

# 88<sup>TH</sup> TEXAS LEGISLATIVE SESSION

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# 88<sup>TH</sup> LEGISLATURE

- Over 8000 bills filed
  - Record number
  
- 4,550 bills passed

# Amendments to the RCLA

- Ch. 27 of the Texas Property Code
- Major Cleanup

# Other Changes to RCLA

- Limit or tighten up what constitutes a “construction defect”
- Strengthen causation requirements
- Modify the timeline for the Offer of Repair process

# A Contractor is Liable for a “Construction Defect”

- Only to the extent that a defective condition actually causes physical damage to the residence
- An actual failure or lack of capability of a building component to perform its intended function or purpose
- A verifiable danger to the occupants of the residence

# Adds Normal “Cracking” to List of Things Builders Not Responsible For:

- Used to say builder not responsible for “normal shrinkage due to drying or settlement”
- Now says “normal cracking or normal shrinkage cracking due to drying or settlement”
- Small change but should help tremendously

# Causation Requirements

- Must now prove:
  - Construction defect existed at the time of the construction alteration or repair
    - In addition to proving that the damages were proximately caused by the construction defect

And for implied warranty of habitability:

- Must prove that the construction defect was latent at the time the residence was completed or title was conveyed to original purchaser and it has rendered the residence unsuitable for its intended use as a home.

# Offer of Repair

## Previous Deadlines

- Inspection – Within 35 days
- Offer of Repair – Within 45 days
- Repairs – To be made within 45 days of acceptance of offer



# Offer of Repair

## New Deadlines

- Inspection – Up to three within 35 days
- Offer of Repair – Within 60 days
- Repairs – Within 60 days of acceptance of offer

# Statute of Repose

Ch. 16.009 of the Tex. Civ. Prac. & Rem. Code

10 year statute of repose

# Statute of Repose

Shortens statute of repose for Residential Contractor who offers an express warranty

- Shortens it to six years instead of ten
- Does not apply to multi-family/apartments

# Statute of Repose

Must comply with the terms of the statute:

- 1 year workmanship and materials
- 2 years for plumbing, electrical, heating and air conditioning delivery systems
- 6 years for major structural components

# Statute of Repose (cont'd)

May also apply to third party warranties

- “Contractor” defined as having same definitions as Ch. 27.001 of the Property Code (RCLA)
  - Includes a risk retention group that insures all or any part of a contractor’s liability to repair a residence or construction defect

# Business Courts

- Stated purpose is to create a separate court to handle business disputes
- Establishes a statewide business court with concurrent jurisdiction with a district court. However, it actually establishes 11 business courts throughout Texas.
- Question over whether really warranted or necessary
- Question over constitutionality
- Became law on September 1, 2023, and will apply to civil actions filed on or after September 1, 2024

# Business Courts

- Jurisdiction-Two Tiers-Concurrent jurisdiction with district courts
- Tier One-Certain actions where amount in controversy exceeds \$5 million
  - Derivative actions
  - Corporate governance, governing documents, or internal affairs of an organization
  - Pure business disputes – 1. Claim under state or federal securities or trade regulation law asserted against an organization or controlling person; 2. Action by an organization against an owner etc.; 3. Action alleging that an owner, controlling person, or managerial official breached a duty owed; 4. Action seeking to hold an owner or governing person liable for obligation of organization; and 5. Action arising out of the Business Organizations Code.

# Business Courts

- Tier Two-following situations where amount in controversy exceeds \$10 million
  - “Qualified Transaction”
  - Action arising out of a contract or transaction where parties agreed business court would have jurisdiction
  - Action arising out of violation of Finance Code or Business & Commercial Code by an officer or governing person acting on behalf of an organization-other than a bank, credit union or S&L association



# Business Courts

- Tier Two
  - “Qualified Transaction” includes any dispute where consideration is greater than \$10 million
    - Essentially huge business disputes
    - BUT does not include loans by banks, credit unions or S&Ls
    - Also includes Declaratory Actions involving disputes based on a claim within court’s jurisdiction

# Business Courts

- A number of things excluded:
  - Claim arising out of an insurance contract
  - Personal injury
  - Ch. 74 health care liability/med mal
  - Legal mal
  - DTPA
  - Consumer transactions under sec. 601.001 of Tex. Bus. & Comm. Code (consumer right to cancel a transaction)

# Business Courts

- Claim under Estate Code
- Claim under Family Code
- Claim arising out of production or sale of a farm product
- Claim arising under M&M liens (Ch. 53-Property Code) or Texas Trust Code (Title 9-Property Code)
- Action by or against a governmental entity to foreclose a lien

# Business Courts

- Divides Court into 11 divisions
  - Not by judicial districts or counties
  - Not 14 like courts of appeal
  - Corresponds with 11 administrative judicial regions

# Business Courts

- Only truly creates 5 Business Courts
- Does so by sunseting certain divisions
- And only funding and creating courts in 5 divisions
- Business courts only created in major metropolitan areas
  - Dallas
  - Fort Worth
  - Houston
  - San Antonio
  - Austin

# Business Courts

- Divisions sunsetted (never created)
  - Conroe/East Texas
  - Corpus Christi/Valley
  - Hill Country/Southwest Texas
  - West Texas
  - Panhandle
  - Northeast Texas

# Business Courts

- Judges Appointed
  - By Governor-with the advice and consent of Senate
  - Two year term
  - Can be reappointed
  - 2 Judges each for Dallas, Fort Worth, Houston, San Antonio and Austin
  - 1 Judge each for all other divisions
    - BUT not until other divisions are authorized by next legislature
    - Likely never will be

# 15<sup>th</sup> Court of Appeals

- Creates a new Court of Appeals
- Based in Austin
- Comprised of all counties in Texas
- Consists of a Chief Justice and 4 justices



# 15<sup>th</sup> Court of Appeals

- Exclusive jurisdiction over certain appeals
- All appeals from Business Courts
- All actions brought by or against the state or a state agency and employees thereof
  - With certain specific exceptions
  - Takes those cases away from Austin/3<sup>rd</sup> Court of Appeals
- All actions challenging the constitutionality or validity of a state statute or rule where the AG is a party
- Provides for transfer from Travis County District Court of certain actions upon motion or court's own motion if public interest requires a prompt, authoritative determination and case would ordinarily be appealed.

# 15<sup>th</sup> Court of Appeals

- Prohibits Supreme Court from transferring cases to or from court for docket equalization purposes
  - Reinforces specialization/exclusive jurisdiction
- Constitutional?
  - Provides that Supreme Court has exclusive and original jurisdiction over any challenge to constitutionality