

# THE BASIC COURSE IN TEXAS CONSTRUCTION LAW

The Sheraton Dallas Hotel  
Dallas, Texas  
November 17 & 18, 2011



Earn 14.00 MCLE Hours  
including 1.00 Hour Ethics

Designed for  
Texas Lawyers and  
Construction Industry  
Members and  
Professionals



*Sponsored by*  
THE CONSTRUCTION LAW SECTION  
OF THE STATE BAR OF TEXAS

*in cooperation with*  
THE TEXAS INSTITUTE OF CONTINUING LEGAL EDUCATION

# THE BASIC COURSE IN TEXAS CONSTRUCTION LAW

*sponsored by The Construction Law Section of the State Bar of Texas*

November 17 & 18, 2011

400 North Olive Street

The Sheraton Dallas Hotel

Dallas, Texas 75201

This course has been approved for 14.00 hours credit (including 1.00 hour of ethics credit) which will apply towards MCLE, the College of the State Bar of Texas, and the Texas Board of Legal Specialization in Civil Trial Law and Real Estate Law. To obtain full MCLE credit, you must attend all sessions, including the luncheons. If you need CLE credit in a state other than Texas, please let us know at the time of registration.

CPAs may obtain 16.80 hours of CPE credit toward licensing with the Texas State Board of Public Accountancy. Sponsor No. 6867

The Texas Institute of CLE is an accredited sponsor with the Texas Department of Insurance. An application has been filed for 16.80 hours of General credit (all license types) and 1.20 hours ethics.

The organizers of this conference believe there are approximately 14 hours of continuing education credit for architects potentially available over the two-day course. Members of the American Institute of Architects should self-report continuing education to AIA at <http://www.aia.org>. For reporting to the Texas Board of Architectural Examiners, see <http://www.tbae.state.tx.us/Registrants/ContinuingEducation.shtml>.

This course is eligible for MCE credit through the Texas Real Estate Commission.

## HERE'S WHY YOU SHOULD ATTEND:

The course is intended for Texas lawyers and construction industry members and professionals who are interested in acquiring a basic knowledge of Texas construction law, legal relationships between owners, designers, contractors, and their insurers and sureties, and also serves as an introduction to construction industry contracts.

The two-day course will emphasize the practical aspects of construction law, including discussion of construction contracts, Texas lien laws, and construction disputes and their resolution. Attendees will acquire a basic glossary of construction terms and concepts, understand the relationships between the major players in the construction process, and be able to recognize and avoid common pitfalls in contract drafting and in construction litigation.

The program will be taught by experienced construction lawyers who will emphasize the practical aspects of construction law in a setting that will provide ample opportunity for discussion and follow-up questions. The course materials will include a syllabus of recent articles, publications, and cases, together with a glossary and original program materials.

## PROGRAM

### THURSDAY, NOVEMBER 17, 2011

- 8:00 a.m. **Late Registration** – Ballroom Foyer, The Sheraton Dallas Hotel, 400 North Olive Street, Dallas, TX 75201. Telephone: 214/922-8000
- 8:50 a.m. **Welcoming Remarks**  
S. Curtis Hubbard, Dallas (*Presiding Officer*)
- 9:00 a.m. **Overview of the Construction Industry and Glossary of Construction Terms** – An explanation of the way the construction industry operates, including the main players and relationships, and an introduction to the terminology commonly encountered in the practice of construction law.  
Richard A. Capshaw, Dallas
- 10:00 a.m. **Coffee Break** – *Sponsored by Nelson Architectural Engineers, Inc.*
- 10:15 a.m. **Contracts From the Owner's Perspective** – Learn the key clauses and provisions that will help an owner obtain maximum benefit from the general contractor that it hires - and pays - for the construction project, including provisions for protecting owners when projects do not go as planned.  
Brett Lamb, Dallas
- 11:15 a.m. **Mechanics' Lien Law and Strategies in Texas** – Texas has one of the most complicated and dangerous statutory systems in the country for mechanics' and materialmen's liens. Learn the basics of Texas Mechanic's Lien laws including the most common traps for the unwary practitioner.  
Sewall Cameron Cutler, Jr., Dallas

- 12:00 Noon     **LUNCH: Legislative Update** – Hear about the latest developments arising out of the 2011 Legislative Session and what new and revised statutes will affect the construction industry. ***Tickets for registrants may be purchased for \$25. Please use the enclosed form to reserve your seat. Tickets will not be sold at the door.***  
Jeffrey C. Leach, Dallas
- 1:30 p.m.     **Securing and Enforcing Lien & Bond Claims in Texas** – Asserting or defending against bond claims in Texas can be treacherous territory. Learn how to avoid costly mistakes, how to find relief in statutorily required payment bonds, and how to take advantage of alternative payment sources when a good project experience goes bad.  
Misti L. Beanland, Dallas
- 2:15 p.m.     **The Subcontract: With Emphasis on Key Clauses from the General Contractor’s and Subcontractor’s Perspectives** – Learn about the key subcontract clauses and how they can help clarify responsibilities, define rights and remedies, and allocate risk where the parties intend it to be.  
Fred D. Wilshusen, Dallas
- 3:00 p.m.     **Afternoon Break** – *Sponsored by Demand Construction Services, Inc.*
- 3:15 p.m.     **Insurance Basics for the Construction Lawyer** – Every construction lawyer and industry participant should understand the key elements of insurance coverage and claims on construction projects, as well as how to secure and maximize the client’s rights under all available policies. This presentation will help illuminate the often shadowy world of construction insurance and show how to avoid the loss of available insurance coverage and proceeds.  
Lee H. Shidlofsky, Austin
- 4:00 p.m.     **The Successful Preparation and Use of Construction Experts** – Through their testimony and written reports, experts are indispensable for educating judges, juries and arbitrators about complex construction issues. Learn practical guideline, tips and examples of proper selection and preparation of experts, including when to recognize that you need one.  
Dale E. Butler, Fort Worth
- 4:30 p.m.     **Theories of Liability Against Architects and Engineers** – Claimants continue to craft new theories of liability to expand the scope and liability of the architect or engineer, or to avoid defenses like the economic loss rule or lack of privity. This presentation will outline the most common theories of liability and discuss substantive and procedural developments affecting claims against architects and engineers.  
Steve Kennedy, Dallas
- 5:00 p.m.     **Adjourn to Reception** – *Sponsored by Rimkus Consulting Group, Inc.*

## FRIDAY, NOVEMBER 18, 2011

- 8:30 a.m.     **Schedules and Preparation and Analysis of Construction Claims** – Any construction practitioner should know the nuts and bolts of construction claims, including how to prepare and prosecute an affirmative claim. This topic will cover the key elements of claim preparation and discuss the basic strategies in asserting or defending against claims.  
Andrea Alford Hight, Dallas
- 9:30 a.m.     **Causes of Action in Texas Construction Law** – Choosing the right cause of action early on in a case can mean the difference between ultimate success and failure. Learn the most common causes of action and how different ones can help (or hurt) your case.  
C. John Scheef III, Frisco
- 10:30 a.m.     **Coffee Break** – *Sponsored by McCullough & Associates*
- 10:45 a.m.     **Contract Termination** – When faced with a contractual breach, a lawyer must provide the client with the tools and information necessary to assess the pros and cons of termination, often under very time-pressured circumstances. This topic will discuss the do’s and don’t’s of entering the land of contract termination.  
Timothy D. Matheny, Dallas

- 11:45 a.m. **LUNCH: Tips on Avoiding Malpractice for the Young Construction Lawyer** – This presentation will introduce perils encountered by young construction practitioners, key strategies and day-to-day law practice management tips that will help avoid malpractice claims and grievances. *Tickets for registrants may be purchased for \$26. Please use the enclosed form to reserve your seat. Tickets will not be sold at the door.*  
Cara D. Kennemer, Dallas
- 1:15 p.m. **Dispute Resolution Through Litigation and Arbitration, Including the Use of Experts** – An experienced construction lawyer offers views on how to mount and maintain a successful litigation strategy and the nuts and bolts of taking a case through the discovery and trial processes, including the successful preparation and use of construction experts.  
Jeffrey A. Brannen, Dallas
- 2:15 p.m. **What Works and Doesn't Work in Construction Mediations** – Mediation often presents the last, best chance for clients to resolve a claim before expensive discovery battles, trial, or arbitration. An experienced construction mediator offers his views on successful advocacy strategies in these contexts.  
Paul B. Underkofler, Dallas
- 3:15 p.m. **Afternoon Break**
- 3:30 p.m. **Contracts From the General Contractor's Perspective** – General contractors have their own pressure points and goals in negotiating their construction contracts. This presentation will cover some of the key issues and provisions that can help general contractors navigate day-to-day project issues and have adequate remedies when things go awry.  
Jamey L. Voge, Frisco
- 4:30 p.m. **Adjourn**

## CONFERENCE FACULTY

Misti L. Beanland, Dallas  
Matthews, Stein, Shiels, Pearce, Knott,  
Eden & Davis, L.L.P.

Jeffrey A. Brannen, Dallas  
Balfour Beatty Construction

Dale E. Butler, Fort Worth  
Winstead, PC

Richard A. Capshaw, Dallas  
Capshaw & Associates

Sewall Cameron Cutler, Jr., Dallas  
Cutler Smith P.C.

Andrea A. Hight, Dallas  
Canterbury, Elder, Gooch, Surratt,  
Shapiro & Stein, P.C.

Steve Kennedy, Dallas  
McGuire, Craddock & Strother, P.C.

Cara D. Kennemer, Dallas  
Goins, Underkofler, Crawford &  
Langdon, L.L.P.

Brett Lamb, Dallas  
Gardere Wynne Sewell LLP

Jeffrey C. Leach, Dallas  
Griffith Nixon Davison, P.C.

Timothy D. Matheny, Dallas  
Ford Nassen & Baldwin, P.C.

C. John Scheef III, Frisco  
Scheef & Stone, L.L.P.

Lee H. Shidlofsky, Austin  
Shidlofsky Law Firm

Paul B. Underkofler, Dallas  
Goins, Underkofler, Crawford &  
Langdon, L.L.P.

Jamey Lee Voge, Frisco  
Stuber Cooper Voge, PLLC

Fred D. Wilshusen, Dallas  
Thomas, Feldman & Wilshusen, L.L.P.

### Presiding Officer

S. Curtis Hubbard, Dallas  
Griffith Nixon Davison, P.C.

## GENERAL INFORMATION

**The Sheraton Dallas Hotel** -- A limited number of rooms have been reserved at The Sheraton Dallas Hotel at the special rate of \$139.00 per night for a single/double. The hotel is located at 400 North Olive Street, Dallas, TX 75201. **Your reservations must be made by October 24, 2011.** You must identify yourself as a participant with the **Texas Institute of CLE** in order to obtain a room from our room block. Please call the hotel directly at (214) 922-8000 to make your reservation or visit <http://www.starwoodmeeting.com/Book/TXICLE>. We recommend that you make your reservations immediately if you plan to attend this course.

**Pre-Registration** -- To ensure sufficient materials are available for all attendees, pre-registration is strongly encouraged. Door registration is an additional \$50.00.

**Registration by Telephone** -- You may register by calling 512/451-6960. Phone-in registrations require an AMERICAN EXPRESS, VISA or MASTERCARD number, expiration date, security code and billing address.

**Cancellations and Refunds** -- Refunds, less a \$50.00 processing fee, will be given to registrants who cancel by 5:00 p.m. on the Friday preceding the course. No refunds will be granted thereafter. Course materials will automatically be mailed to prepaid registrants who were not able to attend.

**Special Accommodations** -- If special arrangements are required for a person with a disability to attend this program, please contact us at 512/451-6960.

## REGISTRATION FORM

**Mail to:** Texas Institute of Continuing Legal Education  
The Basic Course in Texas Construction Law 2011  
P.O. Box 4646  
Austin, Texas 78765-4646

**FAX to:** 512/451-2911  
**Phone:** 512/451-6960  
**Online at:** [www.clesolutions.com](http://www.clesolutions.com)  
*(Phone, Fax and Online Registrations must be accompanied by American Express, Visa or MasterCard Information.)*

**Please register me for the course as follows:**

- Pre-Registration fee for CL Section Members (Due by 5 p.m. October 28) ..... \$ 345.00
- Pre-Registration fee for Non Members (Due by 5 p.m. October 28) ..... \$ 395.00
- Registration fee (After 5:00 p.m. October 28 and before November 11) ..... \$ +50.00
- Late Registration fee (After 5:00 p.m. November 11 and at the door)..... \$+100.00
- Thursday Luncheon Tickets at \$25.00 each ..... \$ \_\_\_\_\_
- Friday Luncheon Tickets at \$26.00 each ..... \$ \_\_\_\_\_
- Construction Law Section Dues (*to be eligible for the discounted member registration fee*)... \$ 30.00

*I cannot attend the course. Please forward the following:*

- Written course materials at \$160 + .0825 tax ..... \$ 173.20

**TOTAL ENCLOSED** ..... \$ \_\_\_\_\_

**No refunds after 5:00 p.m., Friday, November 11, 2011. See cancellation policy above.**

*(Please Print)*

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_ Bar Card No. \_\_\_\_\_

**Make Checks payable to: Texas Institute of CLE**

**Please Charge:** \_\_\_\_\_ AMEX \_\_\_\_\_ VISA or \_\_\_\_\_ MASTERCARD

Card No. \_\_\_\_\_ Exp. Date \_\_\_\_\_

Name on Card \_\_\_\_\_ 3 or 4 Digit Security Code \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Billing Address (incl. Zip Code) \_\_\_\_\_

**For more information about our CLE seminars and available CLE materials see our website at [www.clesolutions.com](http://www.clesolutions.com)**

Texas Institute of  
Continuing Legal Education  
P.O. Box 4646  
Austin, Texas 78765-4646



## THE BASIC COURSE IN TEXAS CONSTRUCTION LAW . . .

has been designed for the 1-5 year lawyer,  
the senior lawyer who hasn't been involved in a  
construction law case, contractors, design professionals  
and others who are interested in gaining a basic  
knowledge of Texas construction law.

November 17 & 18, 2011 \* The Sheraton Dallas Hotel \* Dallas, Texas

PRESORTED STANDARD  
U.S. POSTAGE  
Paid  
Austin, Texas  
Permit No. 1357