

# 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 or civil cases.

## Statutes & Codes

Texas Rules of Civil Procedure  
<https://www.txcourts.gov/media/1452743/trcp-combined-effective-september-1-2021.pdf>

- Rule 94 – Affirmative Defenses

Civil Practice and Remedies Code  
<https://statutes.capitol.texas.gov/docs/sdocs/civilpracticeandremediescode.pdf>

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

## Secondary Resources in Print

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

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

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

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

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

- Texas Rules of Civil Procedure 94
- Chapter 3 – Defendant's Response & Pleadings, Section E The Answer – Denying Liability § 3E:5 (for list of affirmative defenses, see 3-E § 5.2; 3-E § 5.3)
- Chapter 7

**Dorsaneo's Texas Litigation Guide KFT 1730 .T4**

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

**Texas Pretrial Practice KFT 1737 .T4B7**

- Ch. 36 Summary Judgment § 36.150; § 36:389

**Texas DTPA Forms and Practice 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 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 KFT 1783 .M35

- § 1:290 Affirmative Defenses: Standard of Review

## Texas Commercial Causes of Action

- Ch. 13: 13-5 Affirmative Defenses

## CLE Materials

### Advanced Real Estate Law Course 2019

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

### Advanced Trial Strategies 2019

- Ch. 13 Preservation of Error at Trial
- 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 2019

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

### Family Law 101 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)**