

## **RESIDENTIAL BUILDERS AND REMODELERS NEED TO GET A CONTRACT “CHECK-UP”: CHANGES IN TEXAS LAW REQUIRE THEM TO EXAMINE THEIR CONSUMER CONTRACTS AND BUSINESS PRACTICES OR FACE INCREASED LIABILITY**

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### **What Happened?**

Builders, subcontractors, and remodelers specializing in residential construction face a number of challenges as a result of the most recent legislative session. The main agency, The Texas Residential Construction Commission (“TRCC”), that oversaw the residential construction industry and whose rules provided guidance to certain consumer interactions and dispute resolutions for the last six years disappeared on September 1, 2009. Residential building professionals will need to examine their contracts and business practices to make sure that they have responded to this change in law and have, to the degree possible, insulated themselves from exposure and liability.

### **So, What Replaced The TRCC And Its Statutes?**

In some cases, the hole left by the abolition of the TRCC was filled, in part, by another statute regulating suits related to the construction of new homes, the Residential Construction Liability Act (“RCLA”). In other cases, it is up in the air as to whether the protections or liabilities for builders or remodelers were carried over to the new statutory scheme.

### **What Does The RCLA Do, And How Is It Different From The TRCC?**

The RCLA sets out deadlines for responding to claims by homeowners,

allows for inspection of a premises, allows for offers of repair and cure, requires contracts to contain statutory notices, and sets out limitations on liability, if these processes are followed. There are significant differences between the timetables for action and the protections offered in the “old” TRCC statute and the “new” RCLA statute.

### **What Do I Need To Do?**

1. *KNOW WHAT THE RCLA SAYS*—Because the timelines and provisions of the RCLA are different than the TRCC, the very first thing each builder or remodeler should be aware of is what the RCLA actually says. Therefore, a residential building professional needs to be aware of the RCLA’s provisions and should conform contracts and business practices to the RCLA. You can download a copy of the RCLA at: <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.27.htm>.
2. *EXAMINE YOUR CONSUMER CONTRACTS TO MAKE SURE THAT THEY REFLECT THE CHANGE IN LAW*—If your residential construction standard form contract with a consumer for the provision of a residential construction service is older than September 1, 2009, odds are it is out of date. Don’t use these forms again

until you are certain they comply with the RCLA provisions. There are several quick ways to determine if your current consumer contract is out of date. If your contract refers to the TRCC, the Residential Construction Commission Act, Title 16, Property Code, or make reference to the TRCC's statutory warranty, then your contract needs to be updated to comply with the change in law. Additionally, you need to make sure that the contract contains the RCLA statutory disclosures set out in Section 27.007 of the Property Code, rather than the TRCC's statutory disclosures.

3. *HAVE A PLAN FOR WHAT TO DO WHEN YOU RECEIVE AN RCLA LETTER*—If you comply with the requirements of the RCLA, a residential builder is offered certain protections, including caps on potential liability. The most important thing for a residential builder to do when it receives an RCLA demand letter is to have a plan as to how to respond. A builder has a set time period to respond to the letter, and that time period

includes the ability to inspect the premises and receive certain documents. Failure to respond or an insufficient response may remove the limitation on liability to a builder that the RCLA provides.

4. *KNOW THAT THERE ARE GRAY AREAS*—A central unresolved question of the statutory change is whether remodelers were removed from the provisions of the RCLA and may be subjected to liability under the DTPA, which can potentially triple any damages awarded against a remodeler. Remodelers should evaluate what changes, if any, need to be added to their contracts or business practices to provide them with the best protection for their business.

The return to the RCLA provides an opportunity for each residential building professional to review their contracts and business practices to ensure that they comply with the statute. Faced with the consequences of not complying, it will be time well spent.

The foregoing was provided for informational purposes only, and is not intended to provide legal advice or to serve as an alternative to seeking legal counsel.

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