



THE MIDDLE: DISCOVERY

Discovery in construction law is a set of procedures used to gather information and evidence in a court case. Discovery is obtained before the case goes to trial in an effort to gather as much pertinent information as possible that could build a strong case. When discovery is requested within the rules and the time guidelines of the courts of Texas, the responding party must provide the information. There are a few different types of discovery: written discovery, depositions, and examinations of property. I will outline the different types below.

Written Discovery

There are four types of written discovery in a legal case. These documents assist attorneys in finding all relevant facts that could be used in trial, as well as any information about the individuals or companies involved in a case.

First, there are requests for disclosure. These requests permit both sides certain information from the opposing council without an argument over whether or not the information is discoverable or must be provided. There are twelve different categories in a request for disclosure, ranging from the correct names and contact information of each party involved and any theories or facts about faults or defenses, to the amount and calculation of the financial damages, any information on witnesses or experts, and any medical records associated with the case.

Next up are written interrogatories. These are written questions which are required to be responded to in writing, under oath. Generally, each side is permitted 25 questions that dig deeper into facts about the case. Every question must be answered, but each party is able to respond by providing where the answer may be found in public records.

Requests for Production is done for the purpose of requesting any documents and inspecting any tangible things. This could cover anything from emails, letters, bank statements, tax returns, photos, payroll stubs, and more. Responses to these requests are due in 30 days. While you aren't expected to produce any documents that do not exist, you are expected to provide anything requested that you can reasonably obtain.

The last form of written discovery is Request for Admissions. The purpose of these requests is to eliminate matters of which there is no controversy so that the litigation process can be streamlined. The statements cover information about whether you were at the scene of the incident, what your relationship is to the case, and other admit or deny situations related to the incident. These admissions are specific, written questions that must either be admitted or denied. If the requests are not answered within 30 days with either admit, deny, or challenge, then the statements are automatically admitted as true.

Depositions

Depositions are another form of discovery that take place prior to trial in order to gain pertinent facts and information about the case. There are three types of depositions: oral, video, and deposition upon written questions. Specifically, a deposition is an interview of a party involved in a lawsuit. Attorneys depose the opposing parties by asking questions related to the case. Depositions are always recorded and the transcript must be signed off by the deponent as true. Depositions are sworn testimony, meaning that they are made under penalty of perjury and can be used in court. These sessions allow all parties involved to share all important information that will be used if a trial is necessary and to prepare for and assess all aspects of the case. All information related to a case should be shared in a deposition, which encourages settling out of court because each party understands the strengths and weaknesses of its case and therefore can determine their chances of a trial win.



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Examination of Real Property

In many construction law cases, the lawsuit may be due to an accident or a breach of contract at a construction property. In these cases, parties involved need to visit said property in order to assess the situation. In this case, permission needs to be granted for any involved parties to be able to gain access to the property, whether it is a finished building or a construction site. The results of the examination can then be used in the case.

Discovery, though generally a lengthy and tedious process, is an important step in building both sides of a case. Truthful answers and prompt responses are required and can encourage settling out of court, saving both parties time and money.

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