

Of all the states, Texas has the most burdensome and complex lien law scheme. The Texas Constitution, as adopted in 1876, in part, states that “Mechanics, artisans and materialmen, of every class, shall have a lien upon buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor[e]; and the Legislature shall provide by law for speedy and efficient enforcement of said liens.” In line with the Texas Constitution, the Texas Legislature has enacted laws dealing with the statutory lien rights for people furnishing labor and material on private work.

The current lien laws are very difficult for attorneys to understand and nearly impossible for the lay person to understand. For example, the excessive amount of required notices can serve as a trap for honest mistakes which prevent claimants from protecting their lien rights. The lien law has become complex due to the various substantial changes over the past 100+ years.

The Texas lien law system needs to be modernized and simplified so that the construction team on a project will be better able to comply with the law and secure their lien rights. Some of the changes that should be considered include an early notice system that is consistent with many other states, eliminating several confusing concepts unique to Texas, and providing owners, contractors, claimants, lenders, suppliers and title companies with more timely and accessible information regarding projects via an Internet portal. The law should no longer require fund-trapping notices or retainage. This modernization will provide a more reliable close-out procedure which will result in fewer perfected lien claims on projects.