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The Deceptive Trade Practices Act—(“DTPA”)

The Deceptive Trade Practices--Consumer Protection Act (known as the “DTPA”) is a consumer protection statute which aims to protect consumers against certain “false, misleading, and deceptive business practices”, unconscionable actions, and breach of warranties. A violation of the DTPA is commonly alleged in a construction defect case because the DTPA expressly applies to when a Builder/Contractor breaches its own express warranty and/or the implied warranty of “good workmanlike manner” and/or habitability. A Builder/Contractor also violates the DTPA when it commits an “act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” Finally, a Builder/Contractor violates the DTPA when it engages in "false, misleading, or deceptive acts or practices" that fall under one or more of the following categories:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not;
- (5) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- (6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (7) advertising goods or services with intent not to sell them as advertised;
- (8) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (9) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- (10) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- (11) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;
- (12) representing that a guaranty or warranty confers or involves rights or remedies which it does not have or involve;
- (13) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(14) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; or

(15) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction.

Obtaining a finding that the Builder/Contractor violated the DTPA can be beneficial in that the court and/or arbitrator must award the Homeowner reimbursement of reasonable and necessary attorneys' fees and costs. Additionally, if the trier-of-fact finds that the Builder/Contractor's conduct was committed "knowingly" (actual awareness) then the consumer *may* also recover damages for mental anguish and up to three times (known as "treble damages") the amount of the economic damages. If the trier-of-fact finds that the Builder/Contractor's conduct was committed "intentionally" (actual awareness coupled with the specific intent that the consumer relied on the wrongful act) then the consumer *may* recover treble damages for both economic and mental anguish damages. However, as discussed under the RCLA section above, the RCLA limits the categories and types of damages a Homeowner can recover from damages arising out of a "construction defect". Since the RCLA does not expressly allow for treble damages or mental anguish, a Homeowner cannot recover treble damages or mental anguish damages if the wrongful act arises out of or is in any way related to the construction defect. For example, a Builder/Contractor's failure to honor an express warranty is a violation of the DTPA; however, even if the Builder/Contractor did so either knowingly or intentionally, the Homeowner could not recover mental anguish or treble damages because failing to honor the warranty is directly related to the construction defects. Therefore, in order to recover mental anguish and/or treble damages in a construction defect case, Texas courts have held that the wrongful conduct must be unrelated to the defect claim. Hypothetically, any conduct that falls under the above list or is unconscionable and does not in any way relate to the defective work, might be a basis to recover mental anguish and/or treble damages of the damages caused by the wrongful conduct.