

# Living Legends



On May 20, the DBA presented a DBA Living Legends webinar featuring Michele Wong Krause, Wong Krause & Associates, Chair, DART Board of Directors, interviewed by Hon. Audrey Moorehead, County Criminal Court No. 3. The program was co-hosted by the DBA Allied Bars Equality Committee and DAABA in honor of Asian American and Pacific Islander Heritage Month. Find all the Living Legends videos on our YouTube Channel at <https://buff.ly/3FwEmN3>.



# Dallas ISD Law Academy Renamed after Late Judge L.A. Bedford

## STAFF REPORT

At its March Board Meeting, the Dallas ISD Board of Trustees voted to rename the William Hawley Atwell Law Academy to the Judge Louis A. Bedford Jr. Law Academy to honor the late civil rights advocate.

Born in 1926, Judge Bedford was a graduate of Booker T. Washington High School and Prairie View A&M. After graduating from Prairie View A&M College in 1946, his dream was to pursue a law degree. However, in 1946 the state of Texas did not allow admission to graduate schools to African Americans. He went on to study law in New York and earned his law degree from Brooklyn School of Law in 1951. He then returned to Dallas.

A trailblazer throughout his life, Judge Bedford organized the J.L. Turner Legal Society in 1952, and served as the organization’s historian until his death. He served as the first African American Judge in Dallas County beginning in 1966 and later returned to private practice. He was the fourth African American lawyer to join the Dallas Bar Association in 1968, and was unanimously elected to the Board of Directors in 1984.



Judge Louis A. Bedford Jr.

In 1990 he played a leadership role in moving the Dallas Bar Association forward by making the Presidents of the J.L. Turner Legal Society and the Mexican American Bar Association (now the Dallas Hispanic Bar Association) voting members of the Dallas Bar Association Board of Directors.

Judge Bedford received every honor that the Dallas Bar Association bestows. He was the first recipient of the Martin Luther King, Jr. Justice Award in 1992. Upon receiving the award, he said “The award really isn’t necessary; we all should be about justice.

In 1998, he received the DBA Trial Lawyer of the Year Award for his lifetime commitment to trial work and to the legal profession; and in 2001 he received the Morris Harrell Professionalism Award.

In 2009, Judge Bedford was the subject of the book *Quest for Justice: Louis A. Bedford Jr. and the Struggle for Equal Rights in Texas*, written by SMU historian Darwin Payne.

**HN**



Judge Ketanji Brown Jackson, foreground, with her daughter, Leila, and husband, Patrick G. Jackson, during her Senate confirmation hearing.

# Representation Matters: The Impact on Judge Jackson’s Confirmation

BY AMY M. STEWART

In March 2022, United States Circuit Judge Ketanji Brown Jackson persevered through Senate confirmation hearings to become the first Black woman to be United States Supreme Court Associate Justice. Dallas legal leaders share how this historical moment impacted not only them as lawyers but mothers.

## Grace Through Adversity

Many, like District Judge Tonya Parker, Toyota Managing Counsel, Meyling Ly-Ortiz, and Lynn Pinker Hurst Schwegmann Partner, Jervonne Newsome, focused on Justice Jackson’s lifetime of hard work and perseverance.

“Justice Brown Jackson serves as a beacon, not just for women in our profession, but for those outside of it. She is the manifestation of hard work, humility, composure, and intellect. She shows us all what it looks like to levitate above distractions and walk in one’s purpose.” –Judge Tonya Parker

“The confirmation hearing was both emotionally exhausting and exhilarating. Exhausting because it was easy to empathize how difficult it must have been to exercise restraint at the political grandstanding, defend her credibility, and justify her worth, which women of color repeatedly have to do. She had the extra burden of doing it in front

of millions of people. Exhilarating because we got to witness history being made – and a deferred dream finally realized.” – Meyling Ly-Ortiz

“Grace, respect, temperance, intelligence, and class are just a few of the words that come to mind when I witnessed Judge Ketanji Brown Jackson’s confirmation hearing as she sat there carrying the hope of every little black girl on her shoulders. While we celebrate her being the first, we have a duty to make sure she is not the last.” –Jervonne Newsome

## Beaming With Pride

A striking photograph of Judge Brown’s daughter, Leila, watching her mother during the confirmation hearing captured our hearts. Chief Judge for the Northern District of Texas, Barbara M.G. Lynn; Tillotson Johnson & Patton Partner Anne Johnson; Vice President of Diversity & Inclusion and Associate General Counsel at Boy Scouts of America, Elizabeth Ramirez-Washka; and Thompson Coe Partner Sarah Rogers share how the photograph impacted them.

“It made me feel so proud that a woman of color with her vast diversity of experience could reach the pinnacle of legal achievement while her own daughter watched with immeasurable pride.” – Chief Judge Barbara M.G. Lynn

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## Need Help? You’re Not Alone.

Texas Lawyers’ Assistance Program.....	(800) 343-8527
Alcoholics Anonymous.....	(214) 887-6699
Narcotics Anonymous.....	(972) 699-9306
Al Anon.....	(214) 363-0461
Mental Health Assoc.....	(214) 828-4192
Crisis Hotline.....	1-800-SUICIDE
Suicide Crisis Ctr SMU.....	(214) 828-1000
Metrocare Services.....	(214) 743-1200

More resources available online at [www.dallasbar.org/mentalhealthresources](http://www.dallasbar.org/mentalhealthresources)



Programs and meetings are presented Virtually, Hybrid, or In-Person. Check the DBA Online Calendar ([www.dallasbar.org](http://www.dallasbar.org)) for the most up-to-date information. Programs in green are Virtual Only programs.

Calendar June Events

Visit [www.dallasbar.org](http://www.dallasbar.org) for updates on Friday Clinics and other CLEs.

LGBTQ PRIDE MONTH

June is LGBTQ Pride Month. For additional resources, visit [www.americanbar.org/groups/diversity/sexual\\_orientation](http://www.americanbar.org/groups/diversity/sexual_orientation) or [www.lgbtbar.org](http://www.lgbtbar.org). To find out more about the Dallas LGBT Bar Association, visit <https://dlgbtba.org/>. For more on the DBA's Diversity Initiatives, log on to [www.dallasbar.org](http://www.dallasbar.org).

FRIDAY CLINICS

JUNE 10

Noon

"Taxing Cryptocurrencies: Key Considerations and Trends," Nima Farzaneh, Jonathan Kohn, Andy Yung, and moderator Bill Richmond. (MCLE 1.00)\*

JUNE 17

Noon

"Financial Planning for Attorneys," Keith Pillers. (MCLE 1.00)\*

WEDNESDAY, JUNE 1

Noon

Employee Benefits & Executive Compensation Law Section

"And the Beat Goes On ... Summer Welfare Plan Update," Elizabeth Alston, Keyashia Grisson, and Danita Merlau. (MCLE 1.00)\* Virtual only

Solo & Small Firm Section

"Tough Negotiations: Just Because It Is Not Extortion Doesn't Mean You Haven't Violated the Disciplinary Rules," Jeanne M. Huey. (Ethics 1.00)\* Virtual only

Criminal Justice Committee. Virtual only

Public Forum Committee. Virtual only

4:00 p.m.

LegalLine E-Clinic. Volunteers needed. Contact [mmejia@dallasbar.org](mailto:mmejia@dallasbar.org).

THURSDAY, JUNE 2

Noon

Construction Law Section

"Building Your Case on a Solid Foundation to Withstand Appeal: Reserving Error for Appeal Construction Cases," Katherine Elich. (MCLE 1.00)\* In person only

Admissions & Membership Committee. In person only

Judiciary Committee. Virtual only

FRIDAY, JUNE 3

Noon

DVAP Summer Associates Pro Bono Luncheon

Olesja Cormney, Jake Torres, and moderator DBA President Krisi Kastl. (MCLE 1.00)\* To register, email [martinn@lanwt.org](mailto:martinn@lanwt.org). In person only

DBA/DAYL Moms in Law Lunch at Mattito's, 3102 Oak Lawn Ave. RSVP [cpleatherberry@gmail.com](mailto:cpleatherberry@gmail.com)

MONDAY, JUNE 6

Noon

Tax Law Section

"Hot Topics in M&A," Lacy Durham. (MCLE 1.00)\* Virtual only

TUESDAY, JUNE 7

Noon

Corporate Counsel Law Section

"Managing Litigation: Ethical Challenges Facing In-House Counsel," Julie Lennon, Dena DeNooyer Stroh, and Robert Tobey. (Ethics 1.00)\*

Law Student Professionalism Program

"A Program for Law Students & Recent Law Graduates," Hon. Liz Lang-Miers, Stacey Salters, and Aaron Tobin." Sponsored by Morris Harrell Professionalism Committee. More information at [dallasbar.org](http://dallasbar.org). (MCLE 1.00)\* In person only

WEDNESDAY, JUNE 8

Noon

Bankruptcy & Commercial Law Section

"Revisiting Bad Faith Chapter 11 Filings in the Fifth Circuit," Trinitee Green, Harrison Pavlasek, Emma Persson, and Dylan Ross. (MCLE 1.00)\* (MCLE 1.00)\*

Family Law Section

"New Sources of Digital Evidence," John Browning. (MCLE 1.00)\* In person only

Bench Bar Conference Committee. Virtual only

4:00 p.m.

LegalLine E-Clinic. Volunteers needed. Contact [mmejia@dallasbar.org](mailto:mmejia@dallasbar.org).

THURSDAY, JUNE 9

Noon

Business Litigation Section

"Wasteland: The True Story of Farm Country on Trial," Corban Addison interviewed by Talmage Boston. (MCLE 1.00)\* In person only

CLE Committee. Virtual only

Publications Committee. Virtual only

FRIDAY, JUNE 10

Noon

Friday Clinic

"Taxing Cryptocurrencies: Key Considerations and Trends," Nima Farzaneh, Jonathan Kohn, Andy Yung, and moderator Bill Richmond. (MCLE 1.00)\*

Government Law Section

Topic Not Yet Available

Trial Skills Section

"Appellate Lawyers at Trial: Practical Tips for Avoiding Hidden Traps," Kirsten Castañeda, Hon. Lana Myers, LaDawn Nandrasy, and moderator Leslye Moseley. (MCLE 1.00)\*

MONDAY, JUNE 13

Noon

Alternative Dispute Resolution Section

Topic Not Yet Available

Real Property Law Section

"Commercial Leasing Lessons," Ashley W. Anderson and Erin Marino. (MCLE 1.00)\*

Peer Assistance Committee. In person only

TUESDAY, JUNE 14

Noon

Business Litigation Section

"The Future of Remote Mediations," Leon Carter, Hon. Martin Hoffman, Chris Nolland, Ken Rubenstein, and Paul Wingo. (MCLE 1.00)\* Co-sponsored by the Tort & Insurance Practice Section. Virtual only

Immigration Law Section

Topic Not Yet Available

Legal Ethics Committee. Virtual only

WEDNESDAY, JUNE 15

Noon

Energy Law Section

Topic Not Yet Available

Health Law Section

"Please Tell Me You Didn't...How to Keep Lawyers Out of the Jailhouse, Poorhouse and Nuthouse," Martin Merritt, Mazin Sbaiti, and Katherine Schneider. (Ethics 1.00)\* In person only

Law in the Schools & Community Committee. In person only

Pro Bono Activities Committee

4:00 p.m.

LegalLine E-Clinic. Volunteers needed. Contact [mmejia@dallasbar.org](mailto:mmejia@dallasbar.org).

THURSDAY, JUNE 16

Noon

Appellate Law Section

"Texas Supersedeas Practice 101 and Beyond," Mike Northrup. (MCLE 1.00)\* In person only

4:00 p.m.

DBA Board of Directors

FRIDAY, JUNE 17

9:00 a.m.

Child Welfare Conference

Presented by the Child Welfare and Juvenile Justice Committee. Register at [dallasbar.org](http://dallasbar.org). (MCLE 6.00, Ethics 2.00)\* Virtual only

Noon

Friday Clinic

"Financial Planning for Attorneys," Keith Pillers. (MCLE 1.00)\*

MONDAY, JUNE 20

Noon

Allied Bars Equality Committee

"DEI Book Club—Caste: The Origins of Our Discontents—CLE and Book Discussion,"

Kenitra Brown and Prof. Anna Offit. (Ethics 1.00)\*  
\*Qualifies as 2022 DBA DEI challenge CLE.  
Virtual only

Labor & Employment Law Section

"Recent Appellate Developments Affecting Employment Law Cases," Walt Taylor. (MCLE 1.00)\*

TUESDAY, JUNE 21

Noon

Franchise & Distribution Law Section

Topic Not Yet Available

International Law Section

"When HSI Raids the C-Suite: Sanctions, Export Violations, and Other Homeland Security Issues Impacting Corporate Clients," Rob Dunikoski. (MCLE 1.00)\* In person only

Community Involvement Committee. Virtual only

WEDNESDAY, JUNE 22

Noon

Entertainment, Art & Sports Law Section

Topic Not Yet Available

4:00 p.m.

LegalLine E-Clinic. Volunteers needed. Contact [mmejia@dallasbar.org](mailto:mmejia@dallasbar.org).

THURSDAY, JUNE 23

Noon

Criminal Law Section

"DWI Blood Tests and Alcohol Concentration Curves – Simplified," John Giofreddi. (MCLE 1.00)\* In person only

Environmental Law Section

Topic Not Yet Available

Intellectual Property Law Section

"Patents and the Gender Gap: Inventors, Patent Prosecution, and Patent Litigation," Kirby Drake. (MCLE 1.00)\*

Minority Participation Committee. Virtual only

6:00 p.m.

DAYL Wine Tasting

At Sammons Center for the Arts. Benefiting DVAP. [www.dayl.com](http://www.dayl.com).

7:00 p.m.

DLGBTBA Social

Held at Sue Ellen's, 3014 Throckmorton Street, Dallas. This event is FREE for members of the Dallas LGBT Bar, \$20 for non-members. Questions? Email [info@dlgtba.org](mailto:info@dlgtba.org).

FRIDAY, JUNE 24

Noon

Minority Clerkship Luncheon

"Thriving as a Law Clerk in a Post-Pandemic World," Nadia Haghihatian, Edward Loya, Jervonne Newsome, and James Stafford. (Ethics 1.50)\* Sponsored by the Minority Participation Committee. In person only

MONDAY, JUNE 27

Noon

Science & Technology Law Section

"Managing A Cyber Incident," Amanda Harvey and Rachel Ratcliff. (MCLE 1.00)\*

TUESDAY, JUNE 28

No DBA Events Scheduled

WEDNESDAY, JUNE 29

4:00 p.m.

LegalLine E-Clinic. Volunteers needed. Contact [mmejia@dallasbar.org](mailto:mmejia@dallasbar.org).

THURSDAY, JUNE 30

No DBA Events Scheduled

Pride Month Events

Join the DLGBT Bar Association at these events:

June 4 | Dallas Pride Parade

The Dallas LGBT Bar Association will be at Dallas Pride at Fair Park. For more information visit [dallaspride.org](http://dallaspride.org)

June 23 | "Let's Get Proud" Social

Thursday, June 23, 7pm, at Sue Ellen's (3014 Throckmorton Street, Dallas)

[info@dlgbtba.org](mailto:info@dlgbtba.org)

#pridemonth

Client Development — Speak at a DBA Program

Interested in sharing your legal knowledge and expertise with your colleagues? The CLE Committee is looking for speakers and hot topics for the Friday Clinic programs it holds throughout the year.

Please submit a short bio, title, and 2-3 sentence description of your presentation to [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org). Submissions will be discussed at monthly CLE Committee meetings.

If special arrangements are required for a person with disabilities to attend a particular seminar, please contact Alicia Hernandez at (214) 220-7401 as soon as possible and no later than two business days before the seminar.

All Continuing Legal Education Programs Co-Sponsored by the DALLAS BAR FOUNDATION.

\*For confirmation of State Bar of Texas MCLE approval, please call the DBA office at (214) 220-7447.

\*\*For information on the location of this month's North Dallas Friday Clinic, contact [yhinojos@dallasbar.org](mailto:yhinojos@dallasbar.org).

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President's Column

Welcome Summer!

BY KRISI KASTL

Father’s Day

June has always nurtured my heart. With the warmer weather comes a growing number of celebrations. On June 19, we celebrate fathers everywhere. My own Dad’s influence cannot be understated. One of my favorite lessons Frank Kastl instilled was how to spell the word rendezvous. He also patiently taught me how to drive a car as well as the value of being an independent thinker and hard worker. Under his tutelage, my siblings and I learned how to navigate the grown-up work world at a tender age. We helped him with our family carnival business and were educated on the value of being a trusted worker.

Juneteenth

June 19 celebrates Juneteenth. President Joe Biden officially designated Juneteenth as a federal holiday on June 17, 2021. This historic day marks a season of hope and celebrates the freedom of enslaved people in the United States at the end of the Civil War. The holiday has been celebrated by many American communities for more than 150 years but now has federal recognition. It is the first new federal holiday since the establishment of Martin Luther King Jr. Day in 1983.

Juneteenth’s history is rich in Texas. Despite the Emancipation Proclamation coming into effect in January 1863, many enslaved people did not know they were free. A full two years after the proclamation, Union General Gordon Granger arrived in Galveston, Texas on June 19 and informed the enslaved peoples of their freedom. He declared “absolute equality of personal rights and rights of property between former masters and slaves.” In 1980 Texas became the first state to recognize June 19 as a state holiday.

50th Anniversary of Title IX

The celebration of equality continues in June. June 23 will mark the 50th Anniversary of Title IX. Although only 37 words, Title IX has had a profound impact. Title IX prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. When President Richard Nixon originally signed this bill into law, only seven percent of high school athletes were female. Women were seen more as spectators of athletic events and were rarely center stage. That number has increased every year and in 2021 there were over 3.4 million female athletes. The impact is not only felt in the sporting arena but high school and college retention. The trajectory of societal change deserves to be celebrated on this important day and I am so proud to be part of an organization that recognizes the contribution of women in ever-growing arenas.

Cynt Marshall Trailblazer

The 50th anniversary of Title IX was made even more special when **Cynt Marshall** gave a dynamic and moving talk during Law Day. I was fortunate enough to speak with her and it was one of the most inspirational moments in my life. She is a shining beacon of possibility. Marshall is the first African American CEO in NBA history. She grew up



Conversation with Cynt Marshall

in the projects and worked her way up to the top in a male-dominated field. Any trepidation I carried meeting this phenomenal woman evaporated once we sat down to talk. She radiated open positivity and grace. I felt like my late friend **Karen McCloud** was in the room with us. Both are strong women with an innate ability to see what others need and elevate and inspire.

I asked my good friend and fellow personal injury attorney **Paul Wingo** to sing the Star-Spangled Banner as a dynamic kick-off to the day’s events. His lovely voice provided the perfect opening gravitas. Paul describes music as a “medium to the soul.” He was thrilled to align his passion for singing with the celebration of Law Day. His rendition of the piece set the perfect tone for the epic festivities the day of.

Hon. Nancy Thomas

**Nancy A Thomas** was the fourth female President of the Dallas Bar Association in 2002. She is a living legacy to the field of law and has made a mark helping those in need. She graduated from the Baylor University School of Law in 1980 and garnered many scholarships and academic accolades. After graduation, she headed to the Dallas Court of Appeals where she was the briefing Attorney to Chief Justice **Clarence A. Guittard**. Her career spanned various firms and companies where she worked as a corporate attorney, arbitrator, and mediator. Thomas served as an Associate Judge for the Dallas County Civil District Courts and in 2006 she was appointed by Governor Rick Perry to the 160th Judicial District Court in Dallas County. After leaving the bench, she became Senior Vice President and General Counsel of First Southwest Company.



Nancy Thomas

Thomas has also been an important advocate for the vulnerable community of Sand Branch. Sand Branch is a town about 15 miles south of Downtown Dallas. Although the town has been around for 142 years, it has never had running water. I was fortunate enough to witness her grace firsthand in late December. I accompanied her and handed out food to the handful of residents left in this small community that has no stoplights, trash, or sewage water. She lights up when helping others and I am inspired by her goodwill.

Looking Ahead

Summer does not mean slowing down at the DBA. In addition to cultivating the practice and promise of the Dallas community of law through CLEs and organized meetings, the DBA Allied Bars Equity Committee is showcasing a wonderful event. On June 18, please join the Committee at the Strauss Square for the production of “Griots: Celebrating a Compilation of Dallas’ Cultural Storytellers of African Diaspora.” An elite cadre of key Dallas artistic and cultural storytellers will combine drum, dance, cultural ceremonies, performance art, and theater to honor the hallowed pathways of cultural lineage. Further details are available on our website.

There is so much to celebrate this month and I sincerely hope you enjoy each moment in June.

Krisi

HEADNOTES

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DALLAS BAR ASSOCIATION

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Established 1873

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SWIRL. SMELL. SIP. REPEAT!

Thursday, June 23  
6:00-8:00 p.m.  
Sammons Center for the Arts

Benefiting DVAP

Visit [dayl.com](http://dayl.com) for more information.





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# Robert “Bob” Davis Passes Away

## STAFF REPORT

Dallas Bar Association past president **Robert Edwin “Bob” Davis** passed away April 29, 2022 at the age of 87. He served as President of the DBA in 1980.

Mr. Davis was born in New Orleans, but a Dallas resident for the last 71 years of his life. While attending Adamson High School in Dallas, Bob was involved in public speaking and debate for four years under the tutelage of Carl Nutley, the debate coach, and that experience altered the course of his professional life. He graduated from Southern Methodist University with a B.A. in 1957 and a J.D. from SMU’s Law School in 1958. When a freshman at the law school, he and two teammates won the Texas Moot Court Competition against the challenge of all the other law schools in Texas. He was a member of the editorial staff for the *Oil & Gas Reporter* for two years. Upon graduation from law school, Bob was awarded

a graduate fellowship by the Southwestern Legal Foundation and taught oral advocacy at SMU’s law school during the 1958-1959 academic year, and he also studied graduate courses in federal tax law.

During his legal career, Mr. Davis handled many high-profile white collar crime cases, and represented the worlds’ largest telephone company for 17 years. In 1982, he served as the First Deputy Assistant Attorney General in the Tax Division of the Department of Justice in Washington, D.C., a division having 350 trial and appellate attorneys. He was a founding partner in Davis, Meadows, Owens, Collier, Reed & Zachary in 1983. Later in his career, he worked as a partner at Hughes & Luce (now K&L Gates) for many years.

Mr. Davis was the first President of the DBA to enjoy a full term in the association’s Mansion, and his term was extended from August of 1980 through December 31 of 1981. During his term as President, the association brought one of the four

surviving copies of the Magna Carta for display at the association’s headquarters.

He served as a Director of the State Bar of Texas 1981-1982 and as Chair of the SBOT’s Section of Taxation in 1976-1977.

In 2006 he was presented with the Jules Ritholz Memorial Merit Award by the Civil and Criminal Penalties Committee of the Section of Taxation of the American Bar Association “in recognition of outstanding dedication, achievements, and integrity in the field of civil and criminal tax controversies.”

Bob is survived by four sons: Robert E. Davis, Jr., Alan R. Davis, Christopher L. Davis, and Ian E. Davis, three daughters: Skye Violet Davis, Shea Lona Davis, and Arran Ansley Davis; his grandchildren, Rachel, Audrey, Jackson, Ava, Julia, and Anderson; brothers, Joseph B. Rodriguez and Don Edward Davis; nieces, nephews and countless friends and colleagues.

In lieu of flowers, the family welcomes



Robert Edwin “Bob” Davis

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Focus | Construction/Real Property Law

Protection in Perpetuity – SB 885 Bridges the Gap

BY HUNTER TAYLOR

Short-term solutions often present long-term problems. This notion was recognized by the Texas Legislature through its ratification of Senate Bill 885 during the 87th legislative session—a bookend to efforts dating back to 1999 to address the consequences of certain warrantless conveyances. In amending the Texas Civil Practice and Remedies Code and expanding language in the Texas Property Code, the Texas Legislature acknowledged an ambiguity that was being exploited by parties staking claim to real property through adverse possession. The Legislature’s tonic, SB 885, expands bona fide purchaser protections to the benefit of an otherwise vulnerable grantee and hedges against the pose of an adverse possessor.

As a rudimentary form of conveyance, a quitclaim instrument in Texas merely evidences the relinquishment of a grantor’s “right, title, and interest” in real

property—if any. A quitclaim provides no warranties as to ownership, omitting those provided by special or general warranty deed. The allure of a conveyance of this sort is based in its short, simple, and inexpensive form, and the justifications for this form are especially palpable when the concerns that promote due diligence and adequate underwriting are usurped by temporal and fiscal constraints. In those situations, which often involve the transfer of property incident to death, divorce, or otherwise, the quitclaim of interests has been historically favored insofar as the warranties and representations indicative of a warranty conveyance are not required to induce an exchange. Despite appearing advantageous to a grantor, the long term and otherwise lingering consequences resulting from a quitclaim conveyance have presented substantial, complex, and often unintended consequences for a grantee which seeks to establish a valid and defensible chain of title.

While many jurisdictions, through statute or caselaw, provide that bona fide purchaser protections are available when a party is quitclaimed a property for value and otherwise without notice of claim, Texas has historically taken a different approach. Prior to the effective date of the changes implemented by SB 885 (September 1, 2021), quitclaim conveyances afforded no such protections and were interpreted to create constructive and “automatic” notice to prospective purchasers of a defect in the chain of title. Effectively, a quitclaim in the chain of title inhibited fee title from being conveyed thereafter. The “void” this inhibition caused allowed adverse possessors to stake their claim to title to a property insofar as the other elements of adverse possession were satisfied. Absent an adequate safe harbor, the grantee pursuant to a quitclaim deed held the property subject to future contest in perpetuity.

Although the tedious nature of the process of linking ownership to property lacks allure, the consequences of a quitclaim conveyance in Texas can be troubling and need to be proactively identified. After all, “betting the farm” does not muster the same angst when you did not actually own the farm in the first place.

In response to these concerns and specifically at the request of the Texas title industry, the Texas Legislature endeavored to address these issues and provide a procedure for long-term title assurances. Through an amendment to Section 16.025(b) of the Texas Civil Practice and Remedies Code (which codifies a line of caselaw providing that an adverse possessor may not claim land

based on quitclaim deed using the five-year statute), and the addition of Section 13.006 of the Property Code (which sets forth a procedure for a grantee to obtain bona fide protections), a resolution to this quandary was implemented. To this end, SB 885 (i) extends bona fide purchaser protections to recipients of quitclaim instruments and (ii) resolves the sentiment that a quitclaim constitutes notice to a subsequent purchaser or creditor of any unrecorded conveyance, transfer, or encumbrance of the property; in each case, to the extent no claim has been made in the four years following the record date of the quitclaim instrument. Accordingly, a timeline and mechanism for the construction of the aforementioned “bridge” in title was created.

SB 885 provides reprieve to a class of grantees that has historically been subject to an indeterminate period of ownership. This sanctuary, of sorts, enables parties holding Texas properties conveyed by quitclaim to close a link in the chain of title which otherwise would remain in a state of uncertainty. While ancillary consequences such as the enhanced marketability (and, therefore, value) of a parcel are clear, those on the receiving end of quitclaim conveyances may no longer be forced to remain in the title purgatory caused by warrantless instruments. Further, underwriters and practitioners alike are now afforded a procedure by which defensible title may be readily established when sought in accordance with the newly-promulgated statutory framework.

HN

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Focus

Construction/Real Property Law

# The Limited Role of the Trustee Under a Texas Deed of Trust

BY MARTIN CAMP

Texas lenders use deeds of trust to evidence real estate liens. The borrower/grantor grants a lien on the mortgaged property to the lender/beneficiary. Because Texas is a lien theory and not a title theory state, the deed of trust does not transfer legal title which remains with the borrower/mortgagor. *Taylor v. Brennan* 621 S.W. 592,593 (Tex. 1981). The deed of trust does grant a power of sale in the trustee. If there is a default under the deed of trust, the lender can instruct the trustee to hold a non-judicial foreclosure sale and the trustee will execute a trustee's deed transferring title to the successful purchaser at the sale. The trustee's role is limited to, in response to the mortgagee's instructions, complying with

the provisions of the deed of trust and Texas Property Code which provide for a non-judicial foreclosure process. The title that is transferred is the title of the borrower/mortgagor, not the mortgagee or trustee. All warranties come from the mortgagor. *Sandel v. Burney*, 714 S.W.2d 40, 41 (Tex. App.—San Antonio 1986, no writ). This article will address three questions that sometimes arise concerning the status of the Trustee.

**1. Is the trustee listed as a party to the deed of trust in the Grantor/Grantee Index in the real property records?** The answer is no. While each County Clerk's Office has its own procedures and policies for accepting and recording instruments, the name of the trustee will generally not appear in the index. The borrower/grantor will be

indexed as the grantor of the deed of trust and the lender will be listed as the mortgagee in the Grantee Index. In residential mortgages often a nominee for the lender, such a MERS (Mortgage Electronic Registration System), will also be indexed as a grantee.

Even if the trustee forecloses, the trustee's deed is indexed under the name of the borrower/grantor. The trustee is acting in a representative capacity for the borrower/grantor. County Clerks have wide latitude in how they index documents and may err on the side of listing all named parties so that the maximum notice is imparted. See Attorney General Opinion of April 7, 2009 GA-0702.

**2. Must/should the trustee be a signatory to an amendment of the deed of trust? A release of the deed of trust lien? A transfer of lien?** The answer again is no. The lender and/or its nominee executes releases of liens and signs transfers of liens. The lender will execute any modification of the deed of trust. Neither the lender nor the trustee is a signatory of original deed of trust. The trustee does not sign subsequent documents, other than when acting under the power of sale and foreclosing and transferring the property. Frequently, the original trustee is replaced by the lender or the mortgage servicer with a substitute trustee at the time of foreclosure. Texas Property Code § 51.0076 additionally provides that the appointment of a substitute trustee may be contained in the mandatory notice of sale required by Texas Property Code § 51.002(b).

**3. Should/must the trustee be a party to litigation involving the deed of trust?** Here the answer is sometimes yes and sometimes no. If the action is to enjoin the sale or to claim the trustee acted improperly, the trustee needs to be a party to the law suit. If the action involves a dispute between the borrower and the lender regarding the loan, and not the actions of the trustee, the trustee does not need to be included in the action. The trustee does not hold a beneficial interest in the loan or the property and has no power to impact disputes between the borrower and the lender. Nevertheless, trustees are often included in litigation even though they generally have nothing to do with the loan administration, have no fiduciary duties to the parties, are not debt collectors, and generally play a very limited role of conducting the sale. When the case does not involve actions of the trustee, the trustee can file a verified denial stating "the basis for the trustee's reasonable belief that the trustee was named as a party solely in the capacity as trustee under the deed of trust..." Tex. Property Code §51.007(a). The court will determine if the trustee is a necessary party. The trustee has to plead sufficient reasons why he is not a necessary party. *Marsh v. Wells Fargo Bank, N.A.*, 760 F. Supp. 701,707 (N.D. Tex. 2011)


HN

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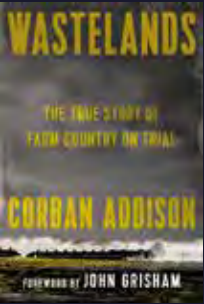
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**\$296,000,000** verdict against Koch Industries, which is the largest award for actual damages in a wrongful death case in the nation’s history, according to records compiled by Jury Verdict Research. A liquid butane pipeline broke and exploded near a subdivision in a northeast Texas town, killing two teenagers who inadvertently triggered the blast with an ignition spark from their truck. A foundation that promotes pipeline safety was created. A chapter in Daniel Schulman’s New York Times best-selling biography about the Koch brothers, *Sons of Wichita*, details how **Smalley v. Koch Industries** changed Koch Industries’ policies.

**\$84,425,000** verdict in a personal injury case resulting from a U-Haul truck’s parking brake not working and the transmission so worn that it would not lock into first gear. Evidence developed in **Waldrip v. U-Haul** proved that six people who used the same truck had similar problems, all of which were reported to U-Haul.

**\$27,000,000** verdict sent a message to the country’s largest onshore pipeline company, Enterprise, that safety matters. **C&H Powerline Co. v. Enterprise, et al.** stemmed from a massive, fatal pipeline explosion in which the defendant company failed to mark its pipeline. This verdict is the largest in the history of Washington County, Okla.

**\$20,439,581** verdict awarded to a family after a terrible accident and tragic death that happened years after Ford and Firestone announced a highly publicized, nationwide recall to replace defective tires Ford blamed for causing rollovers. Evidence presented in the trial of **Wiles v. Ford Motor Company** showed the Explorers sold from 1990 to 2003 were too small and more responsible for the vehicles rolling over than the defective tires.

**\$18,795,800** jury verdict against Greyhound, the largest bus transportation provider, demonstrated public safety overrides corporate profits in **Reeves, et al. v. Greyhound**.

**\$18,780,000** verdict awarded at the trial of **Dawson v. Fluor Intercontinental Inc.**, one of the world’s largest military industrial corporations, for negligence and the failure to properly maintain the safe temperature of the water heaters.

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Revisions to Texas Mechanic’s Lien Statutes

BY MARK TORABI

The Texas Legislature made significant revisions to the mechanic’s lien statutes during the 2021 regular session, simplifying and streamlining current law by eliminating repetitive and confusing language and providing specific statutory forms for notice under the Property Code

Notably, the legislature expanded lien rights to architects, engineers and surveyors who have no privity of contract with the owner, eased up notice requirements for subcontractors, and did away with various formalities that seemed to hinder the purpose of the lien statutes.

The 2021 revisions apply only to original contracts entered into after January 1, 2022, regardless of when the subcontract was signed or when the work was performed.

Definitions

“Improvement” has been expanded to include “a house, building, structure, parking structure, physical appurtenance, pool, utility, railroad, well, storage facility, ... land reclaimed from overflow, and

other fixtures or modifications to real property, ... machinery or apparatuses used for raising water or for supplying or storing water.”

“Improvement” now also includes “a design, drawing, plan, plat, survey or specification provided by a licensed architect, engineer, or surveyor,” and “labor” has been broadened to include preparation work performed by design professionals.

The revised definitions also contain a new term—“purported original contractor” to replace the former “Sham Contract” provision. A *purported original contractor* is considered to be an original contractor for purposes of perfecting a mechanic’s lien.

Notices

Any notice required under Chapter 53 is now permitted to be provided either in person, by certified mail, or “by any other form of traceable, private delivery or mailing service that can confirm proof of receipt.” Additionally, deadlines under the statute fall on a Saturday, Sunday, or legal holiday are extended until the next day that is not a Saturday, Sunday, or

legal holiday.

Architects, engineers, surveyors, landscapers, and demolition crews are no longer required have to have a contract with the owner or owner’s agent to be entitled to file a mechanic’s lien. Anyone who has a contract with the owner or the owner’s agent, trustee, receiver, contractor, or subcontractor, and who provides labor or materials on the particular project, has lien rights.

An original contractor must file the lien affidavit for a non-residential project “not later than the 15th day of the fourth month after the month in which the original contractor’s work was completed, terminated or abandoned.” A subcontractor must file “not later than the 15th day of the fourth month after the later of (1) the month the claimant last provided labor or materials or (2) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered. For residential projects, original contractors must file the lien affidavit “not later than the 15th day of the third month. Subcontractors must also file by the 15th day of the third month.

Finally, a subcontractor seeking a lien for retainage will now be required to “file an affidavit with the county clerk not later than the 15th day of the third month after the month in which the original contract under which the claimant performed was completed, terminated, or abandoned.”

The notice requirements for subcontractors and sub-subcontractors were consolidated into a single third month notice for commercial construction, and single second month notice for residential construction. Notice must be sent to the owner and the original contractor no later than 30 days after the claim-

ant’s contract is completed, terminated or abandoned, or 30 days after the original contract is terminated or abandoned, whichever is earlier.

Affidavit of Completion

Claimants must now include a “conspicuous statement that a claimant may not have a lien on retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter.” The owner must send a copy to any claimant “not later than the third day after the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later.”

Release and Foreclosure of Lien

The deadline for filing suit to foreclose on a mechanic’s lien for commercial projects has been shortened from two years to one. Further, regardless of the Texas Civil Practice and Remedies Code’s provisions allowing for counterclaims that would independently be barred by the statute of limitations, if an owner sues to remove a lien based on the claimant’s failure to timely foreclose on the mechanic’s lien, the claimant will be unable to cure the defect by asserting a counterclaim.

While these legislative changes have significantly broadened protections under the statute, clarified terms, and simplified certain procedures for perfection, enforcement, and lien removal, their proper application still requires diligence and care for contractors, sub-contractors, and owners alike.

HN

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Representation Matters: The Impact on Judge Jackson’s Confirmation

CONTINUED FROM PAGE 1

“We often wonder if our daughters understand our passion, convictions, or reasons for following through with something seemingly impossible. Watching Justice Jackson’s daughter look at her during the excruciating confirmation hearings, there is no doubt she understood the significance of that moment. That look of pride is something every mother strives for.” – Sarah Rogers

“That picture of her daughter smiling like “Mom, you got this” was everything. For women lawyers, it was everything we’ve hoped and dreamed. To be sitting in that room, claiming her rightful place on the highest court in the land, skillfully facing down the critics with her daughters behind her, lifting her up . . . well, it was just amazing.” – Anne Johnson

“As a Latina attorney and mother of two daughters who aspire to be lawyers, my heart melted to see how we are making progress. We should continue to fight for the things we care about, pay it forward, and do not let others write our script.” – Elizabeth Ramirez-Washka

Representation Matters

Dallas Assembly Representatives Dallas County District Judge Monica Purdy, Kimberly Clark Vice President & Deputy General Counsel Shonn Brown, Perkins Coie Managing Partner, Jill Lewis, and Reciprocity Con-

sulting Group’s Debra Hunter Johnson, and AT&T’s Senior Legal Counsel, Vicki Blanton, were in Washington DC when Judge Jackson was confirmed. Louis shared the importance of representation in our legal system.

“We are founded on being a democracy, to be a government of the people. If justice is administered by people who don’t look like you always; but is done to the people who do, then are you really a part of the government? Should you be part of that government? And today really solidifies that yes, we are and yes, we should.” Brown expressed in today’s culturally diverse society, everyone should have a voice in our democracy. “And that’s why representation matters, because if you don’t see it then you can’t believe that you can actually achieve it, and so it is very important to have that visual.”

In This Together

Over the last two years, we as a country have shared the pandemic’s damaging impact on our personal and professional lives. Judge Jackson’s confirmation is a moment of great progress that all Americans should celebrate. As Judge Jackson explained, “I strongly believe that this is a moment in which all Americans can take great pride. We have come a long way toward perfecting our union.”

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Amy M. Stewart, of Stewart Law Group, can be reached at astewart@stewartlawgrp.com.



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The Infrastructure Boom: Pre-Condemnation Procedures

BY CLINT SCHUMACHER  
AND TYLER MILTON

Between the growth Texas is experiencing and the inflow of funds from the Infrastructure Investment and Jobs Act, there are many public projects planned across the state—roads, schools, water and sewer lines, and powerlines. Additionally, Texas is spending historic sums to acquire land to manage floodwaters. Continued development of hydrocarbons from shale formations requires transmission pipelines to carry product to processing facilities and end users. This all requires acquisition of property rights from private owners, often by the exercise of eminent domain.

Eminent domain is the inherent right of the sovereign to acquire private property to be repurposed to public use. The right can be delegated by the legislature to governmental entities or certain private companies, such as gas pipeline operators or electric transmission companies. The property owner has a constitutional right to just compensation under the Fifth

Amendment of the U.S. Constitution and Article I, Section 17 of the Texas Constitution (which uses the term “adequate compensation”), and a statutory right to compensation under Chapter 21 of the Texas Property Code. When an entire piece of property is taken, the compensation is generally determined by ascertaining what the property would sell for in the market, with the caveat that some typical considerations must be ignored in condemnation proceedings. When only a portion of the property or property rights are taken, the compensation is generally determined by calculating the difference in the property value before the acquisition and the property value after the acquisition.

Early in the process, a property owner will often be contacted by a real estate professional (called a right-of-way agent) hired by the condemning authority to try to negotiate a purchase without litigation. These are trained professionals with contractual obligations and duties to the condemning authority and, though they

will seek to build rapport with a property owner, all interactions should be viewed through that lens. A property owner may also be contacted by a surveyor who wants to visit the site to prepare a legal description of the property to be acquired. Sometimes more invasive soil sampling or testing may be requested. These requests, like any made in the context of a potential condemnation, should be carefully reviewed.

Before condemnation proceedings (the lawsuit that exercises the eminent domain power) can commence, the condemning authority must make a written “bona fide” offer to buy the rights it seeks. The condemning authority must present the form of legal instrument it wishes to use, provide a written appraisal prepared by a licensed appraiser that supports the compensation it is offering to pay, and provide a copy of the Landowner’s Bill of Rights (a publication promulgated by the Texas Attorney General’s Office). If negotiations are unsuccessful, the condemning authority can commence the condemnation lawsuit to forcefully take the rights. A careful and nuanced review of the appraisal is perhaps the single most important step in the initial stages of condemnation. Great care should be taken to ensure that the condemnor’s appraiser has both followed Texas law and the Uniform Standards of Professional Appraisal Practice.

From the earliest contact, a property owner can best position itself to deal with this difficult and unfamiliar situation by consulting with someone who deeply understands the eminent domain process and the unique rules of valuation used in these proceedings. Measures taken (or

not) during the pre-negotiation phase can enhance or detract from the eventual total compensation. A few of the many factors that should be diligently analyzed include: (i) entitlements or zoning designations that may influence value; (ii) existing lease agreements or loan agreements that may impact valuation or the disbursement of proceeds; (iii) whether the property is being marketed and if so, what are the terms of the listing; (iv) the effect of property tax valuation appeals; and (v) whether the taking will impact the access, elevation, or drainage on the property.

Once negotiations begin, having an experienced team is critical. Condemnation valuations are unlike a bank appraisal; they have a unique subset of rules and requirements. The property owner should select an appraiser who understands the law and can explain the valuation to a factfinder. Similarly, there may be other professionals, such as engineers or land planners, that are necessary to study how a property will function both during and after construction. Finally, the language of the conveyance instrument (whether a deed, an easement, or a court judgment) will materially impact the future use and burdens on a property. In fact, the instrument wording can frequently be more important than the compensation paid.

Acquisitions under threat of eminent domain are a distinct subset of real estate transactions. They have their own customs and rules and must be navigated with great care.

HN

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Congratulations to the UNT Dallas College of Law Mock Trial team for finishing as semi-finalists in the TEX-ABOTA Showdown competition. The team, led by DBA Director Lauren Black, included: Jordan Garrett (3L), Aaron Veuleman (2L), Kelly Weller (3L), Raven Williams (4E) and Grant Emmons (2L).

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# 30th Annual DBA Golf Tournament

The 30th Annual DBA Golf Tournament, benefiting Access to Justice, took place on April 28 at the Texas Rangers Golf Club. The tournament raised funds for the **Entrepreneurs in Community Lawyer-**

**ing** program, which provides resources and mentoring to new attorneys in the Dallas area who serve clients of modest means. Congratulations to the **Winstead PC** team—the 2022 Law Firm Challenge win-

ner! Thank you to everyone who supported and sponsored the tournament, and a big thank you to our Golf Committee and Co-Chairs **David Kent** and **Ty Sheaks**. We appreciate you!





# 30th Annual DBA Golf Tournament





DALLAS BAR ASSOCIATION  
100 CLUB



## 2022 DBA 100 CLUB

The Dallas Bar Association would like to recognize our **DBA 100 Club** members. The following firms, government agencies, organizations/schools and corporate legal departments have 100% membership in the DBA—showing their commitment to the advancement of the legal profession and the betterment of the community. Recognition is given to the **2022 DBA 100 Club** members in our June, July, and August *Headnotes*, at our Annual Meeting, and at DallasBar.org.

**Not a DBA 100 Club member yet?** This is the perfect time to encourage your newly hired attorneys to join the DBA and take advantage of our many member benefits—such as **450+ FREE CLE programs, plus 15 hours of on-demand CLE**, networking opportunities, community projects and many other member benefits, as well as the opportunity to qualify for the **DBA 100 Club**.

Please note that the DBA 100 Club is open for renewal annually to every firm. We do not automatically renew a firm’s membership due to changes in firm rosters from year to year.

To become a **2022 DBA 100 Club** member, submit your request via email and include a list of all lawyers in your Dallas area office to Shawna Bush, sbush@dallasbar.org. Your list will be verified with our member records, and if eligible, your firm will be added to the **2022 DBA 100 Club**!

If we receive your qualifying list by June 7, your firm will be included on the July and August **DBA 100 Club** recognition lists in *Headnotes*.

### Send in your list TODAY!

**DBA 100 Club Members as of May 17, 2022**

**Law Firms with 2 to 5 Attorneys**

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Adam L. Seidel, P.C.  
Addison Law Firm P.C.  
Adkins Lawyers, PLLC  
Albert & Stowe, PLLC  
Alexander Dubose & Jefferson LLP  
Allmand Law Firm, PLLC  
Anderson Grossman PLLC  
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Ashcraft Law Firm  
Atwood Gameros LLP  
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Bower PLLC  
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Capshaw & Associates  
Chen Dotson, PLLC  
Chris Lewis & Associates, P.C.  
Clark Law Firm  
Crain Brogdon Rogers, LLP  
Deans Stepp Law, LLP  
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Grinke Stewart Law, PLLC  
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Horton & Archibald, P.C.  
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Wilson, Peer, Lark & Associates, PLLC  
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Wolff Law, PLLC  
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**Law Firms with 6 or More Attorneys**  
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Carrington, Coleman, Sloman & Blumenthal, L.L.P.  
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GoransonBain Ausley PLLC (Dallas)  
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Matthews, Shiels, Knott, Eden, Davis & Beanland, LLP  
Mayer LLP  
McCathern, Shokouhi, Evans, Grinke, PLLC (Dallas)

McCathern, Shokouhi, Evans, Grinke, PLLC (Frisco)  
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2022 Virtual Child Welfare  
CONFERENCE

Friday, June 17, 2022

9:00 am – 4:00 pm

6.0 hours & 2.0 Ethics (pending)

Hosted On Zoom





KOONSFULLER NORTH TEXAS TEAM

- LEFT TO RIGHT:
- R1: Heather King,\* Rick Robertson,\*  
Ike Vanden Eykel,\* Charla Bradshaw,\*  
Liz Porter\*
- R2: Jessica Janicek,\* Brian Loughmiller,\*  
Neda Garrett,\* Julie Crawford\*
- R3: Laura S. Hayes,\* Sean Abeyta,\*  
Dana Manry,\* Chris Meuse,\* Fred Adams,\*  
Sally Pretorius,\* Rob McEwan\*
- R4: Jessica Perroni,\* Kevin Segler,\*  
Courtney Walker, Deron Sugg,  
Jonathan Bailey, Lauren Shaw
- R5: James Logue, Lauren Harris,  
Lindsey Vanden Eykel, Taylor Joeckel,  
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# The Risk of Outsourcing Risk Management

BY ASHLIE ALAMAN,  
TAMARA D. BAGGETT,  
AND AMBIKA B. SINGHAL

While no two construction projects are identical, they all have one thing in common: the need to carefully manage the risks of personal injury and property damage. Many companies are opting to outsource the management of these risks to brokerage firms that also provide risk management services. But having a broker act as the company’s risk manager presents its own set of risks. Practitioners should be aware of these risks and work with the risk manager/broker to protect the company from any ethical conflicts.

Businesses rely on risk managers to assess company exposure, determine and procure the proper and necessary coverages, and manage and defend claims. The risk manager must understand the company’s business, vulnerabilities, and risk appetite; she is, at all times, the company’s advocate. A broker, on the other hand, understands the insurance marketplace, applicable policies, and lapses in coverage; she also maintains and leverages the relevant insurance industry relationships. Where the company employs its broker as its risk manager, competing tensions can be created between advising on and advocating for the company’s best interest with respect to policies and claims, all in the most efficient and economical manner, and earning commission on the sales of insurance products.

In practice, this tension materializes in various ways. For example, risk managers are tasked with determin-

ing the lines and amounts of coverage the company needs to keep its operations within the company’s prescribed risk appetite and budget. On the other hand, brokers often try to manage beyond the company’s risk appetite and solely through the vehicle of insurance, and can be motivated by commission or by maximizing industry relationships. Another example is in the case of a filed claim. If claim-related litigation arises between the company and the insurance provider, the risk manager is a necessary party to such conversations and negotiations, while the broker may be conflicted and feel the need to protect the relationship with the insurance provider.

There are also legal repercussions to the broker acting as the risk manager. A risk manager, understanding that the way a claim is filed and described from the beginning greatly impacts its treatment by the insurance provider and its ultimate resolution, typically frames and submits insurance claims in a way to be thoughtfully considered and ultimately covered by the insurance provider. A broker may not be as clearly tasked with advocating for the company and therefore not as motivated to prepare submissions using the approach most protective of the claim. The more critical repercussion, however, is the loss of attorney-client privilege. If the broker acting as risk manager is present for internal meetings to advise on risks related to claims, the privilege is lost.

While outsourcing risk management is growing in appeal to many companies and is regularly done, the well-prepared practitioner will: (i) negotiate the rele-

vant services agreement to bifurcate the risk manager and broker roles and to set forth the risk manager’s obligations to the company relating to contemplating or filing claims to protect professional relationships; (ii) craft a policy to ensure that the company’s interests, including attorney-client privilege, are best protected; (iii) educate the business on these conflicts and ensure that they do their part to protect the privilege; and (iv) carefully evaluate the risk manager’s advice and the insurance products she is suggesting. There are, however, certain things that the company never wants its risk manager to do while acting as a broker:

1. Participate in strategy when dealing with a carrier that issued a reservation of rights or coverage denial. In most states, these types of communications may not be privileged.

2. Determine whether notice of claim or notice of circumstances should be provided and to which carriers—this should be done by counsel as brokers are not trained in how allegations, a demand letter, or discovery may trigger

a policy.

3. Interpret policy provisions. Brokers may provide insight into what was intended, but what the actual language means is a legal question.

4. Consult on whether a claim is covered—this should be done by counsel. Brokers may advise not to make certain claims for renewal reasons, inhibiting proper and timely notice.

5. Determine whether a bad faith claim should be asserted against a carrier—this should be done by counsel because it involves legal strategy.

Other activities performed by a risk manager/broker should also be evaluated for potential conflicts of interest. If any arise, the company should outsource those activities only if it is clear that the company’s best interests—and privilege—will be protected considering the conflict.

HN

Ashlie W. Alaman is Counsel for Starbucks Coffee Company and can be reached at [aalaman@starbucks.com](mailto:aalaman@starbucks.com). Tamara D. Baggett is a Partner at BakerHostetler and can be reached at [tbaggett@bakerlaw.com](mailto:tbaggett@bakerlaw.com). Ambika B. Singhal is an Associate at BakerHostetler and can be reached at [asinghal@bakerlaw.com](mailto:asinghal@bakerlaw.com).

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BEST




2022

(D Mag. Best 2018, 2020, 2022)

DBA in the Netherlands



DBA members participated in a “Journey to the Netherlands” trip May 1-5 as part of the CLE Abroad program. The group shown above is standing in front of the Peace Palace - The International Court of Justice.

 Allied Bars Equality Committee

BOOK CLUB

2022 DEI Book Club – Book 2:

Caste: The Origins of Our Discontents

by Isabel Wilkerson

Virtual CLE & Book Discussion


Monday, June 20, 2022 at Noon with

Kenitra Brown, SMU Dedman School of Law

Professor Anna Offit, SMU Dedman School of Law

MCLE: 1.00 DEI Ethics (pending)

The DEI Book Club strives to utilize the power of influential novels, writings, discussions, and speakers to initiate and mobilize conversations addressing social and racial injustices affecting our society today.

 Scan to view reading list and sign up to participate. Participants will receive access to additional suggested readings and invitations to participate in quarterly CLE discussions. All levels of participation are welcome!



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# DBA Celebrates Law Day at the Arts District Mansion

On April 29, local judiciary and attorneys attended the 2022 Law Day Luncheon at which **Cynt Marshall**, CEO of the Dallas Mavericks, was interviewed by DBA President **Krisi Kastl**. **Paul Wingo** opened the luncheon by singing The Star-Spangled Banner.

In addition to awards presented to the winners of the Law Day Dallas ISD art and essay contests, DAYL President **Andy Jones** and President-Elect **Nicole Munoz Huschka** presented their awards to: **Paige Tackett** (Outstanding Young Lawyer Award), **Stacey Cho Hernandez** (Outstanding Mentor Award), and **Nicolle Ketcham** (the Liberty Bell Award).



2022

Dallas Bar Association

DEI CLE Challenge

The DBA encourages its members to aspire to complete 3 hours of CLE training in the areas of diversity, inclusion, and equity each calendar year. The DBA will recognize members who complete and self-report their 3 hours of DEI CLE by December 31, 2022. Programs that qualify will be identified on the DBA's online calendar.

Join the Challenge

to be recognized in the February 2023 Headnotes, in DBA Online, and receive your electronic DEI CLE Challenge badge.

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Focus

Construction/Real Property Law

# Changes in Liability for Defective Design Documents

BY JOE F. CANTERBURY, JR.

Almost 115 years ago in *Loneragan v. San Antonio Loan & Trust Co.*, 104 S.W. 1061 (1907), the Texas Supreme Court held that a contractor bore the risk and liability of a building collapse that was the result of defective design documents furnished by the owner. The Court rejected the contractor's argument that the owner impliedly warranted the sufficiency of the plans and specifications, holding that in the absence of express contractual language, contractors accept plans and specifications at their peril. The Court reasoned that, since the contractor contracted to construct the building in accordance with the specifications, the contractor implied that it understood them and, therefore, was in the same position as the owner to know whether they were sufficient.

In contrast, in 1918, the U.S. Supreme Court held that an owner

impliedly warranted the sufficiency of plans and specifications in *U.S. v. Spearin*, 248 U.S. 132, stating, "if a contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications." The reasoning of *Spearin* has been adopted in almost all states except Texas.

The prospect of being liable for design defects of an architect or engineer selected and paid by an owner has posed severe risks for contractors in Texas, resulting in extensive contract drafting to avoid those risks and conflicting court of appeals' decisions, as some sought to avoid the unfair results of *Loneragan*. The Texas Supreme Court never specifically addressed the conflict between its *Loneragan* holding and the contrary decisions of numerous other states and the U.S. Supreme Court. In fact, it impliedly followed *Loneragan* rea-

soning in *El Paso Field Services, LP v. MasTec N. Am.*, 389 S.W.3d 802 (Tex. 2012), in interpreting contract language against a contractor on assumption of risks for design defects. Also, some federal courts followed *Loneragan* in Texas diversity cases. For example, the 5th Circuit Court of Appeals in *Interstate Contracting Corp. v. City of Dallas*, 407 F.3d 708 (5th Cir. 2005) concluded that the Texas Supreme Court would continue to follow *Loneragan*.

Last year the Texas Legislature provided relief from *Loneragan* with the enactment of S.B. 219, codified as Chapter 59 of the Tex. Bus. & Comm. Code. This new statute, effective September 1, 2021, provides that:

A contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators, or suppliers, or its consultants of any tier.

With some exceptions, a contractor no longer assumes the risk of defects in the design documents when they are provided by a party other than one associated with the contractor.

However, a contractor must, "within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency," disclose in writing to the party with which it contracted any known defects or defects "that rea-

sonably should have been discovered by the contractor using ordinary diligence before or during construction." If a contractor fails to disclose any such defects, it may find itself liable for the consequences of them.

The statute also contains many exceptions, including the construction or repair of a "critical infrastructure facility," which the definition in Section 59.001(3) includes in a listing of 24 types of projects, including petroleum and chemical plants and airport facilities. Also, the statute does not apply to design-build projects including engineering, procurement, and construction contracts. It is not certain, but probable, if a contract is subject to one of the exceptions, *Loneragan* will apply unless contractual language protects the contractor. Therefore, lawyers advising any client on construction contracts must review the statute for its application and exceptions. The best practice for those advising contractors is to seek contract language to place liability for design defects on the party who provides the design documents in all contracts, and not rely solely on the relief provided by Chapter 59, Tex. Bus. & Comm. Code.

Perhaps the Texas Supreme Court will decide if its *Loneragan* ruling is still effective in a case where an exception to the statute applies. Hopefully, another 115 years will not pass before that decision is issued. **HN**

Joe Canterbury is the founder and currently of Counsel to of Canterbury, P.C. and can be reached at [jcanterbury@canterburylaw.com](mailto:jcanterbury@canterburylaw.com).

## DBA/DAYL Moms in Law

Being a working mom can be challenging. Being a working lawyer mom can be a different ballgame with its own unique challenges. Moms in Law is a no-pressure, no-commitment, informal, fun, support group for lawyer moms. If you would like to join the listserv, email Christine Leatherberry at [cpleatherberry@gmail.com](mailto:cpleatherberry@gmail.com).

Upcoming event:

- Lunch at Mattito's, (3102 Oak Lawn Ave, Dallas), **Friday, June 3, Noon.** RSVP to [cpleatherberry@gmail.com](mailto:cpleatherberry@gmail.com)

## DVAP's Finest



### BARRY HOCKING

Barry Hocking is a sole practitioner.

**1. How did you first get involved in pro bono?**  
Even before I moved to Texas in 2020, I knew that volunteering for pro bono cases would be a key activity for me in this next career phase, so not long after arriving here, I started searching the internet for volunteer attorney organizations in the DFW area. DVAP turned out to be a perfect fit for me, and I think I'm extremely fortunate to be able to participate in the program.

**2. What types of cases have you accepted?**  
Other than one will and power of attorney case, I've only accepted divorce cases thus far. I started with a couple of no-kids/no-property cases around April 2021 and progressed from there to cases with more complexities.

**3. Why do you do pro bono?**  
After almost 12 years as a Business Controller with The Volvo Group, I am now launching a next career as an attorney. I earned my J.D. in a four-year evening program and studied for and passed the Texas bar all while working for Volvo. Because of my day job, I wasn't able to pursue any of the typical internship opportunities that traditional law students work through while completing their J.D., so I recognized the need to get some hands-on practical experience for my resume and pro bono work seemed like the perfect win/win where I get to work on real cases and help real people at the same time. I'm happy to say that it is working for me, and I would recommend pro bono work to any new lawyer looking for valuable experiences, or even more seasoned lawyers looking to expand into new practice areas.

**4. What impact has pro bono service had on your career?**  
I've learned so much from everyone I've met at DVAP and it's helped me get familiar with many of the nuts and bolts of family law. I'd like to send a special shout-out to my primary DVAP mentor, Kristen Salas. She's been so helpful and supportive during this time. I really can't thank her enough for helping me progress in the practice of law.

**5. What is the most unexpected benefit you have received from doing pro bono?**  
I don't think I'd say that it's completely unexpected, but helping the clients work through what can be a confusing and overwhelming time for them, has been really rewarding for me. As I say, it really is a win/win for both DVAP clients and their volunteer attorneys.

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## June Friday Clinics

**June 10, Noon, Hybrid**  
(Arts District Mansion & Zoom):  
"Taxing Cryptocurrencies: Key Considerations and Trends,"  
Nima Farzaneh, Jonathan Kohn, Andy Yung, and  
Bill Richmond, moderator. MCLE 1.00

**June 17, Noon, Hybrid**  
(Arts District Mansion & Zoom):  
"Financial Planning for Attorneys," Keith Pillers.  
MCLE 1.00

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# The Joys of Teaching at the University Level

BY JOHN B. REYNA

Being a professor can be rewarding in numerous ways. I have experienced this firsthand through my role as an adjunct professor at The University of North Texas at Dallas. This Spring semester, I taught Beverage Management at the School of Business and Practice Foundation II: Negotiations and Conflict Resolution at the College of Law. Teaching two classes may sound like a big commitment, but it is worth the time.

**An opportunity to master your craft.** As a professor, you are hired for your expertise and knowledge of a particular subject matter. However, just because you have practiced in a certain area of law does not mean you

can phone it in. When you are teaching something, you have to know the material cold. If you do not understand something and try to explain it, your lack of understanding will show. The best professors are those who continually strive to learn and stay current on new developments.

**Public speaking experience.** Teaching is a wonderful way to practice public speaking. Every week I must prepare a lesson plan and then convey that lesson to a room full of students. By the end of the semester, I will have presented 14 or 15 times. Each week I strive to communicate with my students more clearly. I cannot think of a better way to get the same amount of public speaking experience.

**Helping to make our profession**

**better.** By teaching at a law school, you are personally involved in training the next generation of lawyers. The lessons that law students can learn from practitioners are invaluable. Well-trained professors can help instill confidence in their students and generate better lawyers for the future. It is nice for your heart to help the next generation of lawyers.

**A marketing opportunity.** My role as an adjunct professor is something I can advertise to prospective clients in my private practice. Being a professor exhibits a level of expertise that many clients find intriguing. Clients often believe that because you are teaching, you know what you are talking about, and that is helpful. There is also substance behind this belief because you have to know what you are teaching to get your point across.

**Learning from younger generations.** Most undergraduate students are part of Generation Z. Interacting with these students helps me learn how to relate. These students are our future employees, clients, and neighbors. It is thus paramount to understand how to communicate with them. Sure, it breaks my heart when they do not understand my references to 90s movies, but I do not know how to use TikTok. So, we learn from each other.

**Gaining perspective on how far you have come.** Many attorneys quickly forget how steep the learning

curve is in law and how little they used to know. It is difficult to remember not knowing basic legal elements, such as damages or torts. Yet most law school students enter their first year of law school with limited knowledge of the law. Working with students is a great reminder of how much one learns over a career.

**Teaching can bring value in many other ways.** We each find joy and happiness in our own ways. Teaching is a source of joy for me. I find myself smiling a lot while teaching because the students are fun to be around, and I enjoy connecting with them. For me, teaching is a great break from the monotony of practicing law, allowing me to scratch an itch to share knowledge with no concern about billable time or client agendas. It is also fun to see former students grow and be successful.

**Where do you sign up?** If you are interested in teaching, I encourage you to look for adjunct professor positions. This is a great way to dip your toe in the water to see if you enjoy legal teaching. Do not limit yourself to only law schools. Business schools hire attorneys as adjuncts too. So go apply and have some fun!

**HN**

John B. Reyna is the Managing Attorney at the Texas Hospitality and Non-Profit Law Center, PLLC. He can be reached at [john@texashospitalitylaw.com](mailto:john@texashospitalitylaw.com). Mr. Reyna sends a special thanks for the inspiration behind this article to colleagues David Gair and Darren Moore.

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## ECL Attorney Spotlight

### LAURA BAEZ TORRES



Born in San Luis Potosi, Mexico, and raised in West Dallas, Laura Baez Torres has always had a passion for serving her community. She was first called to action as an educator and helped close the achievement gap in low-income communities through the Teach for America Program. Laura then decided to pursue a law degree in the evenings at Southern Methodist University Dedman School of Law while working full-time. Laura proved her tenacity in law school—not only completing her degree, but also welcoming two babies during her time at SMU.

Laura's internship with Catholic Charities, immigration law courses and involvement in the Hispanic community solidified her desire to practice immigration law. Through her solo practice, she is dedicated to serving her community with outstanding customer service and payment options that work for every family.

“I am eternally indebted to the many mentors and guides that I have had along my journey as a first-generation college and law student. I want to pay it forward by helping my community move towards more equitable access to justice,” Laura says. Through the help of the ECL program, Laura has been able to grow her newly launched firm into a successful business.





Focus | Construction/Real Property Law

Construction Litigation Quirks

BY KATIE ANAND

Being a construction litigator often requires donning a hard hat and learning about the intricacies of each construction project, from utility plants and boilers, to roofs and foundations, to project scheduling and management. Construction litigation also involves unique procedural and legal issues. It is impossible to address the breadth of issues that may arise in any given construction dispute, but the following examples provide some color.

Certificates of Merit

In any lawsuit against a licensed or registered professional engineer, architect, landscape architect, or land surveyor, a claimant must support its claims with a certificate of merit filed contemporaneously with its petition, as required by Chapter 150 of the Texas Civil Practice and Remedies Code. A certificate of merit is an affidavit provided by a third-party licensed professional holding the same professional license or registration as the defendant. For each theory of recovery, the certificate of merit must set forth the negligence or other action, error, or omission of the defendant and the factual basis for each claim. The purpose of this requirement is to deter meritless claims against licensed and registered professionals. Failure to file a certificate of merit results in dismissal.

Experts

Construction litigation involves

early and heavy use of experts. Given the certificate of merit requirement, the plaintiff must engage experts prior to filing claims against professionals. When alleged defects in construction or design result in litigation, both sides will need to engage experts early to perform inspections and evaluate whether the defects are to blame. There could be multiple defects that implicate architects, engineers, and/or contractors. Other experts who may be involved in construction litigation include appraisers and other professionals who evaluate potential damages from project delays or remediation costs.

Residential Cases

In residential construction defect cases, the Residential Construction Liability Act modifies the framework for seeking damages. Among other things, the Act requires pre-suit notice and provides a menu of potential damages and a mechanism for capping damages. For example, a homeowner must send the builder a notice at least 60 days before suit is filed to allow the builder to inspect the home and make an offer to repair or propose a cash settlement. This process encourages prompt resolution of disputes and affords contractors the opportunity to remedy their work.

Mechanics’ & Materialmen’s Liens

Chapter 53 of the Texas Property Code provides complex procedures

and requirements related to mechanics’ and materialmen’s liens, including new changes from the 2021 legislative sessions. Of note, the statute provides for expedited discovery and a summary motion procedure to remove invalid or unenforceable liens. There is also a shortened one-year statute of limitations for foreclosing on a lien for non-residential projects, which matches the existing period for residential projects.

Multiple Forums and Vouching In

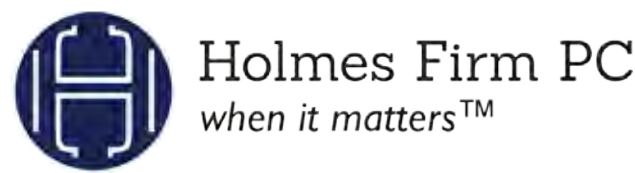
Multiple contractual relationships are often implicated in a construction dispute, and not all of them may be governed by identical dispute resolution provisions. For example, the prime contract between the owner and general contractor may mandate arbitration, but the contracts between the general contractor and its subcontractors/suppliers may not. In that situation, the owner may initiate arbitration against the general contractor, while the general contractor may be forced to bring downstream indemnity claims against its subcontractors in court. When non-signatories cannot be compelled to arbitration, it may be possible to “vouch-in” downstream indemnitors to bind them to the findings in the arbitration. Vouching-in is a mechanism by which a party notifies a non-party of a pending suit and that, if liability is found, the defendant will look to the non-party for indemnity and hold the non-party to the findings in the case.

However, conflicts often prevent utilization of the vouching-in procedure, and thus it may not be possible to avoid litigating aspects of the same dispute in more than one forum.

Statutory Procedures and Remedies

Construction disputes may implicate numerous other unique statutory procedures, remedies, or limitations. As a taste, Section 272.001(b) of the Texas Business and Commerce Code renders out-of-state venue and choice-of-law provisions voidable for construction projects located in Texas (although the Federal Arbitration Act may preempt as to venue for arbitrations). Newly enacted Section 59.051 limits a contractor’s liability for certain defects in design. The Texas Trust Fund Act and Texas and Federal Prompt Pay Acts provide remedies for the misuse of trust funds and untimely payment on projects, respectively. Additionally, whether a project is private or public determines the applicability of a host of statutes. Construction litigation is a challenging and rewarding practice area given the complexities and unique issues that arise in the construction industry and law. However, it does present some traps for the unwary. Consultation with counsel who regularly practices in this area is recommended. **HN**

Katie Anand is a construction and business litigation partner at Martin Powers & Counsel, PLLC. She may be reached at [katie@martinpowers.com](mailto:katie@martinpowers.com).



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The Litigator's Practice Guide  
By Amy Elizabeth Stewart

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## Focus | Construction/Real Property Law

# 2021 Texas HOA Law Legislation Update

BY KATHLEEN KILANOWSKI  
AND GREGORY CAGLE

A number of bills filed in the 2021 legislative session had the potential to dramatically affect state laws governing Texas property owner associations (POAs). However, the legislature only enacted a few of these bills. A summary of some of the more interesting new laws are discussed in this article.

### HOUSE BILL 1659

HB 1659 modified Section 209.0041 of the Texas Property Code. As modified, the statute creates new restrictions on the use of the Declaration amendment procedure for recording restrictive covenants governing residential subdivisions. A Declaration amendment may not be used if it will affect a portion of a subdivision development that is zoned for or that contains, or previously contained, a commercial structure, an industrial structure, an apartment complex, or a condominium.

### HOUSE BILL 3571

HB 3571 adds Section 202.023 to the Texas Property Code. Section 202.023 prohibits a POA for a subdivision development ("Subdivision POA") from adopting or enforcing any restrictive covenant that prevents a property owner from building or installing security measures, such as security cameras, motion detectors, or perimeter fences. Section 202.023 does permit a Subdivision POA to regulate the type of fencing that an owner may install.

### SENATE BILL 318

This bill adds Section 82.1141 to the Texas Property Code. Section 82.1141 includes new statutory provisions for the production and keeping of records by condominium POAs. The POAs are now required to adopt a document production and copy charge policy as well as a document retention policy.

### SENATE BILL 581

SB 581 amends Section 202.018 of the Texas Property Code. The new Section 202.018 prohibits POAs from restricting an owner or resident from displaying a religious item anywhere on the owner's or resident's dwelling or property. However, Section 202.018 permits POAs to prohibit the display of religious items: (1) on common area or common element property; (2) that violate any applicable building line, right-of-way, setback, or easement; or (3) that are attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

### SENATE BILL 1588 – The Omnibus Bill

The most significant of the enacted bills is SB 1588. SB 1588 has 27 separate sections that add or modify statutory provisions in Chapters 202, 207, and 209 of the Texas Property Code.

SB 1588 modifies Section 209.004 of the Texas Property Code. Section 209.004 now requires a Subdivi-

sion POA's management certificate to identify the recording data for governing Declarations and all amendments thereto, the telephone and email address for the person managing the Subdivision POA, the website address where the Subdivision POA's Dedicatory Instruments are published, and the amount and description of any fees charged by the Subdivision POA related to the transfer of property. Section 209.004 now also requires the POA's management certificate to be filed with the Texas Real Estate Commission (TREC). The Subdivision POA may not hold a property owner liable for attorney's fees incurred in the collection of unpaid assessments or interest on the unpaid assessments if the Subdivision POA has not timely filed or recorded the management certificate as required.

SB 1588 adds Section 209.00505 to the Texas Property Code. This statute imposes new rules prior to the denial of an application by an architectural committee for a subdivision development with more than 40 lots. There is now a procedure for appealing such a denial to the Subdivision POA's board of directors. Section 209.00505 also restricts members of the POA's board of directors, and their spouses and household members, from serving on the architectural committee.

Section 209.0052 of the Texas Property Code has been modified as well. As amended, Section 209.0052 requires Subdivision POAs proposing to contract for services costing more than \$50,000 to solicit bids or proposals using an established bid process.

SB 1588 modifies Section 209.006 and adds Section 209.0065 to the Property Code. These changes create new due process procedures that must be performed before a Subdivision POA reports a property owner's delinquent account to credit reporting services. The Subdivision POA is prohibited from charging fees to a property owner as the result of making such a credit report.

Section 209.007 of the Texas Property Code has also been amended. Section 209.007 no longer permits a committee appointed by the board of directors to be the first to hold a hearing regarding an owner's alleged covenant violation. The board of directors must now designate an individual board member or other representative to present the Subdivision POA's case at the hearing. Section 209.007 separately requires the board of directors to provide a property owner with a packet containing all evidence of an alleged violation to be presented at the hearing at least 10 days before the hearing. The hearing date will be extended automatically if the board fails to timely produce this packet of evidence.

SB 1588 created Section 209.017 of the Texas Property Code. This law authorizes property owners to sue a Subdivision POA in justice court for violations of Chapter 209 of the Texas Property Code.

HN

Kathleen Kilanowski and Gregory Cagle are Partners at Cagle Pugh, Ltd. LLP. They can be reached at [kate.kilanowski@caglepugh.com](mailto:kate.kilanowski@caglepugh.com), and [gregory.cagle@caglepugh.com](mailto:gregory.cagle@caglepugh.com), respectively.

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*Congratulations Sarah*