

Memorandum



DATE November 7, 2016

TO Housing Committee Members: Scott Griggs, Chair, Carolyn King Arnold, Vice-Chair, Mayor Pro-Tem Monica R. Alonzo, Tiffinni A. Young, Mark Clayton, and Casey Thomas, II

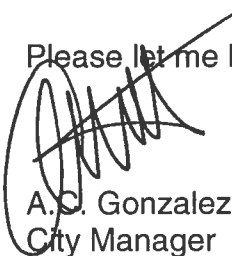
SUBJECT Revisiting the Statute of Repose Applicable to Real Property Construction

At the October 26th Council agenda, the Proposed Legislative Program for the 85th state legislative session was pulled from the agenda for additional briefing and discussion. Council then directed staff to further research the measure that lowered the timeframe for the statute of repose applicable to real property construction and revisit the subject at a later date.

The issue will be briefed to the Housing Committee on November 7th and the Council will vote on its inclusion in December 2016.

Attached is the briefing for the November 7th Housing Committee.

Please let me know if you have any questions.



A.C. Gonzalez
City Manager

c: The Honorable Mayor and Members of the City Council
A. C. Gonzalez, City Manager
Rosa A. Rios, City Secretary
Larry Casto, City Attorney
Craig Kinton, City Auditor
Daniel F. Solis, Administrative Judge
Ryan S. Evans, First Assistant City Manager
Eric D. Campbell, Assistant City Manager
Jill A. Jordan, P. E., Assistant City Manager
Mark McDaniel, Assistant City Manager
Joey Zapata, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Sana Syed, Public Information Officer

Elsa Cantu, Assistant to the City Manager – Mayor and Council

REVISITING THE STATUTE OF REPOSE APPLICABLE TO REAL PROPERTY CONSTRUCTION

November 7, 2016

A Briefing to the Housing Committee



State Statutes Applicable to Real Property Construction

Sec. 16.008. ARCHITECTS, ENGINEERS, INTERIOR DESIGNERS, AND LANDSCAPE ARCHITECTS FURNISHING DESIGN, PLANNING, OR INSPECTION OF CONSTRUCTION OF IMPROVEMENTS.

(a) A person must bring suit for damages for a claim listed in Subsection (b) against a registered or licensed architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than 10 years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment.

(b) This section applies to suit for:

- (1) injury, damage, or loss to real or personal property;
- (2) personal injury;
- (3) wrongful death;
- (4) contribution; or
- (5) indemnity.

(c) If the claimant presents a written claim for damages, contribution, or indemnity to the architect, engineer, interior designer, or landscape architect within the 10-year limitations period, the period is extended for two years from the day the claim is presented.



State Statutes Applicable to Real Property Construction

Sec. 16.009. PERSONS FURNISHING CONSTRUCTION OR REPAIR OF IMPROVEMENTS.

(a) A claimant must bring suit for damages for a claim listed in Subsection (b) against a person who constructs or repairs an improvement to real property not later than 10 years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement.

(b) This section applies to suit for:

- (1) injury, damage, or loss to real or personal property;
- (2) personal injury;
- (3) wrongful death;
- (4) contribution; or
- (5) indemnity.

(c) If the claimant presents a written claim for damages, contribution, or indemnity to the person performing or furnishing the construction or repair work during the 10-year limitations period, the period is extended for two years from the date the claim is presented.

(d) If the damage, injury, or death occurs during the 10th year of the limitations period, the claimant may bring suit not later than two years after the day the cause of action accrues.

(e) This section does not bar an action:

- (1) on a written warranty, guaranty, or other contract that expressly provides for a longer effective period;
- (2) against a person in actual possession or control of the real property at the time that the damage, injury, or death occurs; or
- (3) based on wilful misconduct or fraudulent concealment in connection with the performance of the construction or repair.

(f) This section does not extend or affect a period prescribed for bringing an action under any other law of this state.



Legislative History

- 1969: HB 108 by Traeger was enacted after the 61st Regular Session. The bill created section 16.008 in the Texas Civil Practice and Remedies Code to protect registered or licensed architects and engineers from perpetual liability.
- 1975: HB 1175 by Hale was enacted after the 64th Regular Session. The bill created section 16.009 in the Texas Civil Practice and Remedies Code to protect persons who had performed or furnished construction or repair of improvements to real property from perpetual liability.
- 1985: SB 797 by McFarland during the 69th Regular Session. The bill made non-substantive revisions to Texas Civil Practice and Remedies Code.
- 1997: HB 1456 by Goolsby was enacted after the 75th Regular Session. The bill added interior designers and landscape architects to Statute 16.008 of the Texas Civil Practice and Remedies Code.



State Comparison of General Statutes of Repose

- The Statute of Repose differs in some states based on the type defect (e.g. patent , latent, product).
- All states with a generalized statute of repose (47) address real-property holistically and do not differentiate based on ownership.
- Texas currently uses a 10-Year window, as do most states.

Liability Window (Years)	Number of States	States
<5	1	TN
5	3	AR, LA, VA
6 – 9	16	CO, DE, ID, MA, MI, MS, NC, WA, AL, CT, KY, AZ, GA, NH, SC, UT
10	22	AK, DC, FL, HI, IN, KS, ME, MD, MN NJ, NM, ND, OK, OR, RI, SD, SD, TX, WV, WI, WY
>10	3	IN, PA, IA
No Statute of Repose Enacted	2	NY, VT

Source: 2014. American Institute of Architects. Statutes of Repose: AIA National Compendium



State Comparison of Residential Liability Reform

Colorado

- Denver Metro Area Housing Diversity Study
 - Prepared for the Denver Region Council of Governments
 - Prepared by: Economic & Planning Systems, Inc.
 - October 29, 2013
- Study looked into the slow creation of for-sale attached units (owner-occupied multi-family units).
- Study found that lending, foreclosures, economic and market factors, changing demographics, and construction defects litigation as factors impacting the market.
- The most significant impact for Colorado was the affect of HB 10-1394 which expanded the scope of who can be sued for a construction defect. This change created major insurance cost increases for HOA projects due to a heightened perceived risk.
- In 2015, the Colorado legislature debated SB 177, a bill that would make mediation and arbitration the preferred method, as opposed to litigation, for construction defect cases. This bill was designed to reduce legal and insurance costs for developers.
- The 2015 bill did not pass. In 2016, a similar bill was in process, however, it was not introduced.

Washington

- Incentivizing Condominium Development in Washington State: A Market and Legal Analysis
 - Prepared by: David Leon at the Washington Center for Real Estate Research
 - July 28, 2016
- Study looked into the increased costs of condominium ownership.
- Study found that financing and capital markets, insurance coverage, and legal-liability for condominium developments are factors.
- The cost of insurance in Washington stems from the perceived risk of condominium development. To remedy the perceived risk, Washington has moved to incentivize direct repairs as opposed to litigation and further defining defects. However, while necessary, it is unclear how much effect further regulatory changes can contribute to lowering the cost of condominium development.
- At this time, there has not been any proposed legislation to reform residential construction defect liability in Washington State.



Q: Does Dallas have a policy that supports homeownership?

- On January 13, 2016, the City of Dallas authorized the Owner-Occupied Housing Development Program Statement
- The City of Dallas supports homeownership, regardless of type.
- On October 14, 2016, the City of Dallas Owner Occupied Housing Development Program Briefing stated the following:
 - “The purpose of this program is to provide assistance to projects where such assistance is necessary and appropriate to incent private investment in the development of homeownership opportunities in the city of Dallas. The funding and projects are approved by the City Council prior to private investment occurring.”



Q: How does the City distinguish between Multi-Family, Multi-Unit, and Single Family Zoning?

- The Dallas Development code does not distinguish between rental and owner-occupied properties.
- Types of Zoning (Dallas Development Code. Article IV. Sec. 51-4.201)
 - Multiple-Family: Three or more dwelling units located on a lot
 - Duplex: Two dwelling units located on a lot
 - Single-Family: One dwelling unit located on a lot



Q: Can Statute of Repose reform be allowed for only residential owner-occupied units?

- Based on case law, there is concern that the repose differences, sought for different classes of ownership, is arbitrary and contrary to the purpose of the statute which was protection in all classes of construction.



Potential Legislative Language

The 85th State Legislative Program can be amended to include the following measure:

The City of Dallas supports legislation that promotes homeownership opportunities.



Next Steps

- Continue Stakeholder Outreach
- Council Follow-up on feedback received
- Council Action to consider a homeownership related item in the City's Legislative Program.



Questions

