



# NATIONAL CONSTRUCTION DEFECT CONFERENCE



*The Roosevelt New Orleans | November 14-15, 2024*

## Jurisdictional Analysis and Future Outlook of Nationwide Industry Trends



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*Perrin Conferences – National Construction Defect Conference  
Macroeconomic Trends In CD*

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# Industry Macroeconomic Trends and Data

## DISCLAIMERS

### WHAT DOES DATA TELL US?

Where we have been.

Where we are now.

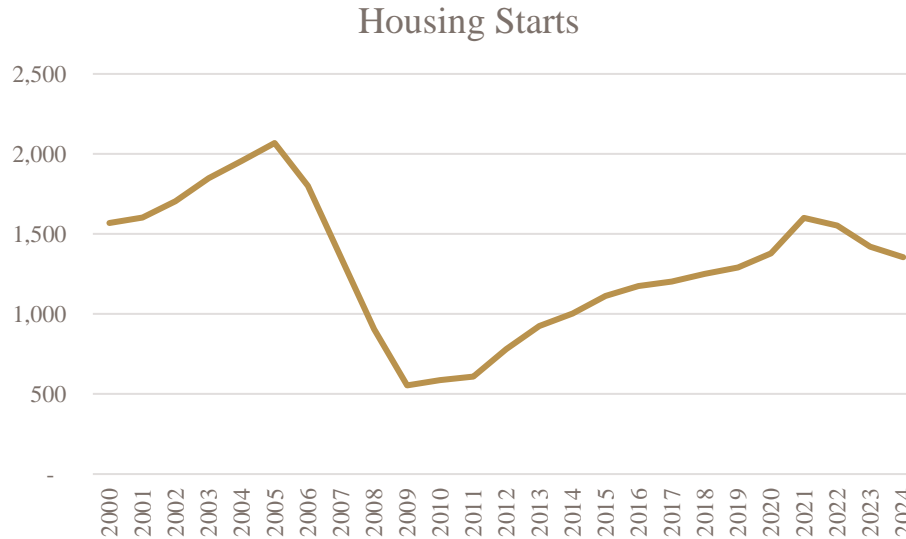
Where are we going???

### HOW WILL YOUR BUSINESS BE IMPACTED?



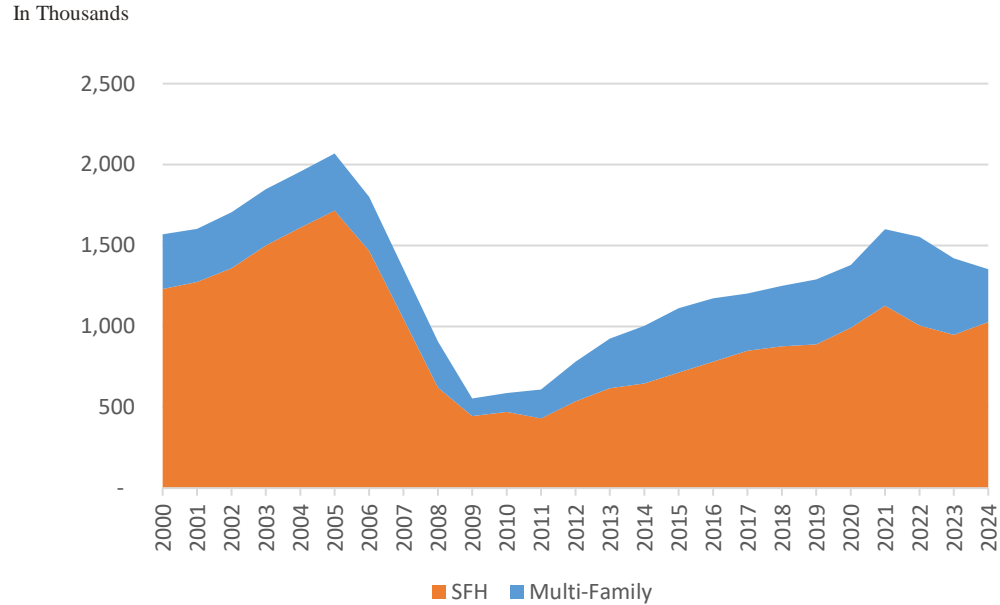
# Housing Starts – U.S. Total

In Thousands



Data Source: U.S. Census Bureau  
Chart: The RiverStone Group

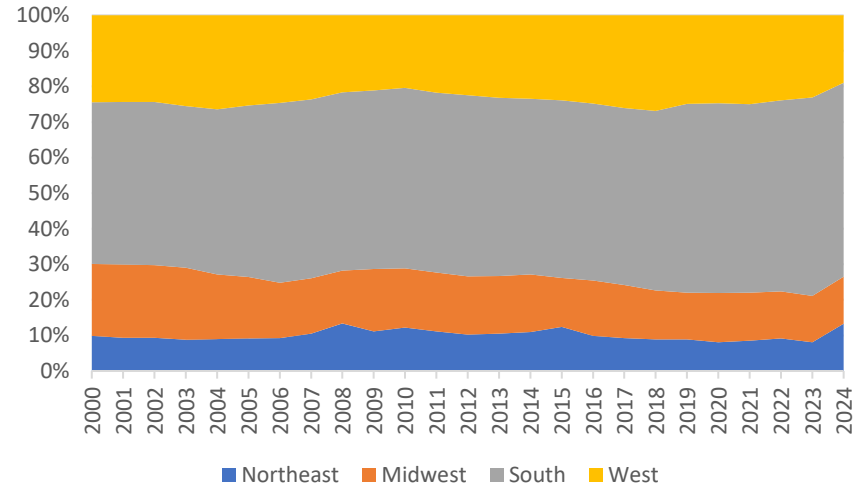
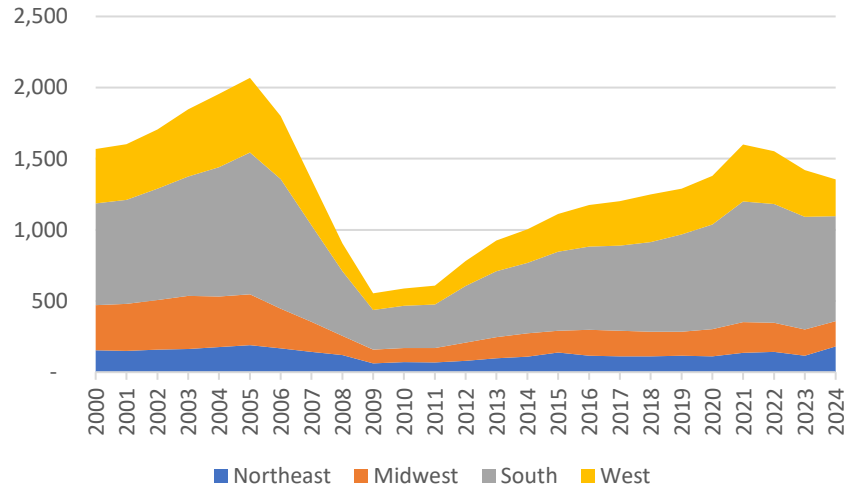
# Housing Starts – Single Unit vs. Multi-Family



Data Source: U.S. Census Bureau  
Chart: The RiverStone Group

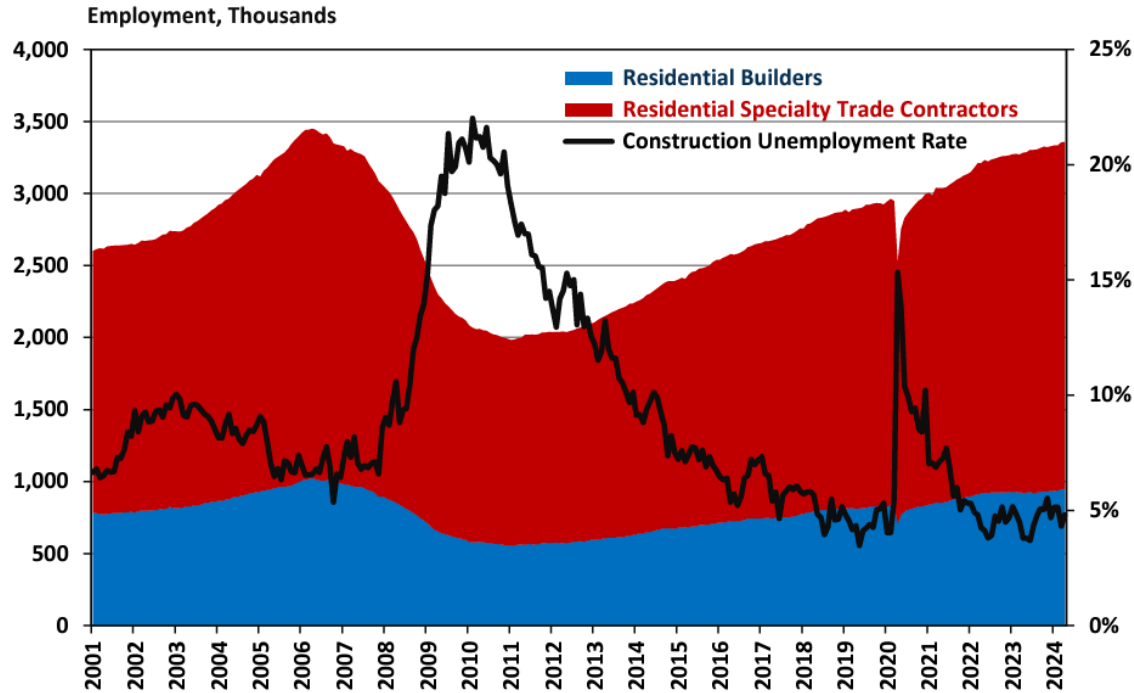
# Housing Starts by Region

In Thousands



Regional Housing Starts  
Data Source: U.S. Census Bureau  
Chart: The RiverStone Group

# Residential Construction Employment & Unemployment



Residential Construction Employment and Unemployment Rate

Data Source: U.S. Bureau of Labor Statistics

Chart Source: Home Builders Institute – The HBI Construction Labor Market Report, June 2023

# 30 Year Mortgage Rates

### 5 Year History



### 50+ Year History

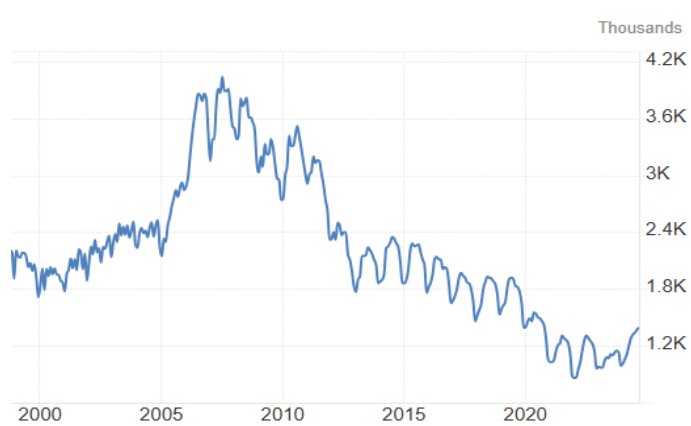


30 Year Mortgage Rates  
Data Source: Freddie Mac via St. Louis Federal Reserve Bank  
Chart: The RiverStone Group



# Housing Inventory & Average House Price

## Housing Inventory



## Median SFH Price



25 Year Housing Inventory & 25 Year Average Home Price

Data Source: US Census Bureau

Chart 1: tradingeconomics.com

# *PPI – Building Materials and Supplies Dealers*

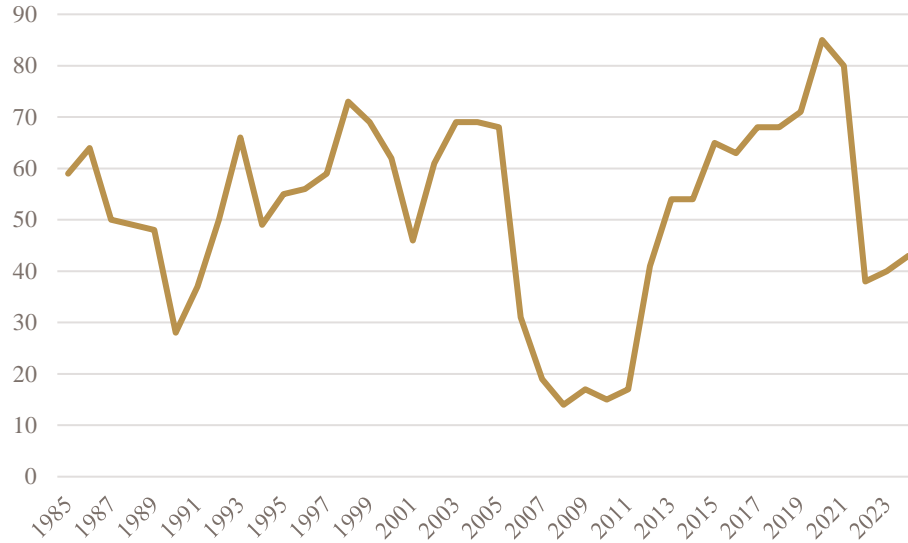


Producer Price Index – Building Materials and Supplies Dealers

Data Source: U.S. Bureau of Labor Statistics

Chart Source: St. Louis Federal Reserve Bank

# NAHB/Wells Fargo Housing Market Index



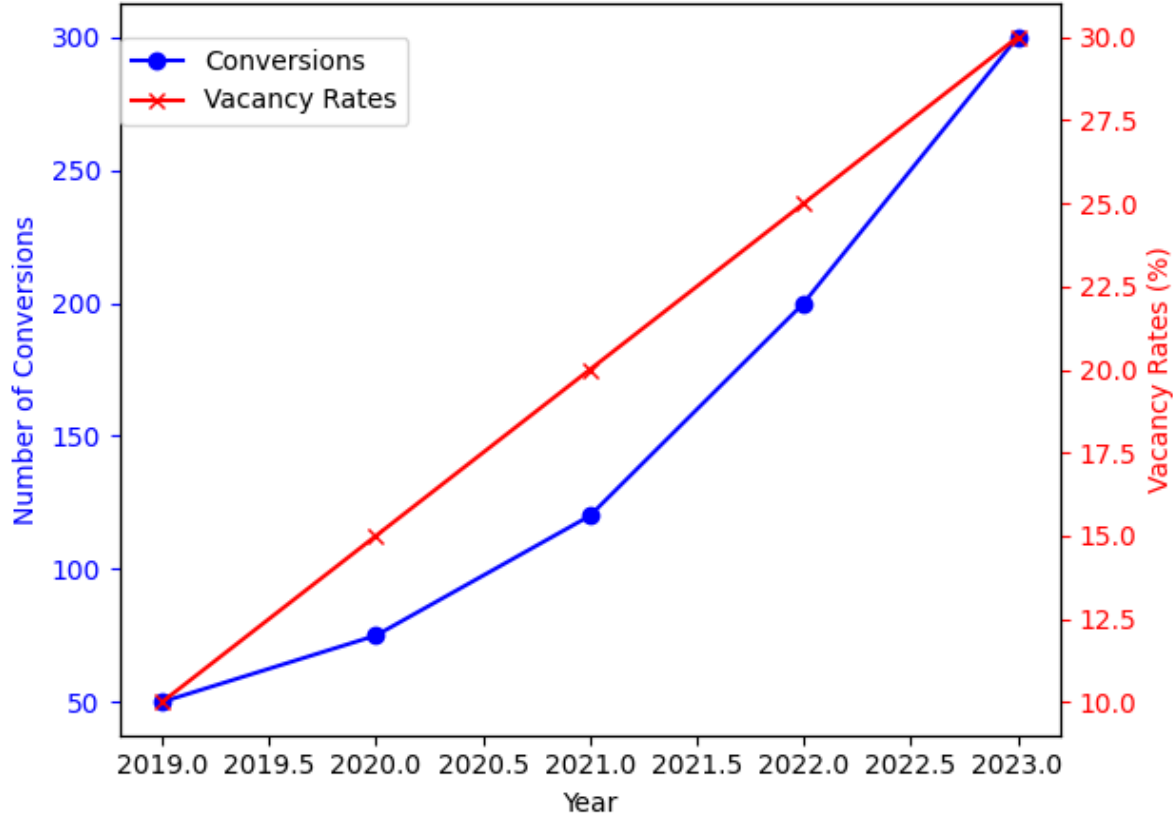
Measures the sentiment of home builders.

Weighted average of three separate component indices:

- present single-family sales,
- single-family sales for the next six months, and
- traffic of prospective buyers.

Housing Market Index  
Data Source: National Association of Home Builders  
Chart: The RiverStone Group

### Trends in Office-to-Residential Conversions and Vacancy Rates



#### THIS CHART SHOWS:

- NUMBER OF CONVERSIONS: THE BLUE LINE WITH CIRCLES REPRESENTS THE NUMBER OF OFFICE-TO-RESIDENTIAL CONVERSIONS EACH YEAR.
- VACANCY RATES: THE RED LINE WITH CROSSES REPRESENTS THE VACANCY RATES IN OFFICE BUILDINGS OVER THE SAME PERIOD.
- THESE TRENDS HIGHLIGHT THE INCREASING NUMBER OF CONVERSIONS AS VACANCY RATES RISE, REFLECTING THE SHIFT IN HOW COMMERCIAL SPACES ARE BEING REPURPOSED.

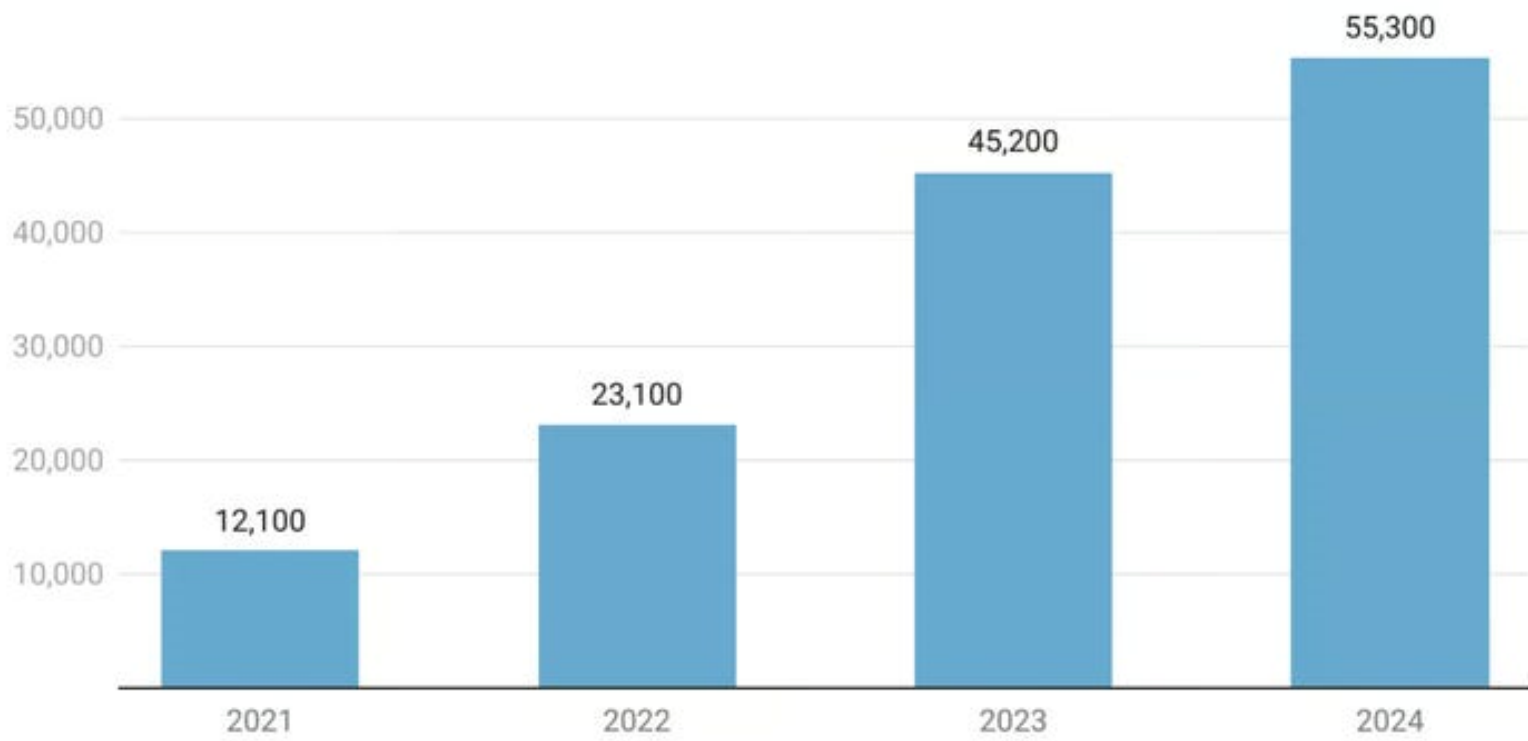


Chart: Lance Lambert • Source: RentCafe • Created with Datawrapper





**25 Water Street Manhattan, NY**



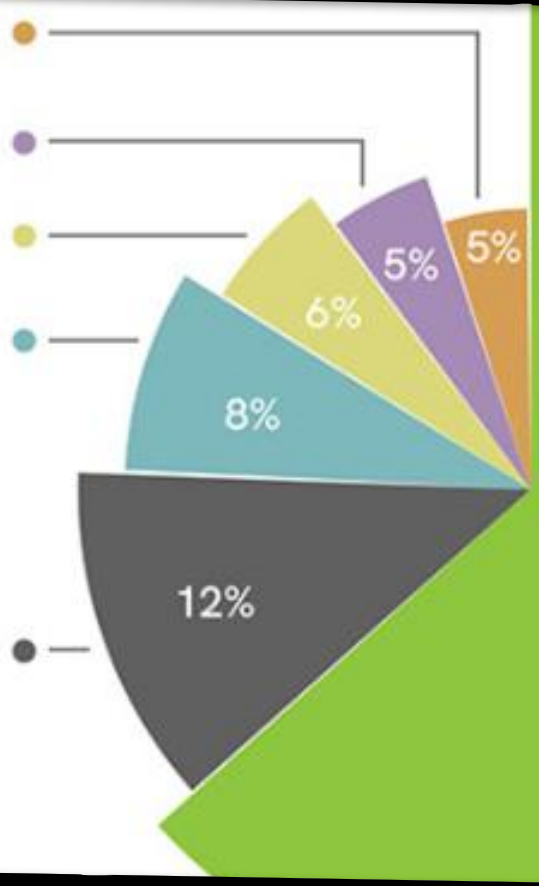
Mixed-Use - Other

Industrial

Other

Hotel

Life Sciences



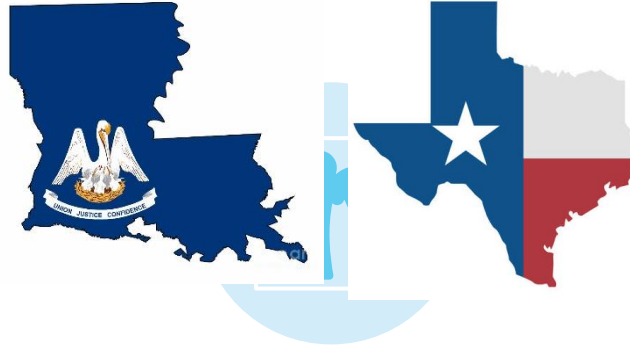
Multifamily  
**63%**



Southeastern States



**SOUTH  
CAROLINA**



**LOUISIANA**



**TEXAS**



**FLORIDA**



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## South Carolina – CD Trends

### Portrait Homes v. Penn National, SC Appeals, Opinion N. 6038, December 12, 2023

Dense opinion

Addresses issues such as:

- Insurer bad faith

- Notice of duty to defend

- Time on risk formulations

- Additional insured considerations



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## Louisiana – CD Trends

SOL from 1 Year to 2 Years (HB 315)

2 year SOL applies to incidents that occur on or after July 1, 2024

Offer of Judgement Bill (SB 84)

Defendants can serve offers of judgment to plaintiffs

25% of final judgment; pay the defendant's costs and attorney fees.

OJs after liability has been determined but before damages are assessed.

Amended Litigation Funding Bill (SB 355)

Requires foreign 3<sup>rd</sup> parties engaged in litigation funding to disclose information to the Office of the Attorney General



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Texas – CD Trends

Update on Statute of Limitations/Repose

Texas Government Code Section 2251.0521 – (Public Change Orders)

Texas Property Code Section 28.0091 – (Private Change Orders)

*Rodriguez v. Safeco Ins. Company of Indiana*, 684 SW 3d 789 (2024)



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## Texas – CD Trends

Update on Statute of Limitations/Repose

RCLA Texas Residential Construction Liability Act

HB 2022:

Limits liability for a defective condition

”Latent defect” - must prove present on the date of completion or when title conveyed to the original purchaser and the residence unsuitable for its intended use.

Requires a claimant to prove the defect existed at the time of completion of the construction, alteration, or repair.

HB 2024 – encourages written warranties, if present, then SOR reduced from 10 to 6 years (SFH/townhomes with exceptions)



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## Texas – CD Trends

### Change orders

Texas Government Code Section 2251.0521 – Government Projects

Texas Property Code Section 28.0091 – Private Projects

Applies to contracts on or after September 1, 2023

Provides contractors avenue to deal with Owners' unilateral work directives

Totals 10 percent or more of the original contract value, the contractor can decline the work (aggregate not piecemeal)

But contractors still responsible for original scope of work

Legislation does not prohibit waiver via contract

Is it practicable? What about unit costs?



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## Texas – CD Trends

*Rodriguez v. Safeco Ins. Company of Indiana*, 684 SW 3d 789 (2024)  
Texas Supreme court found that the insured is not entitled to attorneys' fees if the carrier invokes an appraisal, promptly pays the appraisal, and pays any applicable interest.



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Florida – CD Trends

Statute of Repose Update

Condominium Associations: SOR and Assessments

Citizens Insurance and Private Carriers

Rules of Civil Procedures Revisions



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## Florida – CD Trends

### Statute of Repose Update

Fla. Stat. §95.11(3)(c) – reduces negligence from 4 to 2 years

In any event, the action must be commenced within 7 years after the date the authority having jurisdiction issues a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion, or the date of abandonment of construction if not completed, whichever date is earliest. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.



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## Florida – CD Trends

### Statute of Repose Update

There are four triggering events:

- Date of abandonment of construction

- Date of actual possession by the owner

- Date of the issuance of a CO

- Date of completion of contract

Different interpretations: condos; townhomes; SFHs



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## Florida – CD Trends

### Statute of Repose Update

House Bill 1021 (passed June 14, 2024)

Fla. Stat. 718.124 – Limitation on actions by association

The statute of limitations and statute of repose for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration. (effective July 1, 2024)

Retroactive?



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## Florida – CD Trends

### Citizens Insurance and Private Carriers

If private carrier offers premium that is 20% more than Citizens, need not accept. But if 19% or less, forced to accept.

It will result in increased premiums

Will it mean more claims?



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## Florida – CD Trends

### Rules of Civil Procedures Revisions

#### Rule 1.202 – Conferral Prior to Filing Motions

Does not apply to MSJ, injunctions, judgment on the pleadings

#### Rule 1.460 – Continuances

Currently, trial courts exercise board discretion to grant continuances.

Effective January 1, 2025, motions to continue trial will be disfavored and should rarely be granted and only with good cause. The revised rule identifies specific information that must be established in the motion for continuance.

Try to get your motions filed NOW.

#### Rule 1.510 – Summary Judgment

Revised nonmovant's response from 20 days before hearing to 60 days after motion is served

How will judges handle pending MSJ motions after January 1?

In the absence of clear legislative intent that a law apply retroactively, the general rule is that procedural statutes apply retroactively and substantive statutes apply prospectively. Env't Confederation of Sw. Fla., Inc. v. State, 886 So. 2d 1013, 1017 (Fla. 1<sup>st</sup> DCA 2004)



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# REALITY CHECK: NEW ISSUES CREATE LITIGATION

An illustration of three elderly people walking from left to right. On the left is a man wearing a brown hat, a red jacket, and dark pants. In the middle is a woman with white hair wearing a yellow jacket and red pants. On the right is a man wearing a blue cap, a blue sweater, and dark pants. Behind them is a large, light-colored dollar sign. The background is a light blue gradient.

- Lack of Skilled Laborers / Aging Workforce
- Adoption of New Technology
- Green Construction, Modularity, 3D Printing
- High Rise, Conversions, Mixed Use

# WEATHER EVENTS FUEL LITIGATION; NEW GENRE OF DEFECT CLAIMS

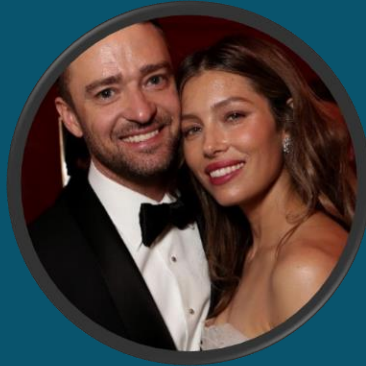
- *Rains Test Building Envelope*
- *Hurricane Straps*
- *Wildfires and Fire Resistive Construction*
- *Design Professionals Implicated*
- *Sympathetic Fact Patterns*
- *But Are They Defects?*



# TRENDING: UNREASONABLE HIGH-END HOMEOWNERS

- Frequency/Severity
- Outrageous Demands
- Plaintiff Lawyer Out of Depth
- Money No Object; Often Revenge Motive

# HIGH PRICE POINT FUELS BIG CD CLAIMS (AND UNREASONABLE EXPECTATIONS)







WSHB

# TRENDING: HIGH RISE CLAIMS

- Huge Repair Costs
- Often Underfunded Single Asset LLCs
- Complex Insurance Towers
- Venues Typically Judicial Hellholes

# In the News: High Profile Cases

- NYC Tallest Buildings
- \$250 Million Demand
- 1500 Defects Alleged (Design and Construction)





## TRENDING: NEW LAWS CREATES NEW CLAIMS

### Surfside Collapse

- New Law Requires Structural Integrity Inspections at 25-30 years
- Special Assessments + Insurance Crisis = Trouble

# TRENDING: NEW LAWS CREATES NEW CLAIMS

## Berkley Balcony Collapse

- New Law Enacted Following Media Exposure
- Inspection of Elevated Elements 6'+.
- Focus on balcony/deck/walkway waterproofing
- HOA Assessments + Defects Identified = Claims

## TRENDING: MORE TRIALS/ARBITRATIONS

- Emboldened/Coordinated Plaintiff Bar
- Judicial Hellholes Predominate
- Insurance/Coverage Factor



# TRENDING: INSURANCE WITHDRAWAL FROM MARKETS

- Loss Ratios Drive Withdrawals
- Florida, California, New York
- Impact on CD Claims
  - *Theories of Liability*
  - *Higher Premiums*
  - *Restricted Coverage*



# EMERGING TRENDS

- Statute of Repose/Statute of Limitations
- Fraud - Construction Site Accidents
- Litigation Funding







## GENERATIVE AI AND THE CHANGING LANDSCAPE OF LITIGATION

LEE J. HURWITZ

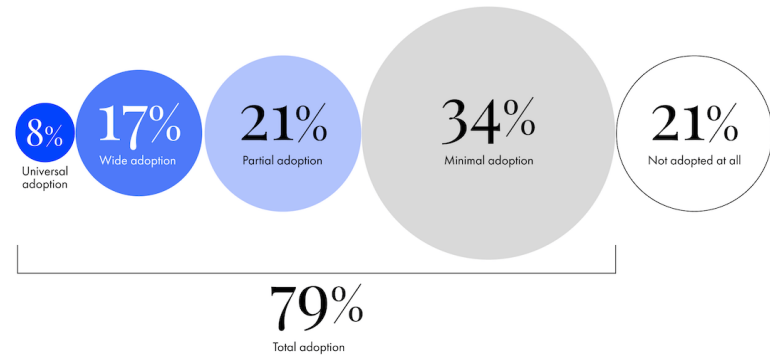
SHAREHOLDER, SEGAL MCCAMBRIDGE SINGER & MAHONEY, LTD.

# THE RISING POPULARITY OF GENERATIVE AI

	NUMBER OF ATTORNEYS						
	Total	Solo	2-9	10-49	50-99	100-499	500 or more
		Attorneys	Attorneys	Attorneys	Attorneys	Attorneys	
Currently using artificial intelligence-based technology tools	10.9%	10.4%	9.2%	11.3%	3.6%	10.6%	21.4%
Seriously considering purchasing artificial intelligence-based technology tools	9.8%	4.2%	11.5%	10.3%	17.9%	6.4%	14.3%
Not interested in purchasing artificial intelligence-based technology tools	20.5%	31.3%	28.5%	15.5%	10.7%	4.3	7.1%
Don't know	27.5%	8.3%	13.1%	38.2%	39.3%	63.8%	42.9%
I don't yet know enough about AI to answer this question	31.3%	45.8%	37.7%	24.7%	28.5%	14.9%	14.3%
	100%	100%	100%	100%	100%	100%	100%
Count	440	96	130	97	28	47	42

American Bar Association  
2023 Artificial Intelligence (AI)  
TechReport

The vast majority of lawyers have adopted AI in some capacity



Clio Legal Trends  
Report

LEGAL  
TRENDS  
REPORT

SEGAL  
McCAMBRIDGE



# QUICK POLL / SHOW OF HANDS

- Who currently uses generative AI in their practice and for what purpose?
- Who does not use generative AI but is interested in incorporating in their practice?
- Who is adamantly against the use of generative AI in legal? Why?



## WHY USE GENERATIVE AI?

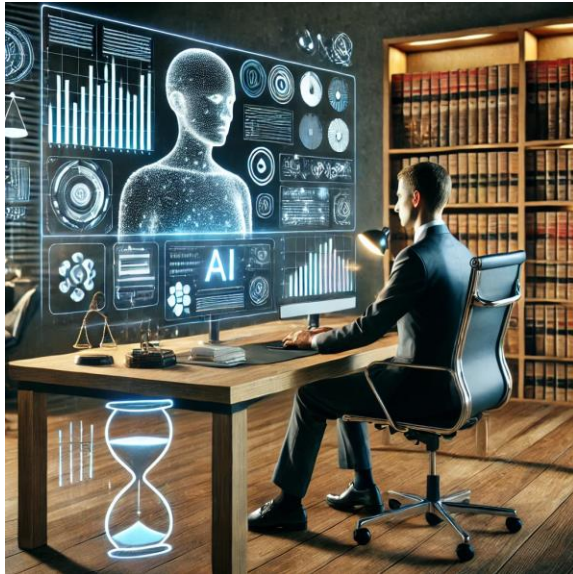
### Benefits

- Saves time/cost
- Increase efficiency
- Can provide more accurate analysis and review

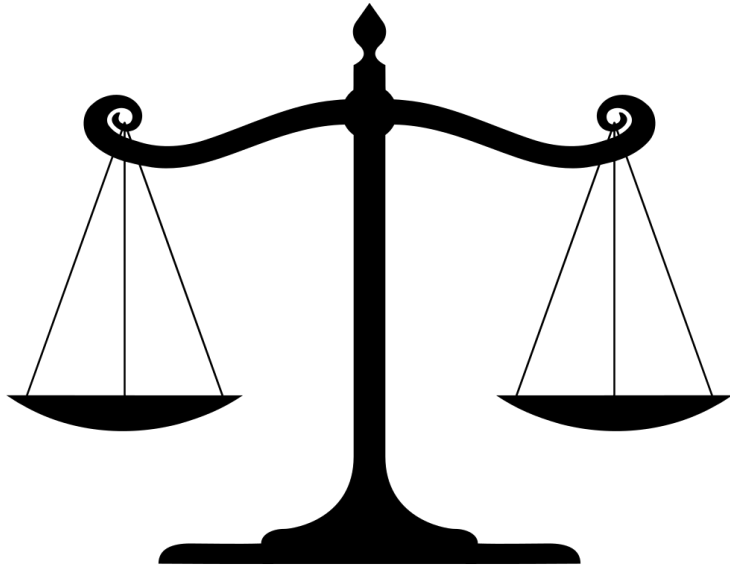
### Drawbacks

- Using a new tool improperly without fully understanding how to use it
- Failure to fact-check/review generative AI's work
- The machines become self-aware and take over (just kidding)

# WAYS OF USING GENERATIVE AI IN LEGAL PRACTICE AND CLAIMS



- Conduct legal research
- Document review
- Summarizing deposition transcripts and expert reports
- Preparing memoranda, correspondence and demand letters
- Detect patterns of behavior, claim forecasting and risk analysis



- Judges are applying standing orders regarding the usage of generative AI
- *i.e.* Judge Jeffrey Cole (Magistrate Judge, Northern District of Illinois)
- Judges who use generative AI to develop written opinions and rulings
- <https://abovethelaw.com/2024/06/federal-judge-chatgpt-opinion/>



REAL WORLD EXAMPLE – HOW NOT TO USE AI:  
MATA V. AVIANCA, INC., 1:22-CV-01461 (S.D. NY)

- Originated as personal injury claim against Avianca that was filed in the Southern District of New York
- Defendant moved to dismiss and Mata's counsel filed a response
- Defendant and the Court were unable to identify Mata's citations supporting his arguments
- Mata's counsel admitted he used ChatGPT, which fabricated the cases Mata cited to
- The Court sanctioned Mata under Rule 11 for its improper citations



## ETHICAL CONSIDERATIONS REGARDING THE IMPACT AND USAGE OF GENERATIVE AI

- MRPC 1.1 – Competence
- MRPC 1.4 – Communication
- MRPC 1.6 – Confidentiality of Information
- MRPC 5.1 – Responsibilities of Partners, Managers, and Supervisory Lawyers
- Develop firm/company policy for usage of generative AI