

Tort Reform Continues in Texas

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You might wonder why tort reform should be of interest to real estate managers. It is believed that the more “lawsuit” friendly we

make the state, the more attractive we become to companies to relocate here and, of course, occupy our buildings. In this regard, Governor Rick Perry signed House Bill 274, in late May 2011, implementing a “loser pays” system for frivolous lawsuits in Texas. According to Governor Perry, “HB 274 provides defendants and judges with a variety of tools that will cut down on frivolous claims in Texas. This important legislation will help make Texas that much more attractive to employers seeking to expand or relocate from countries all over the world by allowing them to spend less time in court and more time creating jobs.”

THE NEW LAW:

- Allows a trial court to dismiss a frivolous lawsuit immediately if there is no basis in law or fact for the lawsuit;
- Allows a trial judge to send a question of law directly to the appellate court without requiring all parties to agree if a ruling by a court of appeals could decide the case;
- Allows plaintiffs seeking less than \$100,000 to request an expedited trial; and

- Encourages a timely settlement of disputes.

The legislature tasked the Texas Supreme Court to adopt rules that will allow defendants to file a motion to dismiss a claim that has no basis in law or fact. The rules will require a court to decide this motion within 45 days of its filing. This will put a burden on the judges, and I can imagine that there will be methods adopted to deal with and build in some delay. An important feature of this new procedure is the granting of attorney’s fees to the prevailing party (which can either be the plaintiff or defendant depending on the outcome of the lawsuit). Granting attorney’s fees to the prevailing party appears to be mandatory, so a plaintiff should be cautious when filing a lawsuit, and, likewise, a defendant should be cautious when evaluating whether to file for dismissal of a lawsuit. There presently exists a similar procedure in federal court, but the prevailing party is not awarded attorney’s fees.

The next significant measure in House Bill 274 is a direct appeal from the trial court to an appellate court to decide controlling legal questions. Presently, there were only a few matters that could be appealed before a final judgment was entered. This new law makes any controlling question of law that would materially aid in the disposition of the case appealable without having to go through a full trial.

Many times, the cases that involve property management issues, excluding forcible entry and detainer cases, involve amounts in controversy less than

\$100,000. This new law will mandate an expedited procedure for cases less than \$100,000. This will mean cases where a tenant has failed to pay rent (or other damages) less than \$100,000 should move more swiftly through the courts without the building owner incurring a lot of legal fees and expenses. However, the final rules for these expedited procedures have not been drafted, so we will wait and see how they look.

In many cases that arise against a property owner or a property manager, there is a third party who, though not sued by the Plaintiff, is responsible for all or a portion of the damages. An example of this could be a third-party contractor, a guest entering the building, or a guest entering one of your tenant’s premises. A defendant (such as a landlord or property manager) in such a case can either actually join that third party to the litigation, or merely use a

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procedure that “designates” the third party as a “responsible third party.” Prior to House Bill 274, a defendant could make such a designation even if the statute of limitations expired as to that third party. However, as a result of House Bill 274, a defendant must disclose to all parties in a lawsuit the identity of a third party that they desire to designate as a “responsible third party” in a timely manner before the designation can be made.

The final change resulting from the new law affects offers of settlement made in the course of a lawsuit. The law makes clear that a prevailing party can be awarded not only attorney’s fees, but also expert witness fees (for up to two experts) and deposition costs. In addition, litigation costs are limited

to the amount that the plaintiff would recover on its underlying claim before taking into account the award of litigation costs. There are certain requirements to invoke this process, and a specific offer of settlement must be made under the statute. Once this is done, if the rejecting party is a defendant and the award is more than 120% of the offer or if the rejecting party is a plaintiff and the award is less than 80% of the offer, then the party making the offer can recover these costs.

All of the changes resulting from the passage of House Bill 274 take effect on September 1, 2011. It is hopeful that these changes will make Texas a more attractive place for business than it already is. If the Governor is right, then we will all have more to do!

IREM CALENDAR



NO LUNCHEON IN AUGUST

AUGUST 15-19, 2011

Track C – Asset Analysis
Spectrum Center
5080 Spectrum Drive #122W
Addison, TX 75001

AUGUST 26, 2011

IREM® On-Site Open
Bridlewood Golf Club
Flower Mound, TX
10 am shotgun start

SEPTEMBER 13, 2011

Membership Luncheon
Maggiano’s NorthPark

SEPTEMBER 20, 2011

Taste of the Arts
Progressive Happy Hour
One Arts Plaza
(see page 11)

NOTE DATE CHANGE

OCTOBER 6, 2011 (THURSDAY)

Membership Luncheon
Doubletree Campbell Centre

OCTOBER 11-15, 2011

IREM® iCon Conference
San Diego, CA

OCTOBER 17-21, 2011

Track D – Capstone Courses
Spectrum Center
5080 Spectrum Drive #122W
Addison, TX 75001

OCTOBER 21, 2011

CPM® Exam
Spectrum Center
5080 Spectrum Drive #122W
Addison, TX 75001

OCTOBER 22, 2011

Ethics 800
Spectrum Center
5080 Spectrum Drive #122W
Addison, TX 75001

NOVEMBER 15, 2011

Joint Membership Luncheon
with BOMA Dallas
Location TBA

DECEMBER 7, 2011 (WEDNESDAY)

SPECIAL EVENT
AWARDS LUNCHEON
AT&T Performing Arts Center

JOIN US FOR
December at the “Arts”
DECEMBER 7 | AT&T PERFORMING ARTS CENTER

IREM® Dallas will host the annual awards luncheon at the beautiful AT&T Performing Arts Center. Don't miss this fantastic event.

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