to health and safety provisions, which include "procedures for obtaining emergency service" and "repairs will commence within 24 after the report of the claim," are required to be included in the contract language, per subsection 1(c). This requirement was added in 1999 under Regulation R195-99. In 2008, the contract requirements were further modified under Regulation R067-07. Some interesting trivia we found from the 2007 rulemaking process; At the workshop held September 18, 2007, a subgroup was formed to work with Division staff to further develop language for the proposed regulation. Subgroup members were James Wadhams, Esq. and Shirley Kerns, representing the Service Contract Industry Council; Art Chartrand, representing the National Home Service Contract Association; Kent Lashley of American Home Shield; and Jesse Wadhams. As a result of the work of Division staff and the subgroup, a proposed regulation was presented at the workshop held on December 17, 2007. I do have copies of the transcripts from the two 2007 workshops and two hearings if that would provide any value to you.

Matt, the SB 381 version which passed the 2021 Senate, would have changed these contract language requirements, including the ability to clearly state this is not an emergency service contract, however, what has been in place since 1999 still remains the Nevada law regarding required contract language, (which includes "procedures for obtaining emergency service). I am more than happy to discuss this with you further if you would like any additional clarification of this information.

I hope you have a good weekend.

Sincerely, Nick Stosic

NAC 690C.110 Information required in contract; status report; exclusion of preexisting conditions. ([NRS 679B.130](#), [690C.300](#))

1. A service contract must clearly state the procedures for making a claim on the contract, including, without limitation:
 - (a) A toll-free telephone number for claim service.
 - (b) Procedures for obtaining prior approval of work if such approval is required by the contract.
 - (c) If the service contract relates to goods that are essential to the health and safety of the holder and the repair of such goods is covered under the terms and conditions of the service contract, procedures for obtaining emergency service on such goods outside of normal business hours, including, without limitation, a statement which provides that if the emergency involves the loss of heating or cooling, loss of plumbing or substantial loss of electrical service and the emergency renders a dwelling unfit for a person to live in because of defects that immediately endanger the health and safety of the occupants of the dwelling:
 - (1) Repairs will commence within 24 hours after the report of the claim and will be completed as soon as reasonably practicable thereafter; and
 - (2) If the provider determines that repairs cannot practicably be completed within 3 calendar days after the report of the claim, the provider will provide a status report to the holder and to the Commissioner as described in subsection 2.

Nick J. Stosic, ChFC, CLU, CFP[™] Deputy Commissioner
State of Nevada, Division of Insurance
(O) 775-687-0783

Oklahoma

Due to the ***Sparks v. ORHP*** case that had language strongly indicating that home warranty was insurance in SB490 Oklahoma.

Most all providers registered under the NHSCA **Home Service Contract Act** in Oklahoma after it being adopted in November 2011. That act says three times that home service contracts are not insurance in Oklahoma. NHSCA passed this statute to reverse the OK Supremes *last missive* in *McMullan v. Enterprise Financial Group, Inc.* 2011 OK 7, Case Number: 108241 which held (in an uninformed and poorly argued case) that service contracts are insurance.

ORHP Home Protection Co, Inc. (as either an insurance company or simply pursuant to the existing service warranty law) issued a home “*warranty*” ostensibly as an insurance contract *prior to 2011* Home Service Contract Act *and continued to do so until 2019*. In 2019 ORHP registered as a home *service contract* provider pursuant to 36 OK 6750—the NHSCA model.

The OK Supremes on May 27, 2020 held that the OK Arbitration Act prohibits contracts of insurance to force arbitration (and hence enforce class action waivers). A number of states also do this. The so called “uniform” state arbitration act and the Federal Arb Act permit insurance contracts to include arbitration. The Federal I Act does not pre-empt the OK Act because McCarran-Ferguson allows states to regulate insurance. This appears correct.

However, the OK Supremes seem to be saying a “home warranty” contract filed by an insurance company and using insurance terms is insurance and so the OK Arb Act applies. This also appears correct. Filing a home warranty as an insurance company is fine and legal. The question is after 2011 why would you? The OK Supremes ruled and in strong “dicta” indicated that home warranty was insurance.

We passed SB490 with OK DOI support and the governor signed on April 22, 2021 to clarify that home warranty and home service contracts are not insurance. Excerpt below.

Section 6751. A. The purpose of the Oklahoma Home Service Contract Act is to create an independent legal framework within which home service contracts and home warranties are defined, may be sold and are regulated in this state. The Oklahoma Home Service Contract Act declares that home service contracts and home warranties, as defined in Section 6752 of this title, are not insurance and not otherwise subject to the Insurance Code. The Oklahoma Home Service Contract Act requires simple registration,

Texas

David Parker, Longbow Partners

As the Texas 87th Legislative Session has just concluded on the last day of May, I am happy to relay that we successfully worked with our friends at SCIC and the Texas Realtors Association to pass favorable legislation, [HB1560](#). Our proposed language was strategically added to a large statewide “Sunset” bill (which periodically reviews and addresses various state agencies) transfers our RSC industry’s oversight from the often-challenging Texas Real Estate Commission (TREC) over to the more efficient, regulatory-friendly Texas Department of Licensing and Regulation (TDLR). This controversial legislation addressing both Residential Service Contract Providers (Occupations Code Chapter 1303) and general Service Contract Providers/Administrators (Occupations Code Chapter 1304) provided for a rollercoaster

ride of getting our language drafted, then inserted in the House, then stripped out in the Senate, to being reinserted in a conference committee between the two chambers. All the stakeholders listed above deserve great credit for working behind the scenes to get our language across the goal line in the final hours of the Session and our longtime industry advocate (and my hometown State Representative) Craig Goldman (R-Fort Worth) should be applauded and recognized for making this legislation happen.

The bill was signed by Governor Abbott on June 16, 2021. The law takes effect September 1, 2021. However, the key date for our industry is that by June 1, 2022, our new oversight agency TDLR will be crafting and adopting new rules to implement these changes to law. As seen in the bill, there are no immediate effects or required actions by our association members in addition to some gracious grandfathering language re: existing licenses, rules, fees, securities maintained, etc. The one new piece of noteworthy transition language that raised some questions was the requirement for RSC's to state that it agrees that, under normal circumstances, the provider will initiate the performance of services not later than 48 hours after the contract holder requests the services.

Overall, we are optimistic that this new chapter with TDLR will provide for a better, progressive agency partner to begin revisiting other outdated regulatory elements that our association has previously attempted to improve.

We will be meeting with TDLR and advise on all mechanics this change entails for members and will advise.