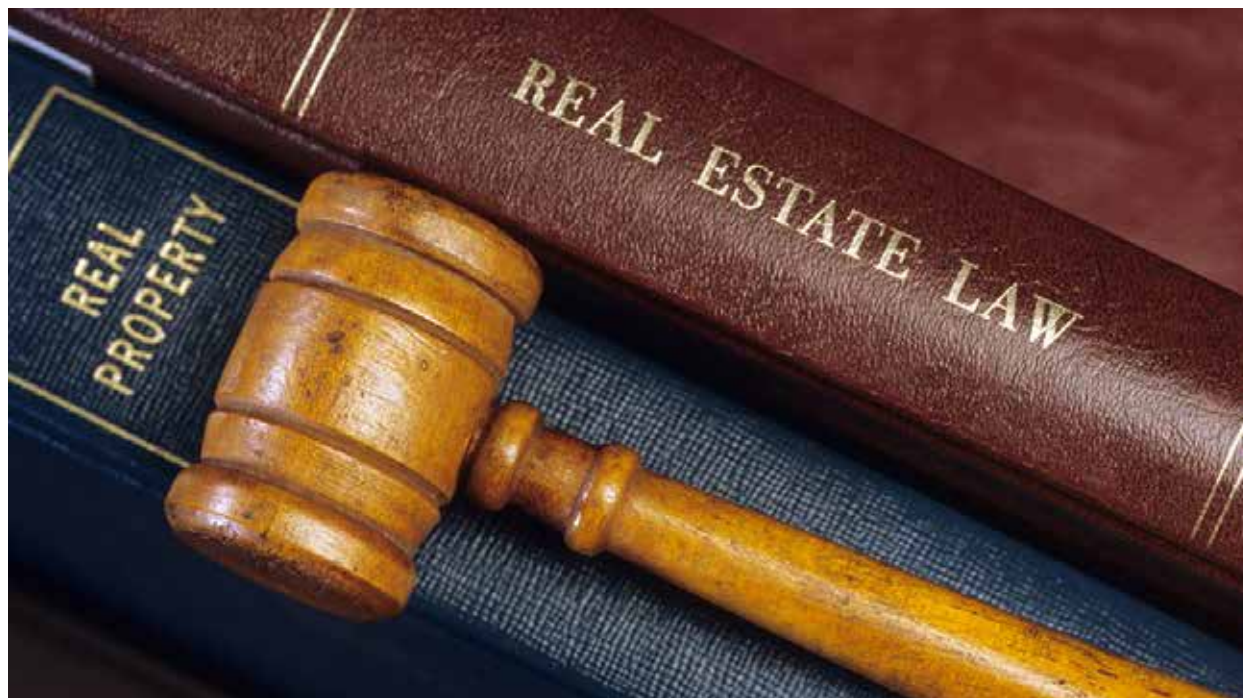


It Depends

What Happens When Real Estate Disputes Go to Court?

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February 28, 2019

Publication 2223



As the old joke goes, a law professor was delivering a commencement address to law school graduates. “Three years ago, if someone had asked you a legal question, you honestly would have answered, ‘I don’t know.’ Now, however, you may emphatically declare, ‘It depends.’”

After becoming embroiled in a real estate dispute, landowners or tenants sometimes find themselves in a lawyer’s office. Sometimes, they come in fired up and ready to file a lawsuit. More often, they just want to find out what their rights are. They schedule a consultation, tell their story, and lay out their vision of the dispute. Then they look expectantly at their lawyer. “What are my rights? What does the law say about my situation?”

Many times, they are shocked to hear the lawyer’s answer: “I don’t know.” Or the statement that has become somewhat of a punchline: “It depends.” It’s funny because it’s true. Lawyers often don’t know, and, almost always, it really does depend. Understanding why

The Takeaway

Many people think of the law as black and white. In reality, the law is constantly changing and rarely simple. Statutes and regulations can provide guidance, but some issues are not finally decided until parties take a dispute to trial and then through one or more appeals.

requires some knowledge of how law is made. The law is at best an educated guess at what courts will decide.

When Lawsuits Are the Only Recourse

Law exists, among other reasons, to provide order, set expectations, and resolve disputes. Many disputes are resolved by informal discussions between neighbors, or by mediations conducted without the filing of a lawsuit. If these efforts fail, a lawsuit may be the only recourse.

Once a lawsuit is filed, the law provides a framework for how the case will be decided. Sometimes the case will be decided at trial by a judge and/or jury. More commonly, it is settled before it reaches trial.

When a case settles, it often settles based on the parties' best guesses at how the law applies, how the evidence is likely to develop, and what a judge or jury is likely to decide. Usually, each side gives up something to obtain the certainty of the result. They are willing to sacrifice some of the money or property at stake rather than risk losing all of it. Also, when the lawsuit process stops, the legal bills soon stop. But when settlement efforts fail, the lawsuit forges ahead toward trial.

Now, look at the law itself. Statutes are legislative acts passed by the United States Congress or the Texas Legislature. Regulations are rules made by federal or state agencies pursuant to power that is delegated to them by congress or the legislature. When most people talk about "the law," they are referring to statutes or regulations, and they generally think of it as black and white, cut and dried.

Unfortunately, no set of statutes or regulations could ever be written that covers every event that might happen across the length and breadth of human interaction. That's where the courts come in. The statutes and regulations must be interpreted in relation to the facts. Often, words in the statutes must be defined. Sometimes there are no statutes or regulations that apply to the facts at hand. In all of these situations, the court may base its decision on the "case law" (i.e., previously decided cases, if any applicable case law exists; often referred to as "common law").

If the case goes to trial, the trial judge will make decisions on such things and will issue a judgment. The judgment is based on the facts as determined at trial and the law as applied by the judge. Most trial court decisions, particularly in Texas, are not published and do not "become law."

Filing an Appeal

If either side disagrees with the interpretations made by the trial court, it can file an appeal to a higher court. A factual finding can be challenged only on the basis of insufficient evidence, whereas a decision on the law is subject to review by the judges of the appeals court. Essentially, the appellant (appealing side) is asking the appeals court judges to grade the papers of the trial court. When the appeal is decided, the appeals court issues an opinion setting forth its decision and explaining its reasons. Once published, the opinion becomes part of the "case law" mentioned above, and it may be used as precedent in deciding later cases.

There are many who rightly decry the practice of "legislating from the bench," wherein judges "make law instead of interpreting it." Certainly judges sometimes overstep their bounds, fail to exercise judicial restraint, or are just plain wrong. Certainly they may blindly follow precedent or make imprudent exceptions to existing rules. But make no mistake: Judges do make law—case law—every time they issue an opinion. It's their job.

Often, different courts of appeals reach different decisions on similar factual situations. If the Supreme Court has not decided the outcome of such a "circuit split," then there may not be a clear answer as to what the law is in a particular dispute until the issue is decided by a higher court.* And that requires an actual dispute actually tried and appealed all the way to that higher court. Courts only decide actual controversies; they do not answer hypothetical questions.

If a party disagrees with the decision of the court of appeals, it may seek further review from the Supreme Court—in Austin or in Washington, depending on whether the case is state or federal. The Supreme Court does not have to hear the appeal. If the Supreme Court does take the case, it also issues an opinion, which becomes the law of the land—state or federal, as the case may be.

Even then, there are pitfalls. Even when the rule is clear, it is rare that two cases have exactly the same facts. One side will argue that the facts are the same and that a particular common law rule should apply to the dispute. The other side will argue that the rule is to be applied narrowly to a specific set of facts, and then point out where the facts are different so as to merit a different result.

Finally, sometimes judges simply don't follow the precedent. When they don't, litigants must decide whether an appeal is available and, perhaps more importantly, if it's worth it.

All of this, of course, takes a lot of time and money and is often very stressful, especially when it involves individuals. As a result, most cases are settled or finally

*The Texas Supreme Court may imply approval of the decision of a Texas Court of Appeals by "refusing" a petition for review. This results in the lower court's opinions becoming statewide precedent. In contrast, "denying" a petition for review does not create statewide precedent; it only means the Supreme Court has found that the petition presents no error that requires reversal or is of such importance to the jurisprudence of the state as to require correction.

decided without going up on appeal. When that happens, no new law is made.

So, to recap: For new case law to be made, a lot has to happen. There has to be an actual dispute. There has to be a lawsuit. It has to make it through the process without settlement, all the way to trial. One of the parties has to have the money—and the stomach—to continue the fight through one or more levels of appellate courts. If all of these things happen, perhaps new law will be pronounced by a court. If so, then the ever-changing law will have changed again.

But will it apply to your case?

Well, it depends.

Nothing in this publication should be considered legal advice. For specific advice, consult an attorney. ➡

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