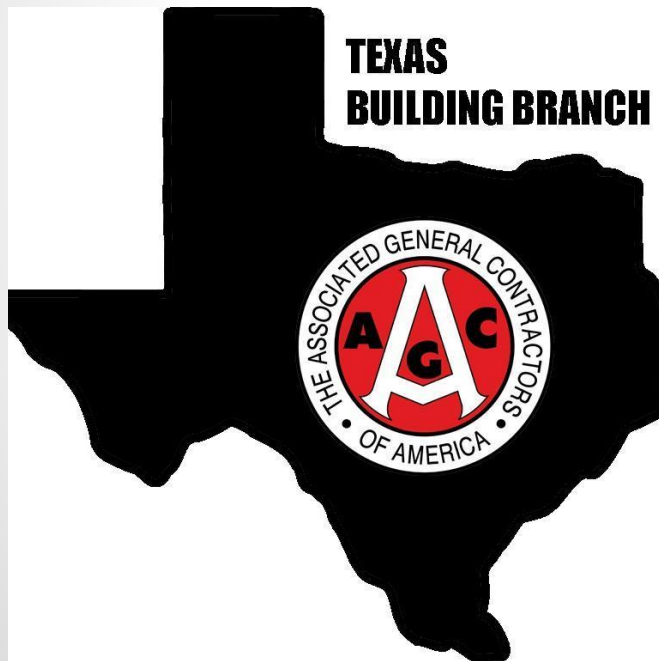


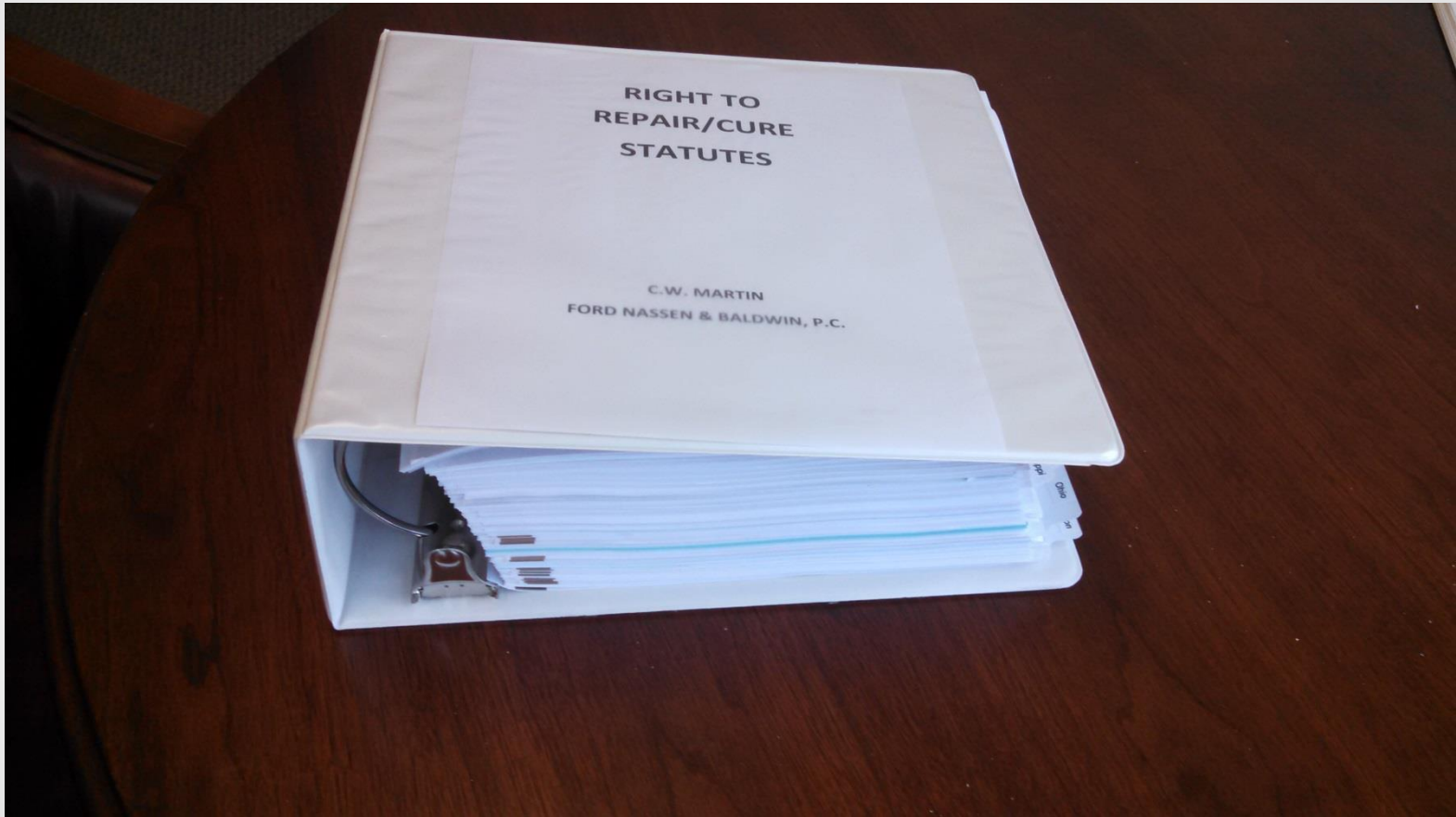
CONSTRUCTION DEFECT STATUTES: LEGISLATIVE APPROACHES FROM 34 STATES



CURT MARTIN



THE STATUTES



BROAD OUTLINES

Broad variety of statutory approaches

- 34 states represented
- Most residential
- Some actually create warranties – favor homeowner
- Licensing statutes
- Some create notice and opportunity to cure

Some recent legislative changes



CONDO STATUTES

Who votes?

- What %

What information to homeowners?

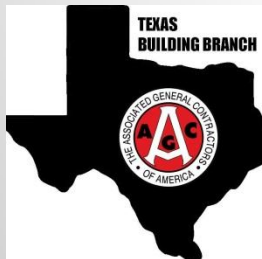


TX: HB 1455 – LIMITS ON CONDO SUITS

Before suit, Condo HOA must

- Obtain inspection by P.E.
 - Giving defendants notice and opp'ty to attend
- Obtain P.E. report on defects, furnish to defendants
- Give defendants 90 days to inspect and cure
- Meeting of unit owners
 - With notice
 - Must have majority of owners vote to sue.

Can't retroactively amend to remove arbitration



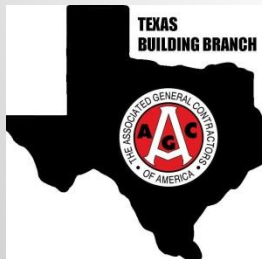
NATIONAL STATUTES CREATING WARRANTIES

Not unlike TRCC

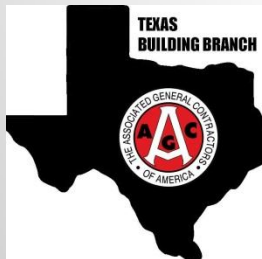
Common structure

- One year: all defects
- Two years: Electr., Plumbing, HVAC
- Ten years: structural

Exclusions



NOTICE AND OPPORTUNITY TO CURE



TEXAS – RESIDENTIAL CONSTRUCTION LIABILITY ACT

Notice and Opportunity to Inspect

- Notice of defect required 60 days before suit
- If asked, claimant to supply evidence
- Contractor given opportunity to repair

Offer of Settlement



TEXAS – RCLA (CONT'D.)

If claimant doesn't accept “reasonable offer” or prevents repairs

- Recovery limited to offer
- No att’y. fees after offer

Provision to compel mediation

Right to repurchase home for original purchase price



NATIONAL NOTICE AND OPPORTUNITY TO CURE STATUTES



ENCOURAGE DIALOG



PENALTIES / INCENTIVES



DEFINING RECOVERABLE DAMAGES

Some States define – or limit – recoverable damages



WHAT NOTICE OF DEFECT IS REQUIRED?

South Dakota: “Serve on the Construction Professional a written notice describing the alleged construction defect.”



MORE DETAILED NOTICE REQUIREMENT

South Carolina: The notice of claim must contain . . .

- (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and**
- (3) a description of the results of the defect, if known.**



MORE DETAILED NOTICE REQUIREMENT

Florida:

“The notice of claim must describe in reasonable detail each alleged construction defect, and if known, a loss resulting from the defect. Based upon at least a visual inspection . . . the notice of claim must identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without under burden.”



VERIFIED NOTICE REQUIREMENT

Nevada:

“(c) Describe in reasonable detail the cause of the defects if the cause is known, and the nature and extend that is known of the damage or injury resulting. . . .

(d) Include a signed statement . . . that each such owner verifies that each such defect, damages and injury specified in the notice exists”



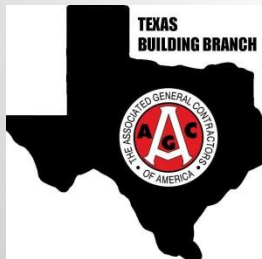
WHAT DOCUMENTS TO BE PRODUCED/EXCHANGED?

Some notice statutes require claimant to produce supporting documentation.

Either with notice or later by exchange.



WHEN NOTICE REQUIRED?



WHAT'S A DEFECT?

Analyzing Definitions of Defect Varying



DEFECTS EXCLUDED

Suits for personal injury / death

Repairs in an “emergency”



RIGHT TO INSPECT

Is there a right to inspect?

How is it triggered / requested?



WHAT KIND OF INSPECTION?

Visual?

Destructive testing?

Repair of destructive testing.



POST INSPECTION

Most States: Detailed Process Back & Forth

A Few States: No Process

Oregon:

- Builder provide written report of inspection;
- Builder also, for each defect:
 - Acknowledge existence;
 - Describe different defect; or
 - Deny existence.



EXCLUSIONS / AFFIRMATIVE DEFENSES



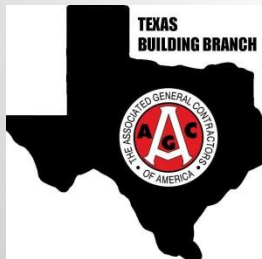
REASONABLE RELIANCE ON CODE?

Missouri:

“any matter that is in compliance with applicable codes and ordinances . . . in effect at the commencement of construction . . . shall conclusively establish that such matter is not, nor shall it be deemed or construed to be a construction defect.”



SOME PROCEDURAL ISSUES



ATTORNEYS FEES

Many States Allow

- Almost always discretionary

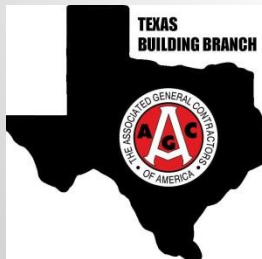
Nevada & Arizona:

- Recent amendment deletes attorney's fees



SUBSEQUENT DEFECTS

What happens with defects discovered after the initial notice?



INSURERS

- **Florida – 2015 Amendment**
 - Includes insurance; claimants can notify carriers
- **Nevada**
 - If claim presented to insurer, then insurer must treat it as if suit has been filed.
 - GC to pursue additional insured rights under subs policy



DISCLOSURE

When claimant sells the home after making a claim....



SECONDARY NOTICES



RECENT LEGISLATIVE CHANGES

- Arizona
- Florida
- Nevada



ADMISSIBILITY

- Are notices admissible later suit?
- Are offers to settle admissible in later suit?



PROCEDURAL ISSUES

Tolling statute of limitations

List the defects

Credits for other recovery

Info exchange discoverable?

Applicability to claims for contribution?

Treatment of subsequent defects



DISCUSSION

CURT MARTIN
FORD NASSEN & BALDWIN P.C.
HOUSTON – DALLAS - AUSTIN

