



# Case Law Update

## Mortgage Lending Institute

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Austin | Charlotte | Dallas | Fort Worth | Houston | San Antonio | The Woodlands

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## Landlord/Tenant/Leases

### *FP Stores, Inc. v. Tramontina US, Inc.*

- Houston CA - first time ***any*** court addressed the “bad faith element” of § 93.011 of the Texas Property Code.
- 6<sup>th</sup> time a court addressed § 93.011.
- § 93.011 imposes liability on ***commercial LL*** who retains security deposit in bad faith.
- T to receive an amount = \$100 + 3x the deposit + attorney’s fees
- Rebuttable presumption LL acted in bad faith if not returned in 60 days.
- Burden on LL to present evidence of good faith.
- Court relied on cases interpreting § 92.109 (residential leases).



***If you represent commercial LLs make sure they have procedures for returning deposits within 60 days and document reasons if LL will exceed 60 days.***

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## Landlord/Tenant/Leases

### *Shields Limited Partnership v. Bradberry*

- TX SC case addressing inconsistent treatment of waiver cases by CAs.
- T frequently paid late and LL accepted. Lease provided:
  - Acceptance of late payments **shall not** be a waiver;
  - Waivers must be **in writing** signed by waiving party; and
  - Forbearance of enforcement **could not** constitute a waiver.
- TX strong public policy favoring freedom of contract.
- Waiver requires **intentional** relinquishment of a known right or **intentional** conduct inconsistent with claiming that right.
- Rights under a nonwaiver provision may be expressly/implicitly waived **but a general or absolute** non-waiver clause **may** be ineffective...



**However, parties can expressly agree (as in this case) that specific conduct will not result in waiver.**

## Seller/Purchaser

### *Tregallas v. Carol M. Archer Trust No. Three*

- Amarillo CA – Mineral Interest ROFR granted to Archer Trust was sold to Tregallas without notice and Archer Trust filed suit.
- Tregallas argued claim barred by Statute of Limitations - § 16.004(a)(1) of the Tex. Civ. Prac. & Rem. Code requires suits for specific performance for conveyance of real property to be brought within 4 years.
- Archer Trust argued:
  - ROFR rights “dormant” until notice of potential sale; and
  - discovery rule tolls cause of action until the party learns of injury.
- Court relied on TX SC holding in **Cosgrove v. Cade** to limit application of discovery rule to injuries inherently undiscoverable.

# Seller/Purchaser

## *Tregallas*

- Well settled in Texas that owners of property are under ***no*** duty to routinely search the deed records for later-filed documents impugning their title.
- CA distinguished case because a ROFR is a contract right and not a property right.
- Interesting to see if the Texas Supreme Court takes the case.

# Construction

## Certificate of Merit Statute

### **Sec. 150.002. Certificate of Merit.**

(a) In any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, the plaintiff shall be required to file ***with the complaint*** an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who:

- (1) is competent to testify;
- (2) holds the same professional license or registration as the defendant; and
- (3) is ***knowledgeable*** in the ***area*** of practice of the defendant and offers testimony based on the person's: (A) knowledge; (B) skill; (C) experience; (D) education; (E) training; and (F) practice.

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