

A nightmare for home buyers

By HEATHER KENNEDY

BRIAN and Susan Dwyer put every cent of their savings into a two-storey, four-bedroom, dark brick "dream home" in East Kellor.

They wanted a home in which to raise their four daughters, somewhere they could live until retirement.

Instead, Brian, 35, and Susan, 32, find themselves entangled in a legal nightmare, living in a \$200,000 home with major cracking outside and inside, and foundations which are moving.

"The house is so badly cracked it is literally moving and twisting. And it's getting worse," Mr Dwyer said.

The house was built in 1994. "You might ignore damage like this in a 50-year-old building, but this house won't be standing in 20 years," Mr Dwyer said.

"We can't sell it, we wouldn't inflict it on another family, but we can't bear living in it."

Mr and Mrs Dwyer are now involved in a legal battle with the builder, Jim Thompson, of Orlit Homes.

The matter will be heard in the Domestic Building Disputes Tribunal on Tuesday.

The *Sunday Herald Sun* made a number of calls to Mr Thompson, through his lawyer John Sharkey, but none was returned.

The Dwyers' lawyer, Peter Davey, of Abbot, Stillman and Wilson, said the case was "widely accepted in Victoria as a test case".

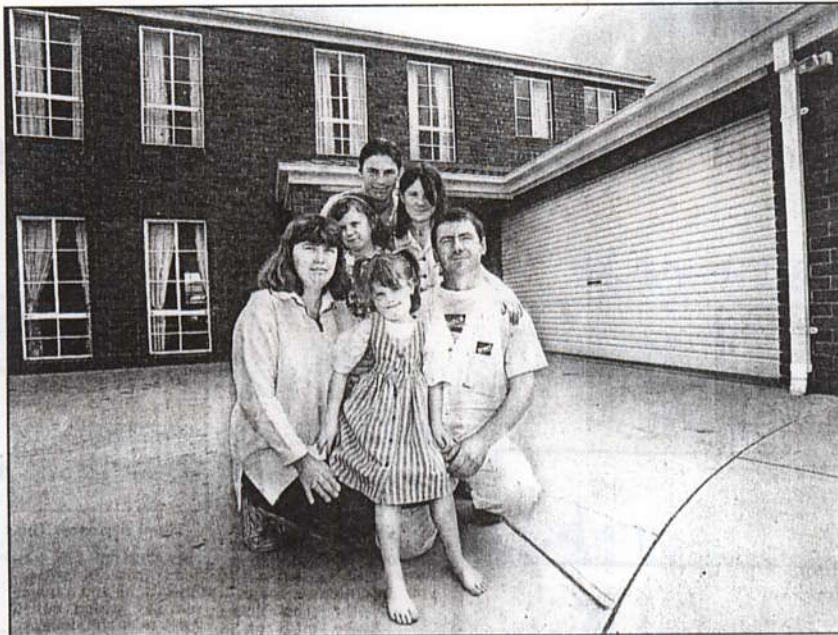
"There are many houses in Victoria waiting on the decision as to how this is going to be resolved," Mr Davey said.

Also legally represented at the hearing is the building industry's Housing Guarantee Fund, to whom the Dwyers turned for help.

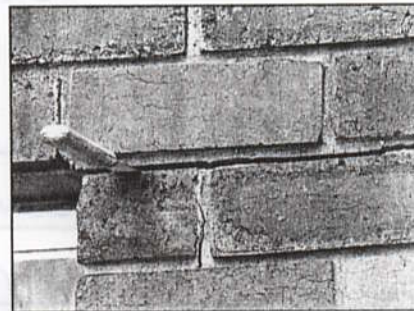
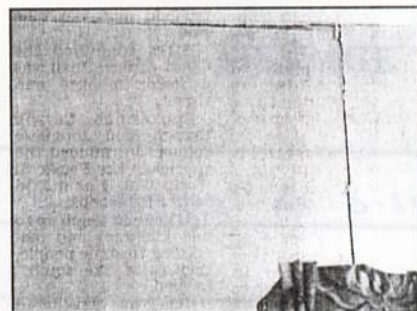
The chief executive of the Housing Guarantee Fund, Rod Atcliffe, did not return calls from the *Sunday Herald Sun*.

In 1993 Mr and Mrs Dwyer sold their home in Avondale Heights and, with the sale money plus Brian's superannuation money and pay out after 13 years with the local council, bought a block of land in Tropp Place, East Kellor.

"Orlit Homes built



Nightmare: The Dwyer family and what was set to be their dream home. Picture: DANIELLE SMITH



Damaged: The 1994 home has cracks in the interior walls (left) and exterior brick walls (right).

my brother's house at Mill Park 15 years ago, so we chose them to build our home," Mr Dwyer said.

Before building began, he said a representative of Orlit Homes said they had chosen "bad ground", and the builder would need to increase the footings to compensate for the soil.

"We paid an extra \$3400 for this, and we moved in in April 1994," he said. "Six months later we started finding cracks — first on the outside, then the inside." Mr Dwyer said the house has continued to deteriorate.

The *Sunday Herald Sun* has seen doors and windows that do not shut, floors which are noticeably uneven to

walk on, deep cracks in the exterior of the house, cracks inside and loose mortar.

Mr Dwyer said Orlit Homes representatives, including Mr Thompson, had twice inspected the property, and "said they had noted the cracks and would monitor the situation. Three months later they came back and said the same thing. But nothing was done." The Dwyers consulted two lawyers and an architect.

"The builder called in a building surveyor who said it was our fault for concreting around the house," Mr Dwyer said.

"He said we'd been overwatering an 18-inch (45cm) garden strip."

In January last year the Dwyers called in a member of the Building Appeals Board and past president of the Institute of Engineers Structural Board, Russell Brown.

Mr Brown reported the house had moved in two places, there was major cracking in the brickwork and plaster cracking inside, window frames were wedged, there were problems with the control joints and no ties between the bricks.

The Dwyers then approached the Housing Guarantee Fund which hired an engineer who found drainage pipes, instead of being underground, were "sticking three or four inches above the ground".

"The HGF then directed the builder to fix the house," Mr Dwyer said. "The builder maintains he isn't responsible, and he's taken the matter to the Domestic Building Disputes Tribunal."

A senior industry source said under the old Housing Guarantee Fund system, builders paid a fee every time they put up a building

insurance money covered fixing them.

The source said the new Building Act transferred the tribunal's functions to the Domestic Building Disputes Tribunal, "which means lawyers and barristers are involved — and the Dwyers are no longer witnesses, but find themselves defendants, paying for experts to prove they did not cause the damage".

The Dwyers, who had to hire a barrister for Tuesday's hearing, are distraught. They say they have paid out almost \$10,000 and their marriage and health have suffered.

Mrs Dwyer is on medication after collapsing in her doctor's surgery. Mr Dwyer said quotes on what the house problems would cost to fix ranged from \$26,000 to \$42,000.

"We've been here four years, and three of those four years we've been fighting all these people," Mrs Dwyer said. "All we wanted was to live happily with our children in an area we really like, with lovely neighbors. Someone has made the mis-