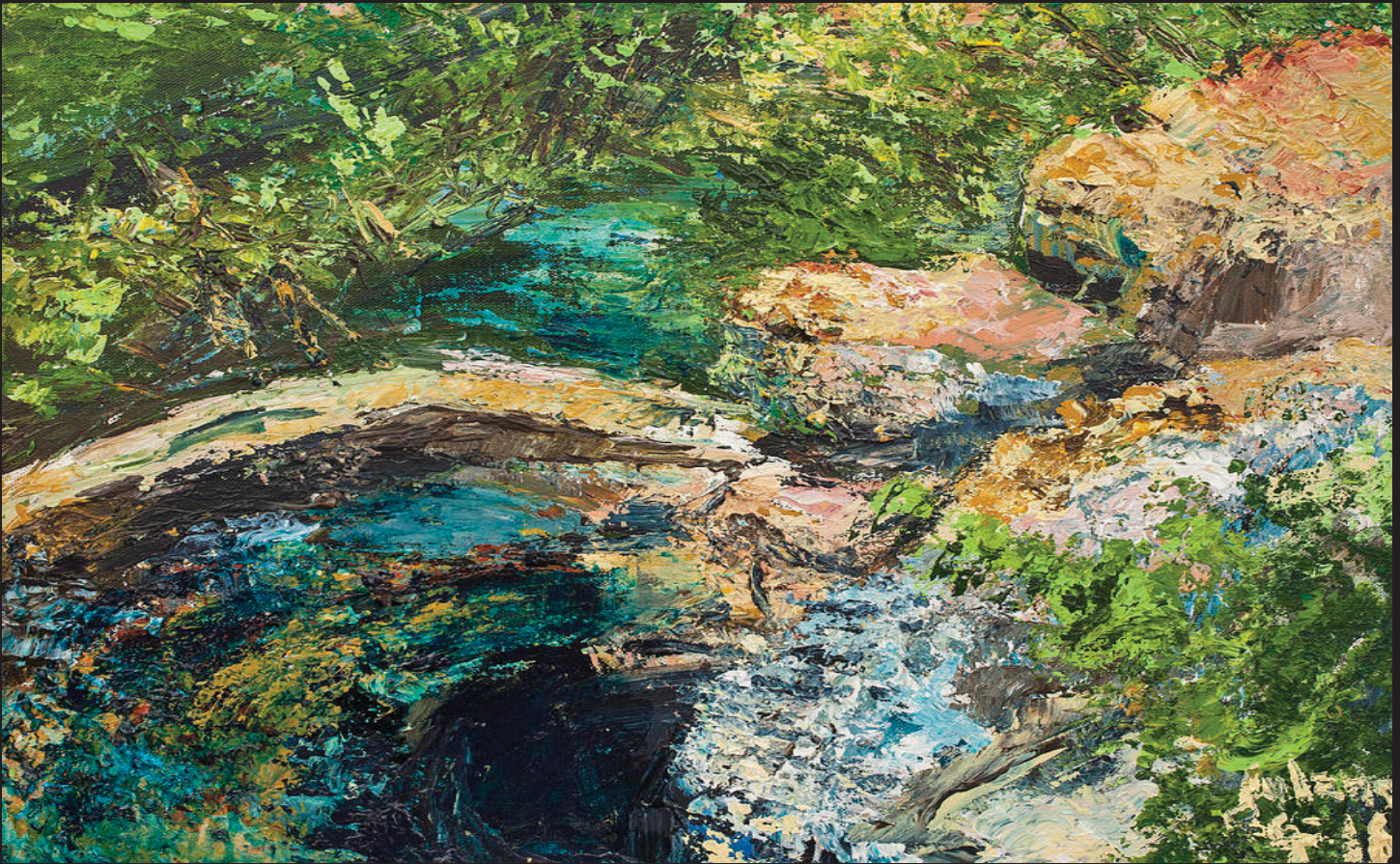


# 36TH ANNUAL CONSTRUCTION LAW CONFERENCE



**MARCH 2 & 3, 2023  
THE LA CANTERA RESORT & SPA  
SAN ANTONIO, TEXAS**

***Earn up to 12.25 Hours MCLE Credit, including 3.75 Hours Ethics!***

*Applicable toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. Eligible for MCE credit through the Texas Real Estate Commission. Texas Department of Insurance credit requested.*

*Sponsored by:*

**The Construction Law Foundation of Texas  
&  
The Construction Law Section of the State Bar of Texas**

*in cooperation with*

**The Texas Institute of Continuing Legal Education**



# 36TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 2 & 3, 2023 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

## WEDNESDAY, MARCH 1, 2023

- 12:00 **GOLF TOURNAMENT** – *Shot Gun Start*  
Only conference registrants, presenters and 2023 sponsor attendees are eligible to register.  
The Resort Course at The La Cantera Resort
- 2:00 **PRE-REGISTRATION PICK-UP** – Attendees who pre-registered by February 17 may pick-up their badge and materials from 2:00-4:00pm.
- 3:30 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP NETWORKING & SPA EVENT** – Spa services between 1:45–4:00pm to be arranged in advance directly with the Loma De Vida Spa at La Cantera. Spaces are limited. Networking on the Quench spa patio between 3:30–5pm for registered conference attendees only. *Please indicate your RSVP for the networking on the registration form.* – Sponsored by Socotec
- 6:15 **RECEPTION** – In cooperation with the Construction Law Section Young Lawyers Committee – Sponsored by Berkeley Research Group, LLC

## THURSDAY, MARCH 2, 2023

*PRESIDING OFFICER: Stephanie L. O'Rourke, San Antonio*

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, The La Cantera Resort, 16641 La Cantera Pkwy., San Antonio, TX 78256, (210) 558-6500
- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Fiebig Architecture, PLLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW FOUNDATION**  
Gregory M. Cokinos, Houston
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.  
Gregory M. Cokinos, Houston
- 10:00 **EVALUATING SCHEDULE IMPACTS: WHEN TIME IS NOT ON YOUR SIDE** – This presentation will discuss the critical path for the construction lawyer who was just informed their client's project is behind schedule including the preliminary delay analysis, contract analysis, documentation, claim preservation, and the selection of a claims expert.  
Matthew S.C. Moore, Houston
- 10:30 **BREAK** – Sponsored by Lighthouse Consulting Group
- 11:00 **MEAN TWEETS: CONSTRUCTION LAW CONFERENCE EDITION**  
Matthew C. Ryan, Austin
- 11:05 **MY GC FILED FOR BANKRUPTCY: NOW WHAT?** – What are the "first day" steps when a project's general contractor files for bankruptcy? How do owners proceed if their project is still under construction? What does this do to suits on bonds and lien foreclosure cases? How do you keep project funds moving to finish the project, and what do you do with project files and litigation files? How is battle joined on the Trust Fund Acts and dischargeability, and what are the worst and/or most frequent traps that ensnare and destroy lawyers who aren't full-time bankruptcy lawyers?  
Eric J. Taube, Austin
- 11:45 **JAMES V. WESTLAKE** – Written notice, substantial compliance, and practice points for contract negotiation, administration, and disputes in the wake of the Texas Supreme Court's recent and significant decision.  
Russell W. Smith, Houston
- 12:15 **LUNCHEON** – *Tickets available for \$25 each.*  
**LITIGATING IN A DIVIDED NATION**  
Claude E. Ducloux, Austin
- 1.00 Ethics*
- PRESIDING OFFICER: Curt M. Covington, Rockwall*
- 1:45 **INSURANCE LAW UPDATE** – Insurance in the world of construction: What's new and what's coming around the bend?  
Douglas P. Skelley, Austin

- 2:15 **THE ROAD LESS TRAVELED: CURRENT RESIDENTIAL ISSUES AND TOPICS** – An exploration of residential topics that are NOT the RCLA, such as certificates of merit, arbitration appeals, joinder in arbitration, class actions, implied warranties, HOAs, subsequent-purchaser issues, little known RLCA issues (ok, there is some RCLA), and other areas that are off the beaten path.  
Curt M. Covington, Rockwall

- 3:00 **BREAK** – Sponsored by FTI Consulting, Inc.

### CONCURRENT SESSIONS - Choose Sessions A or B

#### Sessions A

- 3:30 **DEALING WITH CONSTRUCTION LENDERS** – We'll explore several issues that come up on financed projects. Lenders require general contractors and design professionals to consent to the owner's collateral assignment of their contracts, which allows the lender to step into the owner's shoes after a default. These documents often include a waiver or subordination of lien rights, agreements to indemnify and name the lender as an additional insured on GL policies or a dual obligee on a P&P bond, and provisions regarding notice and authority for change order approvals, as well as payment after takeover. We'll also review mechanic's lien issues such as priority and removables. Finally, we'll look at some unique situations that arise on HUD-financed projects and on affordable housing projects.  
David Gregorcyk, Austin
- 4:00 **THE ART OF NEGOTIATING CONSTRUCTION & DESIGN CONTRACTS** – Curious how to approach a contract negotiation to protect your client's interest, but also align party expectations and set a project up for success? Learn drafting strategies from a panel representing owner, architect, general contractor, and subcontractor perspectives on provisions such as consequential damage waivers, limitations of liability, indemnities, and dispute resolution.  
Owner: Kristen L. Sherwin, Dallas  
GC: Daniel G. Gurwitz, McAllen  
Sub/Supplier: Cara D. Kennemer, Fort Worth  
Architect: Harrison Trammell, Greenville, SC
- 5:00 **ALLOWANCES AND CONTINGENCIES – WHEN A GMP IS NOT REALLY A GMP** – This presentation will explain the differences between Allowances and Contingencies in construction contracts, why they are important (for both Owners and Contractors), and how they can be used to address uncertainties in pricing that cannot be fixed or capped at the time the GMP is established – without unduly jeopardizing the GMP.  
Robert C. Bass, Jr., Austin

#### Sessions B

- 3:30 **ONE LIE SPOILS A THOUSAND TRUTHS** – Trends and questions in spoliation claims since Brookshire Brothers.  
Hon. Tanya Garrison, Houston
- 4:00 **FROM THE ARBITRATOR'S POINT OF VIEW: EFFECTIVE CONSTRUCTION ARBITRATION PRACTICE TIPS** – Good News! Trying your construction case in arbitration means that you don't have to educate a judge and jury on complicated construction issues! Bad News! You have to educate the arbitrator(s) on complicated construction issues and persuade them that your client is right! Seasoned arbitrators will provide tips and insights on how to effectively present your case in arbitration. The topics will include opening and closing statements, effective use of experts, using witness statements at the final hearing, third-party practice, handling discovery disputes and much more.  
Cindy L. Becker, Austin  
Clayton C. Cannon, Houston  
W. Jerry Hoover, Houston

- 5:00 **CATCH IT WHILE YOU CAN: PRE-JUDGMENT REMEDIES FOR THE CONSTRUCTION LAWYER** – The wheels of justice move slowly, and that can be a problem for a party seeking damages. It could be years before the claimant obtains a judgment and the ability to collect on that judgment. And in the meantime, an unscrupulous defendant could abscond with or liquidate assets. So what is the claimant's attorney to do? Texas law provides a party with multiple pre-judgment remedies, such as writs of sequestration, writs of attachment, writs of garnishment, and injunctive relief. In the right circumstance, a construction lawyer should consider seeking pre-judgment relief to prevent the money from running out the back door.  
Joshua W. Mermis, Houston

- 5:30 **ADJOURN TO RECEPTION** – Sponsored by Interface Consulting International, Inc. & Nelson Forensics, LLC

## FRIDAY, MARCH 3, 2023

*PRESIDING OFFICER: Colbie Brazell Campbell, Dallas*

- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Hill International, Inc.
- 8:30 **LEGISLATIVE UPDATE** – What's happening in the 88th Legislative Session that impacts the construction industry and your practice?  
Cathy L. Altman, Dallas
- 9:00 **WHAT GOES UP MUST COME DOWN... BUT WHAT IF IT DOESN'T?** – Since 2020, COVID-19 impacts worldwide on supply chains have caused all parties involved in construction to experience significant material price escalation, delays and unavailability. This presentation will discuss strategies and considerations for all parties in the construction chain to consider when dealing with these issues and the practical effects of such decisions.  
Timothy C. Ross, Houston
- 9:45 **ROHR SHOCK PART 2: A PRACTICAL GUIDE TO RECOVERING ATTORNEYS' FEES** – Attorneys plead for fees in virtually every construction case, but often spend very little time or thought in preparing their fee claim. Given the high costs of litigation and the heightened standards for fee recovery articulated in Rohrmoos, this is a potentially dangerous practice. But fear not! This session will provide practical advice on preparing a recoverable attorneys' fee claim, including writing time entries, properly redacting bills, techniques for segregating between parties and claims, and more.  
Amy M. Emerson, Austin
- 10:15 **BREAK** – Sponsored by Bryant Consultants, Inc.
- 10:45 **COGNITIVE BIAS IN THE LAW** – Lawyers need to have a broad skill set and, understandably, typically focus on improving their understanding of the law and the best ways to present their case to a judge or jury. However, an overlooked skill all lawyers need is how to properly evaluate their cases. Most cases settle, yet lawyers often allow cognitive biases to adversely impact their case evaluations. We will take a deep dive into various cognitive biases, analyze how they can impact cases, and discuss how best to ensure that you are properly evaluating your litigation risks. Harness psychology to improve your understanding of your case and its proper valuation.  
Steven Schulwolf, Austin
- 1.00 Ethics*
- 11:30 **LUNCHEON** – *Tickets available for \$26 each.*  
**WE ALL NEED SOMEBODY TO "LIEN" ON: A TEXAS LAWYERS' ASSISTANCE PROGRAM ("TLAP") ROUNDTABLE** – This panel will provide an overview and discussion of TLAP's many beneficial services and resources for attorney assistance. The presentation also includes
- 1.00 Ethics*

discussion of the panelists' own personal recovery experiences and solutions implemented as practicing construction lawyers.

Paul S. Jacobs, Austin  
Colbie Brazell Campbell, Dallas  
Steven D. Nelson, Dallas

**PRESIDING OFFICER:** John C. Warren, Houston

**1:15 RAFFLE**

**1:30 I'M LATE, I'M LATE, FOR A VERY IMPORTANT DATE – THE CURRENT LANDSCAPE OF LIQUIDATED DAMAGES** – In this presentation, we go “down the rabbit hole” to discuss liquidated damages claims, including cases addressing the application of the “unbridgeable discrepancy” test, drafting tips for negotiating liquidated damages provisions, and strategy with respect to whether to challenge liquidated damages in litigation.  
John W. Slates, Dallas

**2:15 BREAK** – Sponsored by Bert L. Howe & Associates, Inc.

**2:30 DON'T MAKE IT WORSE – TIPS ON NAVIGATING ETHICAL ISSUES AND LESSENING THE LIKELIHOOD OF MALPRACTICE LIABILITY** – While there are no sure-fire ways to avoid liability, this presentation will touch on practical issues related to interactions with clients, prospective clients, and third parties that can reduce the likelihood of malpractice claims and unfavorable interactions with the Office of Chief Disciplinary Counsel. It will include a discussion of recent ethics opinions and cases that affect lawyer liability.  
Ben Weible, Rockwall

**3:15 ADJOURN**

**PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS**

Gregory M. Cokinos, Cokinos | Young, Houston

**PRESIDING OFFICERS**

Colbie Brazell Campbell, Slates Harwell, LLP, Dallas  
Curt M. Covington, Lamberth Ratcliffe Covington, PLLC, Rockwall  
Stephanie L. O'Rourke, Cokinos | Young, San Antonio  
John C. Warren, Cokinos | Young, Houston

**CONFERENCE FACULTY**

Cathy L. Altman, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas  
Robert C. Bass, Jr., Winstead PC, Austin  
Cindy L. Becker, Dynamic Systems, Inc., Austin  
Colbie Brazell Campbell, Slates Harwell, LLP, Dallas  
Clayton C. Cannon, Cannon Law Firm PLLC, Houston  
Gregory M. Cokinos, Cokinos | Young, Houston  
Curt M. Covington, Lamberth Ratcliffe Covington, PLLC, Rockwall  
Claude E. Ducloux, Law Offices of Claude E. Ducloux, Austin  
Amy M. Emerson, Allensworth Law, Austin  
The Honorable Tanya Garrison, 157th Civil Court of Harris County, Houston  
David Gregorcyk, Journeyman Construction, Inc., Austin  
Daniel G. Gurwitz, Atlas, Hall & Rodriguez LLP, McAllen  
Jerry Hoover, Attorney/Mediator, Houston  
Paul S. Jacobs, Texas Lawyers Assistance Program, Austin  
Cara D. Kennemer, Underwood Law Firm, P.C., Fort Worth  
Joshua W. Mermis, West Mermis PLLC, Houston  
Matthew S.C. Moore, Peckar & Abramson, P.C., Houston  
Steven D. Nelson, Markel Surety, Plano  
Timothy C. Ross, Andrews Myers, P.C., Houston  
Steven Schulwolf, Schulwolf Mediation, PLLC, Austin  
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Douglas P. Skelley, Shidlofsky Law Firm PLLC, Austin  
John W. Slates, Slates Harwell, LLP, Dallas  
Russell W. Smith, Cokinos | Young, Houston  
Eric J. Taube, Waller Lansden Dortch & Davis, LLP, Austin  
Harrison Trammell, M. Arthur Gensler Jr. & Associates, Inc., Austin  
Ben Weible, Lamberth Ratcliffe Covington, PLLC, Rockwall

**HOTEL INFORMATION**

**36th ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 2 & 3, 2023**

*The La Cantera Resort & Spa • 16641 La Cantera Parkway • San Antonio, TX 78256*

The La Cantera Resort & Spa is our host hotel for the conference. As of press time, the group room block was filled to capacity with early-bird registrants but the status changes daily and rooms will only be provided on a space and rate-available basis going forward. If you plan to attend, we encourage you to secure a reservation at a nearby venue as soon as possible. You may then wish to contact The La Cantera Resort directly near the end of January to see if any availability has opened due to cancellations within the room block for the 36th Annual Construction Law Conference. Also note that additional parking areas are being made available at The La Cantera Resort during the conference to better accommodate drive-in attendance.

**REGISTRATION FORM**

**Mail to:** The Construction Law Foundation of Texas  
36th Annual Construction Law Conference  
P.O. Box 4646  
Austin, TX 78765-4646

**Online at:** [www.constructionlawfoundation.org](http://www.constructionlawfoundation.org)

**Fax Form to:** 512/451-2911 (must be accompanied by American  
**or Phone:** 512/451-6960 Express, Visa or MasterCard Information)

**Please register me for the conference as follows:**

- ☐ Regular Pre-Registration Fee (due by 5 p.m. February 17).....\$500.00  
☐ Pre-Registration Fee for Construction Law Section Members.....\$450.00  
(due by 5 p.m. February 17)  
☐ Registration after 5 p.m. February 17 & before 5 p.m. February 22.....\$+250.00  
☐ Door Registration after 5 p.m. February 22 (Available Onsite Only).....\$+250.00  
☐ Construction Law Section Dues (eligible for the member registration fee).....\$ 30.00  
\_\_\_\_ Thursday Luncheon Ticket at \$25 each.....\$ \_\_\_\_  
\_\_\_\_ Friday Luncheon Ticket at \$26 each.....\$ \_\_\_\_  
\_\_\_\_ # of "Folds of Honor" Raffle Tickets\* (\$10 each or 3 for \$25).....\$ \_\_\_\_

- ☐ RSVP for Texas Women's CLG Networking Event on Wednesday, March 1, 2023  
☐ I will play in the Golf Tournament on Wednesday, March 1, 2023  
Green Fee (includes range balls and shared cart).....\$155.00  
My handicap is \_\_\_\_\_. **Required**

**Conference Materials:**

Registrants will automatically receive the electronic USB version of the conference materials. You may also pre-purchase the printed binder version for an additional fee.

- ☐ Add Printed Version (3-Ring Binder) at \$50 + .0825 tax.....\$ 54.13

*I cannot attend the conference. Please forward the following:*

- ☐ Audio Files & Course Materials (On USB Only) at \$450 + .0825 tax.....\$487.13  
☐ Course Materials Only (On USB Only) at \$180 + .0825 tax.....\$194.85

**TOTAL ENCLOSED**.....\$ \_\_\_\_

**No refunds after 5:00 p.m. Friday, February 24, 2023. Cancellation policy on back cover.**  
(Call for Government and Student Discount Information)

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Authorized Signature \_\_\_\_\_

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**36th Annual  
Construction Law Conference**  
**March 2 & 3, 2023**  
**The La Cantera Resort & Spa  
San Antonio, Texas**

**Cover Art** – “Impressions of Jacob's Well” is an original by Julene Franki, former Director, TexasBarCLE and Executive Director, ALI-ABA. You can find more of her work at [www.julene.io](http://www.julene.io).

**\*Folds of Honor Foundation (FOH)** — We are proud to once again partner with Folds of Honor to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit FOH and their mission to provide scholarship assistance to the spouses and children of soldiers killed or wounded in service to our country.

**Special Accommodations** — If special arrangements are required for a person with a disability to attend this program, please contact us at 512/451-6960.

**Section Website** — Visit the Construction Law Section's website at [www.constructionlawsection.org](http://www.constructionlawsection.org) for information on how to join the Section and access past conference materials.

**Pre-Registration** — To ensure sufficient materials are available for all attendees, pre-registration is strongly encouraged. Late and door registrations are subject to additional fees.

**Online Registration** — Visit [www.constructionlawfoundation.org](http://www.constructionlawfoundation.org) to register online using a Visa, MasterCard or American Express.

**Registration by Telephone** — You may register by telephone by calling 512/451-6960 or by fax 512/451-2911. Faxed and phone-in registrations require a Visa, MasterCard or American Express number, expiration date, security code and billing address.

**Cancellations and Refunds** — Refunds, less a \$50.00 processing fee, will be given to registrants who cancel by 5:00 p.m. on the Friday preceding the conference. No refunds will be granted thereafter. Course materials and audio files will automatically be mailed to prepaid registrants who did not receive a refund and were not able to attend.

**2023 PLANNING COMMITTEE**  
**The Construction Law Foundation of Texas Board**

Gregory M. Cokinos, Houston President	Misti L. Beanland, Dallas Treasurer
Thomas J. Walthall, Jr., San Antonio President-Elect	Andrea A. Hight, Dallas Secretary
Stephanie L. O'Rourke, San Antonio Immediate Past President	Donna J. Passons, Austin Executive Director
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This course has been approved for 12.25 hours credit (including 3.75 hours ethics) which will apply toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. You must attend all sessions to receive full credit. MCLE credit is available in other states. Please let us know your needs when you register.

CPAs may obtain approximately 14.70 hours of CPE credit toward licensing with the Texas State Board of Public Accountancy. Sponsor No. 6867.

The Texas Institute of CLE is an accredited sponsor with the Texas Department of Insurance. An application has been submitted for 12.00 hours of General credit (all license types) and 3.5 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.

**Annual Conference Sponsors also include:**

- \* **Flash Drives** – Sponsored by Spire Consulting Group, LLC
- \* **Internet** – Sponsored by Rimkus Consulting Group, Inc.
- \* **Name Badge Lanyards** – Sponsored by Weaver
- \* **Notepads** – Sponsored by Thornton Tomasetti
- \* **Power Strips** – Sponsored by Precision Scheduling Consultants, LLC
- \* **Tote Bags** – Sponsored by Socotec
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FOR MORE INFORMATION ABOUT THIS PROGRAM OR OTHER PROGRAMS OFFERED BY THE TEXAS INSTITUTE OF CLE, PLEASE VISIT [WWW.CLESOLUTIONS.COM](http://WWW.CLESOLUTIONS.COM).