

Affirmative Defenses Research Guide

Overview

This research guide contains information and resources related to affirmative defenses. According to *Black's Law Dictionary*, an "affirmative defense" is "a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true." There are a variety of affirmative defenses across different legal issues. They can apply to both criminal and civil cases. The resources listed below are not exhaustive and may not include the most up-to-date information. It is for information purposes only and should not be construed as legal advice or act as the substitute for legal counsel.

Statutes & Codes

Texas Statutes Online www.statutes.capitol.texas.gov

Texas Rules of Civil Procedure

<https://www.txcourts.gov/media/1452743/trcp-combined-effective-september-1-2021.pdf>

- Rule 94 – Affirmative Defenses

Texas Civil Practice and Remedies Code

- Ch. 93 Assumption of the Risk and Certain Other Affirmative Defenses

<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.93.htm>

Secondary Resources in Print

O'Connor's Texas Causes of Action Pleadings REF KFT 1735 .A65 O36

- Ch. 1 General Pleadings Forms, Form 1:19 – Affirmative Defenses

O'Connor's Texas Civil Forms REF KFT 1735 .A6503

- Ch. 3 Defendant's Pleadings, Form 3E:11 – Affirmative Defenses

O'Connor's Texas Rules Civil Trials REF KFT 1729 .A1903

- Texas Rules of Civil Procedure TRCP 94
- Ch. 3-E The Answer – Denying Liability §3E:5 et seq – Affirmative Defenses
- Ch. 7-C Traditional Motion for Summary Judgment 7-C 4.3.1(2); 7-C §4.6 When defendant moves for summary judgment on its affirmative defense

Dorsaneo's Texas Litigation Guide REF KFT 1730 .T4

- Vol. 5, Ch. 70 Answer - Pleas in Bar: Affirmative Defenses §70.05; §70.161-70.177
- Vol. 13, Ch. 202 §202.130 Answer: General Form; Affirmative Defenses
- Vol. 18, Ch. 270A §270A.112 Contractor's Answer – with Affirmative Defense

Texas Pretrial Practice REF KFT 1737 .T4B7

- Vol. 2, Ch. 36 Summary Judgment §36.150; §36:389

Texas DTPA Forms and Practice REF KFT 1430 .B7

- Ch. 6 §6.06 Affirmative Defenses: DTPA
- Ch. 6 §6.08 Affirmative Defenses: Residential Construction
- Ch. 12 §12.5.2 RCLA – Affirmative Defenses Available to Contractor
- Ch. 13 §13.06 Sample Affirmative Defenses in Real Estate Cases

Texas Criminal Practice Guide REF KFT 1775 .T49

- Vol. 5, Ch. 122 General Defenses §122.04 Affirmative Defenses Under Penal Code 2.04

Texas CPRC Plus REF KFT 1728. A196 A2

- Assumption of Risk, CPRC §93.001
- Computer data failure, notice to cure, CPRC §147.081; Reliance, CPRC §147.084
- Dry fire hydrant, CPRC §93.002
- Force in defense of nuclear facility, CPRC §100.001
- Insurance company, pleading, INS Ch. 554 – Burden of Proof and Pleading

Texas Criminal Jury Charges REF KFT 1783. M35

- §1:290 Affirmative Defenses: Standard of Review

Texas Commercial Causes of Action REF KFT 1733 .W7

- Ch. 13 §13-5 Affirmative Defenses

CLE Materials

Advanced Real Estate Law Course KFT 1312 .A75

- 2019 Ch. 1 Case Law Update
- 2019 Ch. 5.1 Late Charges in Non-Lending Transaction Contracts
- 2019 Ch. 25 And the Survey Says...How Do I Read This Survey and Why Is It Important?

Advanced Trial Strategies KFT 1737 .A75 S83

- 2019 Ch. 13 Preservation of Error at Trial
- 2019 Ch. 14 Hot Topics: The Texas Citizens Participation Act and the Early Dismissal Rules, Section IV. D - Affirmative Defenses – Proving a Defense as a Matter of Law

Litigation Update Institute KFT 1738 .A2S7

- 2019 Ch.1, Section V. Defensive Issues, Part F – Affirmative Defenses, pp. 193-205

Family Law 101 KFT 1294 A75 F351

- 2018 Ch. 2 Pleadings 101: What to Plead, When to Plead, and Extraordinary Relief

Online Resources

Affirmative Defenses: Information and Examples
<https://texaslawhelp.org/article/affirmative-defenses-information-and-examples>

Article: “Disseisin, Doubt, and Debate: Adverse Possession Scholarship in the United States (1881-1986),” 5 *Texas A&M Law Review* 1 (Fall 2017) (available on Lexis)

Article: “Adverse Possession of Severed Mineral Interests and the Need for Statutory Guidance,” 37 *Texas Tech Law Review* 1073 (Summer 2005) (available on Lexis)

Article: “Abandonment and Adverse Possession,” 52 *Houston Law Review* 1385 (Spring 2015) (available on Lexis)

Legal Assistance

Legal Lines – Ask Attorneys simple legal questions (free service)

- Tarrant County LegalLine Sign-up
<https://www.tarrantbar.org/>
- Dallas County LegalLine Sign-up
<https://www.dallasbar.org/index.cfm?pg=legalline>

Tarrant County Bar Association Lawyer Referral Service: 817-336-4101 (\$20 for the first 30 minutes)