

# THE BASIC COURSE IN TEXAS CONSTRUCTION LAW

The Westin Galleria Houston  
Houston, Texas  
December 1 & 2, 2016



Earn 14.25 MCLE Hours  
including 1.00 Hour Ethics

Designed for  
Texas Lawyers and  
Construction Industry  
Members and  
Professionals



*Sponsored by*  
THE CONSTRUCTION LAW FOUNDATION OF TEXAS  
&  
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 Foundation of Texas* and  
*The Construction Law Section of the State Bar of Texas*

DECEMBER 1 & 2, 2016

The Westin Galleria Houston • 5060 W. Alabama St. • Houston, Texas 77056

This course has been approved for 14.25 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 17.10 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 up to 13.00 hours of General credit (all license types) and 1.0 hour ethics.

The organizers of this conference believe there are approximately 14.25 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, DECEMBER 1, 2016

- 8:00 a.m.     **Late Registration** – Ballroom Foyer, The Westin Galleria Houston, 5060 W. Alabama St., Houston, TX 77056  
Telephone: (713) 960-8100
- 8:00 a.m.     **Continental Breakfast** – *Sponsored by Nelson Forensics, LLC*
- 8:50 a.m.     **Welcoming Remarks**  
George E. Bowles, Dallas (*Section Chair*)  
John C. Warren, Houston (*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 and an introduction to the terminology commonly encountered in the practice of construction law.  
William “Ben” Westcott, Houston
- 10:00 a.m.    **Coffee Break** – *Sponsored by Exponent*
- 10:15 a.m.    **Contracts From the Owner’s Perspective** – Learn the key clauses and provisions that will help an owner extract maximum benefit from the general contractor that it hires - and pays - for the construction project.  
Bruce W. Merwin, Houston

- 11:00 a.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 prime contractors create a road map for on-the-job conduct and remedies when things go awry.  
Christopher S. Farrar, Houston
- 12:15 p.m. **LUNCHEON:** Discounted tickets available to registrants for \$16 each. *Sponsored in part by Interface Consulting International, Inc.*  
**What Works and Doesn't Work in Construction Mediations (and Arbitrations)** – Mediation often presents the last, best chance for clients to resolve a claim before trial, arbitration, or devastatingly expensive discovery battles; and arbitration often requires trial lawyers to adopt a very different mindset and approach. An experienced construction mediator and arbitrator offers his views on successful advocacy strategies in these contexts.  
Clayton C. Cannon, Houston
- 1:30 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 field and show how to avoid the loss of available insurance coverage and proceeds.  
Rene Pinson, Dallas
- 2:15 p.m. **Securing and Enforcing Lien & Bond Claims in Texas** – Texas has one of the most complicated and dangerous statutory systems in the country for mechanics' and materialmen's liens. 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.  
David L. Tolin, Jr., Houston
- 3:00 p.m. **Afternoon Break** – *Sponsored by The Rhodes Group*
- 3:15 p.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 help provide decision-makers with "informed consent" in deciding whether or not to cross this threshold.  
Amy K. Wolfshohl, Houston
- 4:00 p.m. **Public Procurement in Texas** – Public contract law is both similar and different from the private realm. It is governed by more statutes; it is more consistent in its rules; it can contain more barriers for the private contractor than he or she is used to. But with the deep pockets involved in the public sector, that is where "the action" often is, so familiarity with its promises and pitfalls is a necessity.  
Denis G. Ducran, Houston
- 4:45 p.m. **Adjourn to Reception** – *Sponsored by Rimkus Consulting Group, Inc.*

## FRIDAY, DECEMBER 2, 2016

- 8:00 a.m. **Continental Breakfast**
- 8:30 a.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.  
John P. Cahill, Jr., Houston
- 9:30 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 arrows for the quiver in asserting or defending against claims.  
Brian R. Gaudet, Houston

- 10:30 a.m. **Coffee Break** – *Sponsored by FTI Consulting, Inc.*
- 10:45 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.  
David P. Benjamin, San Antonio
- 12:00 Noon **LUNCHEON:** *Tickets for registrants may be purchased for \$26. Please purchase your tickets in advance. Tickets will not be sold at the door.*
- 1.00 Ethics Credit**  
**Tips on Avoiding Malpractice** – This presentation will introduce perils encountered by practitioners, key strategies and day-to-day law practice management tips that will help avoid malpractice claims and grievances.  
Cara D. Kennemer, Fort Worth
- 1:15 p.m. **The Residential Construction Liability Act** – An explanation of the Texas Residential Construction Liability Act and how to assert and defend a residential construction defect claim.  
Curt M. Covington, Rockwall
- 2:15 p.m. **Afternoon Break** – *Sponsored by VERTEX Companies, Inc.*
- 2:30 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.  
Tracy R. Galimore, Houston
- 3:30 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 guidelines, tips and examples of proper selection and preparation of experts, including when to recognize that you need one.  
William S. McMillan, Houston
- 4:30 p.m. **Adjourn**

## CONFERENCE FACULTY

David P. Benjamin, San Antonio  
Benjamin, Vana, Martinez & Biggs, LLP

John P. Cahill, Jr., Houston  
LeClairRyan

Clayton C. Cannon, Houston  
Cannon Law Firm PLLC

Curt M. Covington, Rockwall  
Lamberth Ratcliffe Covington, PLLC

Denis G. Ducran, Houston  
Satterfield & Pontikes Construction, Inc.

Cristopher S. Farrar, Houston  
Cokinos, Bosien & Young

Tracy R. Galimore, Houston  
Coats | Rose

Brian R. Gaudet, Houston  
Coats | Rose

Cara D. Kennemer, Fort Worth  
Underwood Law Firm, P.C.

William S. McMillan, Houston  
Pipkin Ferguson, PLLC

Bruce W. Merwin, Houston  
Thompson & Knight, LLP

Rene Pinson, Dallas  
American Contractors Insurance Group

David L. Tolin, Jr., Houston  
Cokinos, Bosien & Young

William B. Westcott, Houston  
Andrews Myers, P.C.

Amy K. Wolfshohl, Houston  
Porter Hedges LLP

### *Section Chair*

George E. Bowles, Dallas  
Locke Lord LLP

### *Presiding Officer*

John C. Warren, Houston  
Cokinos, Bosien & Young

### *Conference Sponsors also include:*

- \* **Flash Drives** - Sponsored by Spire Consulting Group, LP
- \* **Internet** - Sponsored by Norwood Architecture, Inc.
- \* **Name Badge Lanyards** - Sponsored by HSSK
- \* **Notepads** - Sponsored by Bert L. Howe & Associates, Inc.
- \* **Tote Bags** - Sponsored by Synergen Consulting

## GENERAL INFORMATION

**The Westin Galleria Houston** — A limited number of rooms have been reserved at The Westin Galleria Houston at the special rate of \$195.00 per night for a single/double. The hotel is located at 5060 W. Alabama St., Houston, TX 77056. **The hotel deadline is November 9, 2016 or until the room block is exhausted, whichever comes first.** You must identify yourself as a participant with the Texas Institute of CLE 2016 Basics Course in order to obtain a room from our room block. Please call the hotel directly at (713) 960-8100 or visit <https://www.starwoodmeeting.com/Book/TK30AB>. 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 \$100.00. *Only printed materials are provided.*

**Registration by Telephone or Online** — You may register by calling (512) 451-6960 or visiting [www.clesolutions.com](http://www.clesolutions.com). Phone-in and online 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 2016  
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. November 11) ..... \$ 395.00
- Pre-Registration fee for Non Members (Due by 5 p.m. November 11) ..... \$ 445.00
- Registration fee (After 5:00 p.m. November 11 and before 5:00 p.m. November 25) ..... \$ +50.00
- Late Registration fee (After 5:00 p.m. November 25 and at the door)..... \$+100.00
- Thursday Luncheon Tickets at \$16.00 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 25, 2016. 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     MASTERCARD

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

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

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

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

For more information or to register online, visit [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.

**December 1 & 2, 2016**

**The Westin Galleria Houston \* Houston, Texas**

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