

85R2003 BEE-F

By: Deshotel

H.B. No. 3065

A BILL TO BE ENTITLED

AN ACT

relating to mechanic's, contractor's, or materialman's liens; authorizing a fee; changing the eligibility for community supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3503.051(3), Insurance Code, is amended to read as follows:

(3) "Notice of claim" means a written notification by a claimant who makes a claim for payment from the surety company. The term does not include a routine statutory notice required by [~~Section 53.056(b), 53.057, 53.058, 53.252(b), or 53.253, Property Code, or~~] Section 2253.047, Government Code.

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (12), (13), and (14) and adding Subdivisions (2-a), (3-a), (5-a), (5-b), (5-c), (7-a), and (7-b) to read as follows:

(2) "Improved" means, in reference to real property, having an improvement, as defined by this section.

(2-a) "Improvement" means a house, building, or other improvement to the real property of an owner. The term includes:

(A) improvements constructed adjacent to the real

property under an original contract with the owner, including  
~~[abutting]~~ sidewalks and streets and utilities in or on those  
sidewalks and streets;

(B) clearing, grubbing, draining, or fencing of  
land;

(C) wells, cisterns, tanks, reservoirs, or  
artificial lakes or pools made for supplying or storing water;

(D) pumps, siphons, and windmills or other  
machinery or apparatuses used for raising water for stock, domestic  
use, or irrigation; ~~[and]~~

(E) planting orchard trees, grubbing out orchards  
and replacing trees, and pruning of orchard trees;

(F) levees or embankments erected for the  
reclamation of overflow land along a river or creek; and

(G) railroads.

(3-a) "Lien website" means the Internet website  
established under Subchapter A-1.

(5-a) "Notice of commencement" means a notice described  
by Section 53.125.

(5-b) "Notice of demand" means a notice described by  
Section 53.0521.

(5-c) "Notice of furnishing" is a notice required under  
Section 53.0561.

(7-a) "Owner" means a person who owns any interest in  
real property or an authorized agent, trustee, or receiver of the

person.

(7-b) "Reputed owner" means a person who is:

(A) identified as an owner in a notice of commencement required under this chapter or in an original contract for an improvement; or

(B) generally considered or reputed to be the owner of the real property being improved.

(12) "Specially fabricated material" means material fabricated for use as a component of the construction or repair of an improvement so as to be reasonably unsuitable for use elsewhere.

(13) "Subcontractor" means a person who has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor of any tier to perform all or part of the work required by an original contract.

(14) "Work" means any part of labor done, material furnished, or materials specially fabricated for the construction or repair of an improvement performed under an original contract.

SECTION 3. Section 53.003, Property Code, is amended by amending Subsections (a) and (c) and adding Subsection (e) to read as follows:

(a) This section applies to notices required by this chapter [~~Subchapters B through G and K~~]. In this section, "notice" includes any written communication required under this chapter.

(c) If a notice is sent by registered or certified mail, deposit or mailing of the notice in the United States mail in the

form required constitutes compliance with the notice requirement. The effective date of the notice is the date the notice is deposited in the United States mail. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(e) A notice to an owner may be filed on the lien website under the protocols established for the website for receipt of the notice. A notice may be sent by an owner by filing the notice on the lien website or by e-mail with an electronic record of delivery to the e-mail address provided to the owner in a notice of furnishing by a person required to be provided with the notice. The effective date of the notice is the date the notice is sent to the lien website under the website's protocols or the date the e-mail is sent. An e-mail sent to a recipient is prima facie evidence of delivery of a message to an e-mail address to which it is sent.

SECTION 4. Subchapter A, Chapter 53, Property Code, is amended by adding Section 53.004 to read as follows:

Sec. 53.004. COMPUTATION OF TIME. In computing the period of days in which to provide a notice or to take an action required under this chapter, if the last day of the period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

SECTION 5. Chapter 53, Property Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. LIEN WEBSITE

Sec. 53.011. LIEN WEBSITE. (a) The secretary of state shall establish and maintain a lien website through the state electronic Internet portal, as defined by Section 2054.003, Government Code.

(b) The secretary of state may adopt rules and forms necessary to implement this subchapter.

Sec. 53.012. POSTING ON LIEN WEBSITE. The lien website must provide an online form for each notice or written communication required by this chapter that complies with the content requirements of this chapter for the notice or communication. The lien website must allow a person to electronically obtain a form and post the notice or written communication on the lien website.

Sec. 53.013. SEARCHING LIEN WEBSITE. The lien website must allow a person to search the notices and written communications posted on the website with a full or partial:

(1) owner name;

(2) project name;

(3) project address;

(4) project real property legal description;

(5) original contractor name; or

(6) name of person posting a notice or written communication.

Sec. 53.014. FEES. (a) Notwithstanding Section 2054.2591, Government Code, and except as provided by Subsection (b), the secretary of state may not charge a fee for a person to:

(1) electronically obtain a form or post a notice or written communication on the lien website; or

(2) use the search functions of the lien website.

(b) The secretary of state may charge a fee for a person to post a notice of commencement on the lien website.

SECTION 6. Section 53.021(a), Property Code, is amended to read as follows:

(a) A person has a lien if:

(1) the person labors, specially fabricates material, or furnishes labor or materials for construction or repair in this state of an~~[-~~

~~[(A) a house, building, or] improvement;~~

~~[(B) a levee or embankment to be erected for the reclamation of overflow land along a river or creek; or~~

~~[(C) a railroad;] and~~

(2) the person labors, specially fabricates the material, or furnishes the labor or materials under or arising out ~~[by virtue]~~ of an express ~~[a]~~ contract or contract implied by law between the person and ~~[with]~~ the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

SECTION 7. Section 53.022, Property Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (e) to read as follows:

(a) The lien extends to the interest of the owner or the owner's successor in interest to the real property in the house,

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building, fixtures, or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed.

(b-1) If an improvement is constructed on real property that is adjacent to the real property of the owner who entered into the original contract for the improvements and the adjacent property is not owned by the owner, the lien extends only to the real property of the owner and not to the adjacent property.

(e) A lien arising from work performed on common elements of a condominium governed by Chapter 81 or 82 extends to each unit owning an interest in the common elements being improved, and is apportioned based on the relative ownership interests of each unit in the common elements being improved, if:

(1) the inception of the lien is after the date the declaration establishing the condominium was recorded; and

(2) the work was performed under a contract with the council of owners, the unit owners' association of the condominium, or all of the owners of the units owning an interest in the common elements being improved.

SECTION 8. Section 53.024, Property Code, is amended to read as follows:

Sec. 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN. The amount of a lien claimed by a subcontractor may not exceed:

(1) an amount equal to the proportion of the total subcontract price, including all additional amounts to which the

subcontractor is entitled as an adjustment to the subcontract, that the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs incurred, and proportionate profit margin bears to the total subcontract price; minus

(2) the sum of previous payments received by the claimant on the subcontract.

SECTION 9. Section 53.026(a), Property Code, is amended to read as follows:

(a) Except as provided by Section 53.0561, a [A] person who labors, specially fabricates materials, or furnishes labor or materials under a direct contractual relationship with another person is considered to be in direct contractual relationship with the owner and has a lien as an original contractor, if:

(1) the owner [~~contracted with the other person for the construction or repair of a house, building, or improvements and the owner~~] can effectively control that other person or that other person can effectively control the owner through ownership of voting stock, interlocking directorships, or otherwise; or

(2) the owner contracted with the other person for the construction or repair of a house, building, or improvements [~~and that other person can effectively control the owner through ownership of voting stock, interlocking directorships, or otherwise; or~~

~~[(3) the owner contracted with the other person for the~~

~~construction or repair of a house, building, or improvements]~~ and the contract was made without good faith intention of the parties that the other person was to perform the contract.

SECTION 10. Section 53.052, Property Code, is amended to read as follows:

Sec. 53.052. FILING OF LIEN CLAIM AFFIDAVIT. (a) Except as provided by Subsection (b) or Section 53.0521, an original contractor or subcontractor ~~[the person]~~ claiming a lien under this chapter must file a lien claim ~~[an]~~ affidavit as provided by Subsection (c) ~~[with the county clerk of the county in which the property is located or into which the railroad extends]~~ not later than the 15th day of the fourth calendar month after the date the work under the original contract is completed or the original contract is terminated ~~[day on which the indebtedness accrues]~~.

(b) Except as provided by Section 53.0521, an original contractor or subcontractor ~~[A person]~~ claiming a lien on ~~[arising from]~~ a residential construction project must file a lien claim ~~[an]~~ affidavit as provided by Subsection (c) ~~[with the county clerk of the county in which the property is located]~~ not later than the 15th day of the third calendar month after the date the work under the original contract is completed or the original contract is terminated ~~[day on which the indebtedness accrues]~~.

(c) A lien claim affidavit must be filed with the county clerk of the county in which the property is located or into which

the railroad extends. The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

(d) For purposes of this section, an original contract is terminated on the date an owner posts a notice of termination on the lien website. If a notice of commencement has not been filed and posted as required by Section 53.125, the owner must send a notice of termination to each person who has filed a notice of furnishing.

SECTION 11. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.0521 to read as follows:

Sec. 53.0521. NOTICE OF DEMAND. (a) If work under an original contract has been completed or the original contract has been terminated, an owner may send a notice of demand to the original contractor or subcontractor requesting the contractor or subcontractor to file a lien claim affidavit. If the notice is based on the termination of the original contract, the notice must state that the original contract was terminated and the date of the termination. An owner may not send the notice before the original contract has been terminated. A notice sent before work under the original contract has been completed is effective only as to a claimant that has completed the claimant's work and is void as to any other claimant.

(b) For purposes of this section, an original contract is terminated on the date an owner posts a notice of termination on the lien website. If a notice of commencement has not been filed and posted as required by Section 53.125, the owner must send a notice of termination to each person who has filed a notice of furnishing.

(c) Notwithstanding Section 53.003, a notice of demand must be sent by registered or certified mail to a subcontractor at the subcontractor's address provided by the notice of furnishing or to an original contractor at the original contractor's last known address.

(d) If an owner sends a notice of demand, a claimant that has completed the claimant's work must, not later than the 30th day after the date the notice of demand is sent, file a lien claim affidavit for a claim the claimant has not included in a previously filed lien claim affidavit.

(e) A claimant that has not completed the claimant's work on the date the owner sends a notice of demand must file a lien claim affidavit as provided by Section 53.052(a) or (b), as applicable.

(f) An original contractor or subcontractor waives any statutory lien rights that have not been perfected if the contractor or subcontractor does not comply with this section.

(g) A notice of demand must be conspicuously printed in bold type and in all capital letters not smaller than 10-point type and must state the following:

"NOTICE OF DEMAND

"WARNING: THIS NOTICE BRIEFLY SUMMARIZES LEGAL REQUIREMENTS STATED BY SECTION 53.0521, PROPERTY CODE. YOU SHOULD CONSULT AN ATTORNEY TO FULLY UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

"THE OWNER IS DEMANDING THAT YOU FILE A LIEN CLAIM AFFIDAVIT NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO YOU. IF THE ORIGINAL CONTRACT HAS BEEN TERMINATED OR IF YOU HAVE COMPLETED YOUR WORK, YOU ARE REQUIRED, NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO YOU, TO FILE YOUR LIEN CLAIM AFFIDAVIT FOR ANY CLAIMS YOU HAVE NOT INCLUDED IN A LIEN CLAIM AFFIDAVIT YOU HAVE PREVIOUSLY FILED OR YOU MAY LOSE ANY STATUTORY LIEN RIGHTS THAT YOU HAVE NOT PREVIOUSLY PERFECTED.

"IF THE ORIGINAL CONTRACT IS NOT TERMINATED OR YOU HAVE NOT COMPLETED YOUR WORK, THE DEADLINE TO FILE YOUR LIEN CLAIM AFFIDAVIT IS PROVIDED BY SECTION 53.052(a) OR (b), PROPERTY CODE."

SECTION 12. The heading to Section 53.054, Property Code, is amended to read as follows:

Sec. 53.054. CONTENTS OF LIEN CLAIM AFFIDAVIT.

SECTION 13. Section 53.054, Property Code, is amended by amending Subsections (a) and (c) to read as follows:

(a) The lien claim affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

- (1) a sworn statement of the amount of the claim;
- (2) the name and last known address of the owner or

reputed owner;

(3) a general statement of the kind of work done and materials furnished by the claimant [~~and, for a claimant other than an original contractor, a statement of each month in which the work was done and materials furnished for which payment is requested~~];

(4) the name and last known address of the person by whom the claimant was employed or to whom the claimant furnished the materials or labor;

(5) the name and last known address of the original contractor;

(6) a description, legally sufficient for identification, of the property sought to be charged with the lien;

(7) the claimant's name, mailing address, and, if different, physical address; and

(8) for a claimant other than an original contractor, a statement identifying the date each notice of furnishing [~~the claim~~] was sent to the owner [~~and the method by which the notice was sent~~].

(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any broad descriptive terms, abbreviations, or symbols customary in the trade to describe the work done or material furnished.

SECTION 14. Section 53.055, Property Code, is amended to read as follows:

Sec. 53.055. NOTICE OF FILED LIEN CLAIM AFFIDAVIT. (a) A person who files a lien claim ~~[an]~~ affidavit must send a copy of the affidavit by registered or certified mail to the owner or reputed owner at the owner's last known business or residence address or file a copy with the lien website not later than the 10th ~~[fifth]~~ day after the date the affidavit is filed with the county clerk.

(b) If the person is not an original contractor, and the person has not filed a copy of the affidavit with the lien website under Subsection (a), the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address in ~~[within]~~ the same manner and time that the affidavit must be sent to the owner under Subsection (a) ~~[period]~~.

SECTION 15. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.0561 to read as follows:

Sec. 53.0561. NOTICE OF FURNISHING. (a) A person who contracts with a person other than the owner and who has a lien as an original contractor under Section 53.026(a) must give a notice of furnishing to the owner or reputed owner for the lien to be valid. A claimant other than an original contractor must give a notice of furnishing to the owner or reputed owner and the original contractor for the claimant's lien to be valid.

(b) The notice of furnishing must include:

(1) a general description of the labor or material

furnished or to be furnished by the claimant and, for specially fabricated material, a separate description of the specially fabricated material, that may include a list of individual items of work or material or use terms, abbreviations, or symbols customary in the trade;

(2) the name, address, and telephone number of the claimant;

(3) the e-mail address of the claimant, if the claimant wants to receive notices of filings on the lien website;

(4) the name, address, and telephone number of the person with whom the claimant contracted to furnish the labor or material;

(5) a legal description, street address, or other description that identifies the real property to which the labor or material was furnished or will be furnished; and

(6) a conspicuous statement in bold type as follows:

"THIS IS NOT A LIEN OR A CLAIM FOR A LIEN. THIS IS ONLY A NOTICE TO THE OWNER THAT A CONTRACTOR IS FURNISHING OR INTENDS TO FURNISH LABOR OR MATERIAL TO THE PROJECT. THIS NOTICE IS REQUIRED TO PRESERVE THE CONTRACTOR'S LIEN RIGHTS UNDER CHAPTER 53, PROPERTY CODE."

(c) Except as provided by Subsection (d), the notice of furnishing does not preserve a lien right for labor performed or material furnished or specially fabricated earlier than 45 days before the date the notice is provided as required by this section.

(d) If the owner has filed and posted a notice of commencement as required by Section 53.125 before the subcontractor begins performing labor or furnishing or specially fabricating material, the notice of furnishing does not preserve a lien right for labor performed or material furnished or specially fabricated by the subcontractor earlier than 15 days before the date the notice of furnishing is provided.

(e) Only one notice of furnishing to an owner is required for all labor or material furnished or to be furnished by each subcontractor. If a subcontractor contracts to perform work for the improvement of the owner's property under more than one original contract, the subcontractor must identify each original contract in the notice of furnishing or must furnish separate notices of furnishing for each original contract.

(f) The notice of furnishing is not invalid if, after the date of the notice, the subcontractor furnishes labor or material that is not within the scope of the notice's general description of the labor and material furnished or to be furnished.

(g) A notice of furnishing that does not include the subcontractor's e-mail address is not invalid.

SECTION 16. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.059 to read as follows:

Sec. 53.059. NOTICE OF COMPLETION. (a) If an owner has filed or has posted on the lien website a notice of commencement as required by Section 53.125 and the work under an original contract

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has been completed or the original contract has been terminated,  
the owner may file a notice of completion with the county clerk of  
the county in which the owner's property is located and post the  
notice on the lien website. The notice must contain:

(1) the name and address of the owner;

(2) the name and address of each original contractor  
covered by the notice;

(3) a description, legally sufficient for  
identification, of the real property on which the improvements are  
located;

(4) a description of the work furnished under an  
original contract covered by the notice;

(5) a statement that the work under an original contract  
covered by the notice has been completed or that the original  
contract was terminated; and

(6) the date of the completion or termination.

(b) Not later than the 10th day after the notice of  
completion is posted on the lien website, the owner must send a  
copy of the notice:

(1) to each original contractor identified in the  
notice; and

(2) by e-mail to each claimant that has sent a notice of  
furnishing to the owner and has provided an e-mail address to the  
owner.

(c) For purposes of Section 53.052, the later of the date the

notice of completion is filed or the date the notice is posted on the lien website is considered the date the work under an original contract identified in the notice is completed or the original contract is terminated. This subsection does not apply to a person to whom the notice of completion was not sent as required by this section.

(d) Except as provided by Subsection (e), the notice of completion must contain the following statement in bold type in all capital letters:

"A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH DAY OF THE FOURTH MONTH AFTER THE DATE OF COMPLETION OF THE WORK."

(e) The notice of completion for a residential construction project must contain the following statement in bold type in all capital letters:

"A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH AFTER THE DATE OF COMPLETION OF THE WORK."

SECTION 17. Section 53.081, Property Code, is amended to read as follows:

Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF CLAIMANTS. ~~[(a)]~~ If a lien claim affidavit is filed by a subcontractor or if an owner receives notice under Section 53.055 [53.056, 53.057, 53.058, 53.252, or 53.253], the owner may withhold from payments due or to become due to the original contractor an

amount necessary to pay the claim stated in the lien claim affidavit, except to the extent that the owner is already withholding payment for the amount of the claim from the original contractor as retainage or otherwise [~~for which he receives notice~~].

~~[(b) If notice is sent in a form that substantially complies with Section 53.056 or 53.252, the owner may withhold the funds immediately on receipt of the notice.]~~

~~[(c) If notice is sent under Section 53.057, the owner may withhold funds immediately on receipt of a copy of the claimant's affidavit prepared in accordance with Sections 53.052 through 53.055.]~~

~~[(d) If notice is sent under Section 53.058, the owner may withhold funds immediately on receipt of the notices sent under Subsection (c) of that section. If notice is sent as provided by Section 53.253(b), the owner may withhold funds immediately on receipt of the notice sent as required by Section 53.252.]~~

SECTION 18. Section 53.082, Property Code, is amended to read as follows:

Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. The owner may retain funds under Section 53.081 until [~~Unless~~] payment is made under Section 53.0831 [~~53.083~~] or the claim is otherwise settled or [~~7~~] discharged [~~, indemnified against~~] under Section 53.157 [~~Subchapter H or I, 7~~] or determined to be invalid by a final judgment of a court[~~, the owner shall retain the funds withheld~~

until:

~~[(1) the time for filing the affidavit of mechanic's lien has passed; or~~

~~[(2) if a lien affidavit has been filed, until the lien claim has been satisfied or released].~~

SECTION 19. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.0831 to read as follows:

Sec. 53.0831. DEMAND FOR NOTICE OF DISPUTE; PAYMENT OF CLAIM.

(a) If a lien claim affidavit is filed by a claimant, the owner may demand in writing that the original contractor notify the owner of whether the original contractor intends to dispute the claim. The owner shall send a copy of the demand to the claimant and shall furnish the original contractor with a copy of the lien claim affidavit.

(b) If the original contractor does not give the owner and the claimant written notice of the original contractor's intent to dispute the claim before the 30th day after the date of receipt of the demand, the original contractor is considered to agree to the demand and the owner may pay the claim when the claim becomes due.

SECTION 20. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.0841 to read as follows:

Sec. 53.0841. PERSONAL LIABILITY FOR LIENS. (a) Except as provided by Subsection (b), an owner is personally liable for the aggregate amount of the liens perfected on the owner's property under this chapter. An owner's personal liability is not affected

by a subsequent foreclosure or other transfer of the owner's interest in all or part of the property.

(b) Subject to Section 53.122(b), the aggregate amount of liens of the original contractor and the subcontractors may not exceed the contract price of the original contract, as may be modified, for the work. Duplicated claims asserted by claimants within the same chain of contract may not be added more than once in determining the aggregate amount of liens. For purposes of this section, a payment by the owner to the original contractor does not reduce the aggregate liability of the owner for liens.

(c) A purchaser of property subject to a lien claim under this chapter is not personally liable for the lien claim in a foreclosure action brought by a claimant, except the purchaser may be held liable for costs and attorney's fees awarded under Section 53.156.

SECTION 21. The heading to Section 53.085, Property Code, is amended to read as follows:

Sec. 53.085. BILLS-PAID AFFIDAVIT REQUIRED.

SECTION 22. Section 53.085, Property Code, is amended by amending Subsections (a), (b), (c), and (d) to read as follows:

(a) Any person who performs work [~~furnishes labor or materials for the construction of improvements on real property~~] shall, if requested and as a condition of payment for such work [~~labor or materials~~], provide to the requesting party, or the party's agent, a bills-paid [~~an~~] affidavit acknowledging the amount

claimed for payment and stating that the person has paid each of the person's subcontractors, laborers, or materialmen in full for all labor and materials provided to the person for the construction. In the event, however, that the person has not paid each of the person's subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each subcontractor, laborer, or materialman to whom the payment is owed.

(b) The seller of any real property shall, upon request by the purchaser or the purchaser's agent prior to closing of the purchase of the real property, provide to the purchaser or the purchaser's agent, a written affidavit stating that the seller has paid each of the seller's contractors, laborers, or materialmen in full for all labor done and materials provided to the seller through the date specified in the affidavit for any construction or repair of improvements on the real property and that the seller is not indebted to any person, firm, or corporation by reason of any such construction or repair through the date specified in the affidavit. In the event that the seller has not paid each of the seller's contractors, laborers, or materialmen in full for labor done and material provided through the date specified in the affidavit, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each contractor, laborer, or materialman to whom the payment is owed.

(c) The affidavit may include:

(1) a waiver or release of lien rights or payment bond claims by the affiant that is conditioned on the receipt of actual payment or collection of funds when payment is made by check or draft, as provided by Subchapter L;

(2) a warranty or representation that certain bills or classes of bills will be paid by the affiant from funds paid in reliance on the affidavit and an identification of the specific bills that the affiant will not pay from the fund; and

(3) an indemnification by the affiant for any loss or expense resulting from false or incorrect information in the affidavit.

(d) A person, including a seller, commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed \$4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. [~~A person may not receive community supervision for the offense.~~]

SECTION 23. Section 53.122(a), Property Code, is amended to read as follows:

(a) Perfected [~~Except as provided by Subchapter E and Section 53.124(e), perfected~~] mechanic's liens that have the same inception date are on equal footing without reference to the date of filing

the lien claim affidavit [~~claiming the lien~~].

SECTION 24. Section 53.124, Property Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (f) to read as follows:

(a) Except as provided by Subsection (c) or (e), for purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction or repair of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.

(c) The later of the date the notice of commencement is filed or is posted on the lien website is the time of inception of a mechanic's lien for the work or material described by the notice that is performed or furnished on or after the later of the date the notice is filed or posted. For work or material performed or furnished before the date a notice of commencement is filed or posted and for work excluded by the notice of commencement, the time of inception of a mechanic's lien is provided by Subsection (a). For work under an original contract entered into after a notice of completion is filed and posted under Section 53.059, the time of inception of a mechanic's lien is the date provided by Subsection (a) or the date a new notice of commencement is posted.

~~[An owner and original contractor may jointly file an affidavit of commencement with the county clerk of the county in which the land is located not later than the 30th day after the date of actual commencement of construction of the improvements or delivery of~~

~~materials to the land. The affidavit must contain:~~

~~[(1) the name and address of the owner;~~

~~[(2) the name and address of each original contractor, known at the time to the owner, that is furnishing labor, service, or materials for the construction of the improvements;~~

~~[(3) a description, legally sufficient for identification, of the property being improved;~~

~~[(4) the date the work actually commenced; and~~

~~[(5) a general description of the improvement.]~~

(d) If a lien, encumbrance, or mortgage securing an interest in the land is filed with the county clerk on or before the date the notice is posted, the lien, encumbrance, or mortgage has priority over a mechanic's lien with a time of inception that is the date of the notice, regardless of the order in which the instruments are filed with the county clerk. [An affidavit filed in compliance with this section is prima facie evidence of the date of the commencement of the improvement described in the affidavit. The time of inception of a mechanic's lien arising from work described in an affidavit of commencement is the date of commencement of the work stated in the affidavit.]

(e) The time of inception of a lien that is created under Section 53.021(c)[, (d), or (e)] is the date of recording of a lien claim [an] affidavit [of lien] under Section 53.052. The priority of a lien claimed by a person entitled to a lien under Section 53.021(c)[, (d), or (e)] with respect to other mechanic's liens is

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determined by the date of recording. A lien created under Section 53.021(c)[~~, (d), or (e)~~] is not valid or enforceable against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.

(f) Unless the landscaping work for which a person may have a lien under Section 53.021(d) or the demolition services for which a person may have a lien under Section 53.021(e) are included in a notice of commencement, the time of inception of a lien under Section 53.021(d) or (e) is the date of recording of a lien claim affidavit under Section 53.052, and priority is determined by the date of recording. Except as provided by this subsection, a lien created under Section 53.021(d) or (e) is not valid against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.

SECTION 25. Subchapter F, Chapter 53, Property Code, is amended by adding Section 53.125 to read as follows:

Sec. 53.125. NOTICE OF COMMENCEMENT. (a) An owner must file a notice of commencement with the county clerk of the county in which the real property being improved under an original contract is located and post the notice on the lien website. The notice must be acknowledged and be in a form that substantially complies with the following:

"NOTICE OF COMMENCEMENT

"Improvements will be made to certain real property, and in accordance with Chapter 53, Property Code, the following

information is provided by this notice of commencement:

"(1) Legal description and, if applicable, street address of property: \_\_\_\_\_.

"(2) Brief description of work to be performed or materials to be furnished: \_\_\_\_\_.

"(3) Work or materials not included in this notice of commencement: \_\_\_\_\_.

"(4) Owner information or lessee information if the lessee contracted for the work:

(A) Name and address: \_\_\_\_\_.

(B) Interest in property (check appropriate box):

Fee simple title

Lease

Other (explain): \_\_\_\_\_.

(C) Name and address of fee simple titleholder to property (if different from owner listed above): \_\_\_\_\_.

"(5) Original contractor(s) for work or designated portions of the work (repeat as necessary):

(A) Name and address: \_\_\_\_\_.

(B) Contractor's phone number: \_\_\_\_\_.

"(6) Surety or sureties for original contractor (if applicable, a copy of the payment bond is attached):

(A) Name and address: \_\_\_\_\_.

(B) Phone number: \_\_\_\_\_.

"(7) Lender(s) providing financing for the work that is

securing a mortgage on or a security interest in the property

(repeat as necessary):

(A) Name and address: \_\_\_\_\_.

(B) Lender's phone number: \_\_\_\_\_.

"(8) Secretary of state's lien website address:

\_\_\_\_\_.

"Date: \_\_\_\_\_

"\_\_\_\_\_ (Owner name)

"By: \_\_\_\_\_ (Signature)

"(Insert acknowledgment)."

(b) Incorrect information contained in the notice of commencement furnished by an owner does not adversely affect the rights of a lien claimant reasonably relying on the information against the owner or the property of the owner. If a subcontractor performs labor or furnishes materials or specially fabricated materials described by the notice of commencement and the notice of commencement does not identify the original contractor under which the labor was performed or materials were furnished or specially fabricated at the time the subcontractor first performs the labor or furnishes or specially fabricates the materials, the notice of furnishing by the subcontractor preserves the lien claimant's rights for the period provided by Section 53.0561(c).

(c) The owner shall send a copy of the notice of commencement to each subcontractor not later than the fifth day after the date the owner receives a written request for a copy from the

subcontractor, unless the subcontractor has received a physical copy of the notice.

(d) Unless a notice of commencement has been filed and posted as required by this section, a subcontractor who has not received a physical copy of the notice may request in writing a copy from the original contractor or a subcontractor with whom the requesting subcontractor has privity of contract. If the original contractor or subcontractor has a copy of the notice, the original contractor or subcontractor shall send a copy of the notice to the requesting subcontractor not later than the fifth day after the date of receipt of the written request. If the requesting subcontractor does not receive a copy of the notice as required by this section, the person failing to send the copy under this subsection is liable to the requesting subcontractor for all actual expenses reasonably incurred by the requesting subcontractor in obtaining the information that would have been contained in the notice.

(e) A notice of commencement posted on the lien website may be amended by the owner by sending the amended notice to the lien website. The effective date of the amended notice is the date the amended notice is posted on the lien website. The owner shall send notice of the amended notice to contractors who have sent a notice of furnishing to the owner before the effective date of the amended notice of commencement.

SECTION 26. Section 53.151(b), Property Code, is amended to read as follows:

(b) A surety issuing a payment bond or performance bond in connection with the work [~~improvements~~] has a priority claim over other creditors of its principal to contract funds to the extent of any loss it suffers or incurs. That priority does not excuse the surety from paying any obligations that it may have under its payment bonds.

SECTION 27. Section 53.153(a), Property Code, is amended to read as follows:

(a) If an affidavit claiming a mechanic's lien is filed by a person other than the original contractor, the original contractor shall defend at the original contractor's [~~his~~] own expense a suit brought on the claim unless the owner is in breach of the owner's contractual obligations to the original contractor under the original contract.

SECTION 28. Section 53.154, Property Code, is amended to read as follows:

Sec. 53.154. FORECLOSURE. (a) A mechanic's lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(b) A suit to foreclose the lien must be brought in a court of competent jurisdiction in the county in which the real property that is subject to the lien is located.

SECTION 29. Section 53.157, Property Code, is amended to read as follows:

Sec. 53.157. DISCHARGE OF LIEN. A mechanic's lien or affidavit claiming a mechanic's lien filed under Section 53.052 may be discharged of record by:

(1) recording a lien release signed by the claimant under Section 53.152;

(2) failing to institute suit to foreclose the lien [~~in the county in which the property is located~~] within the period prescribed by Section 53.158, 53.175, or 53.208;

(3) recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction providing for the discharge;

(4) filing the bond and notice in compliance with Subchapter H;

(5) filing the bond in compliance with Subchapter I; or

(6) recording a certified copy of the order removing the lien under Section 53.160 and a certificate from the clerk of the court that states that no bond or deposit as described by Section 53.161 was filed by the claimant within 30 days after the date the order was entered.

SECTION 30. Section 53.158, Property Code, is amended to read as follows:

Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN. (a) Except as provided by Subsection (b), suit must be brought to foreclose the lien not later than the first anniversary of [~~within two years after~~] the last date [~~day~~] a claimant may file the lien

claim affidavit under Section 53.052 [~~or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later~~].

(b) The period of limitations under Subsection (a) may be extended to not later than the second anniversary of the last date the claimant may file the affidavit if the claimant enters into a written agreement with the then current record owner of the property to extend the period and files the written agreement with the clerk of the county where all or part of the property is located before the expiration of the period provided by Subsection (a). [~~For a claim arising from a residential construction project, suit must be brought to foreclose the lien within one year after the last day a claimant may file a lien affidavit under Section 53.052 or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later.~~]

SECTION 31. Section 53.159, Property Code, is amended by amending Subsections (a), (b), (c), (d), and (f) to read as follows:

(a) If a notice of commencement has not been filed and posted as required by Section 53.125, an [An] owner, on written request, shall furnish the following information within a reasonable time, but not later than the 10th day after the date the request is received, to any person furnishing labor or materials for the

project:

(1) a description of the real property being improved legally sufficient to identify it;

(2) whether there is a surety bond and if so, the name and last known address of the surety and a copy of the bond;

(3) whether there are any prior recorded liens or security interests on the real property being improved and if so, the name and address of the person having the lien or security interest; and

(4) the date on which the original contract for the project was executed.

(b) If a notice of commencement has not been filed and posted as required by Section 53.125, an [An] original contractor, on written request by a person who furnished work under the original contract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of the person to whom the original contractor furnished labor or materials for the construction project;

(2) whether the original contractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond; and

(3) the date on which the original contract for the

project was executed.

(c) A subcontractor, on written request by an owner of the property being improved, the original contractor, a surety on a bond covering the original contract, or any person furnishing work under the subcontract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of each person from whom the subcontractor purchased labor or materials for the construction project, other than those materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials for the construction project; [~~and~~]

(3) whether the subcontractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond; and

(4) the date the subcontractor first performed labor, furnished materials, or specially fabricated materials for the construction project for which any claim for payment is being sought.

(d) Not later than the 30th day after the date a written request is received from the owner, the contractor under whom a claim of lien or under whom a bond is made, or a surety on a bond

on which a claim is made, a claimant for a lien or under a bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. [~~If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.~~]

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section not posted on the lien website is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

SECTION 32. Section 53.160, Property Code, is amended by amending Subsections (b) and (c) to read as follows:

(b) The grounds for objecting to the validity or enforceability of the claim or lien for purposes of the motion are limited to the following:

(1) notice of furnishing [~~claim~~] was not furnished to the owner or original contractor as required by Section 53.0561 [~~53.056, 53.057, 53.058, 53.252, or 53.253~~];

(2) a lien claim [~~an~~] affidavit [~~claiming a lien~~] failed to comply with Section 53.054 or was not filed as required by Section 53.052;

(3) notice of the filed lien claim affidavit was not

furnished to the owner or original contractor as required by Section 53.055 and the owner or original contractor was materially prejudiced by the violation;

~~(4) [the deadlines for perfecting a lien claim for retainage under this chapter have expired and the owner complied with the requirements of Section 53.101 and paid the retainage and all other funds owed to the original contractor before:~~

~~[(A) the claimant perfected the lien claim; and~~

~~[(B) the owner received a notice of the claim as required by this chapter;~~

~~[(5) all funds subject to the notice of a claim to the owner and a notice regarding the retainage have been deposited in the registry of the court and the owner has no additional liability to the claimant;~~

~~[(6)] when the lien claim affidavit was filed on homestead property:~~

~~(A) no contract was executed or filed as required by Section 53.254; or~~

~~(B) the lien claim affidavit [claiming a lien] failed to contain the notice as required by Section 53.254; [~~or~~~~

~~[(C) the notice of the claim failed to include the statement required by Section 53.254;] and~~

~~(5) [(7)] the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit.~~

(c) The claimant is not required to file a response. The

claimant and any other party that has appeared in the proceeding must be notified not later than the 21st day [~~by at least 21 days~~] before the date of the hearing on the motion. A motion may not be heard before the 21st day after the date the claimant answers or appears in the proceeding.

SECTION 33. Section 53.161(f), Property Code, is amended to read as follows:

(f) If the claimant fails to file the bond or the deposit in lieu of the bond in compliance with this section, the owner may file:

(1) a certified copy of the order; and

(2) a certificate from the clerk of the court stating

that:

(A) no bond or deposit in lieu of the bond was filed before the later of:

(i) the 30th day [~~within 30 days~~] after the date the order was entered by the court; or

(ii) the date ordered by the court under Subsection (b); and

(B) no order staying the order to remove the lien was entered by the court.

SECTION 34. Section 53.172, Property Code, is amended to read as follows:

Sec. 53.172. BOND REQUIREMENTS. The bond must:

(1) describe the property on which the liens are

claimed;

(2) refer to each lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the liens referred to in the bond unless the total amount claimed in the liens exceeds \$60,000 [~~\$40,000~~], in which case the bond must be in an amount that is the greater of 1-1/2 times the amount of the liens or the sum of \$60,000 [~~\$40,000~~] and the amount of the liens;

(4) be payable to the parties claiming the liens;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized and admitted to do business under the law in this state and licensed by this state to execute the bond as surety, subject to Section 3503.005, Insurance Code [~~1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19 1, Vernon's Texas Insurance Code)~~]; and

(6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount that the named obligees would have been entitled to recover if their claims had been proved to be valid and enforceable liens on the property.

SECTION 35. Section 53.201(b), Property Code, is amended to read as follows:

(b) If a valid bond is filed, a claimant may not file suit

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against the owner or the owner's property and the owner is not  
authorized to withhold funds or pay a claimant on demand [~~relieved~~  
~~of obligations~~] under Subchapter D [~~or E~~].

SECTION 36. Section 53.202, Property Code, is amended to read  
as follows:

Sec. 53.202. BOND REQUIREMENTS. The bond must:

(1) be in a penal sum at least equal to the total of the  
original contract amount;

(2) be in favor of the owner;

(3) have the written approval of the owner endorsed on  
it;

(4) be executed by:

(A) the original contractor as principal; and

(B) a corporate surety authorized and admitted to  
do business in this state and licensed by this state to execute  
bonds as surety, subject to Section 3503.005, Insurance Code [~~1,~~  
~~Chapter 87, Acts of the 56th Legislature, Regular Session, 1959~~  
~~(Article 7.19 1, Vernon's Texas Insurance Code)~~];

(5) be conditioned on prompt payment for all labor,  
subcontracts, materials, specially fabricated materials, and normal  
and usual extras not exceeding 15 percent of the contract price;  
and

(6) clearly and prominently display on the bond or on an  
attachment to the bond:

(A) the name, mailing address, physical address,

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and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

SECTION 37. Section 53.206, Property Code, is amended by amending Subsections (a) and (b) to read as follows:

(a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C or K for fixing a lien, a person must:

(1) give to the original contractor a notice of furnishing, unless the person has contracted directly with the original contractor [~~all applicable notices under the appropriate subchapter~~]; and

(2) give to the surety on the bond a written notice of the amount and nature of the claim and a copy of the notice to the original contractor within the time period required for filing a lien claim affidavit under Section 53.052 [~~, instead of the owner, all notices under the appropriate subchapter required to be given to the owner~~].

(b) To perfect a claim under this section, a person is not required to [+]

~~[(1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;~~

~~[(2) give notice to the surety under Section 53.058(b) or, if the claim relates to a residential construction project, under Section 53.253(c); or~~

~~[(3)] file any affidavit with the county clerk.~~

SECTION 38. Section 53.255(b), Property Code, is amended to read as follows:

(b) The disclosure statement must read substantially similar to the following:

"KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

"CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

"KNOW YOUR CONTRACTOR. Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the

type and size of construction project on your property.

"GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including [~~provisions for statutory retainage and~~] conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

"READ BEFORE YOU SIGN. Do not sign any document before you have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT. Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

"GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

"MONITOR THE WORK. Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

"MONITOR PAYMENTS. If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payment from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

"CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may be [~~become~~] liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To minimize your [~~avoid~~] liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier that describes the labor or materials to be furnished for your improvements (referred to as a "notice of furnishing"), you should keep that notice in a safe place for at least four months after the completion of your improvements [~~, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved~~]. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice of furnishing to your lender [~~and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold~~]. Confirm that your contractor has received a copy of each notice of furnishing.

(2) As a condition to each payment to be made to the

contractor, including the final payment, you may require the contractor to furnish a lien waiver from each subcontractor or supplier who sent a notice of furnishing, conditioned only on receipt of payment to the subcontractor in the amount specified by the lien waiver. The lien waiver should be in the form required by statute (Chapter 53, Property Code). [~~During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as "statutory retainage." If you choose not to withhold the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to withhold.~~]

"If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located.

A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

"SOME CLAIMS MAY NOT BE VALID. When [~~you receive a written notice of a claim or when~~] a mechanic's lien affidavit is filed on

your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. In order to perfect a valid lien, [A notice of a claim by] a subcontractor or supplier is required to send you a notice of furnishing and a copy of the subcontractor's or supplier's recorded [be sent, and the] mechanic's lien affidavit [is required to be filed,] within strict time periods. The notice of furnishing and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If your property is a homestead and you did not enter into a written contract with your contractor that complies with the statutory requirements for a lien on a homestead, your contractor, the subcontractor, or the supplier may not claim a valid lien on your property. [If you have paid the contractor in full before receiving a notice of a claim and have fully complied with the law regarding statutory retainage, you may not be liable for that claim.] Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

"OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. ~~[When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant.]~~ You can ~~[also]~~ reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you

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with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

"OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement."

SECTION 39. Section 53.259, Property Code, is amended by amending Subsections (a) and (c) to read as follows:

(a) As a condition of final payment under a residential construction contract, the original contractor shall, at the time the final payment is tendered, execute and deliver to the owner, or the owner's agent, an affidavit acknowledging the amount claimed for payment and stating that the original contractor has paid each

person in full for all labor and materials used in the construction of improvements on the real property. If the original contractor has not paid each person in full, the original contractor shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

(c) A person commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed \$4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. ~~[A person may not receive community supervision for the offense.]~~

SECTION 40. Section 53.281, Property Code, is amended to read as follows:

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) Except as provided by Section 53.287, any ~~[Any]~~ waiver and release of a lien or payment bond claim under this chapter is unenforceable unless a waiver and release is executed and delivered in accordance with this subchapter.

(b) A waiver and release is effective to release the owner, the owner's property, the contractor, and the surety on a payment bond from claims and liens only if:

(1) the waiver and release substantially complies with

one of the forms prescribed by Section 53.284;

(2) the waiver and release is signed by the claimant or the claimant's authorized agent and acknowledged [~~notarized~~]; and

(3) in the case of a conditional release, evidence of payment to the claimant exists.

(c) A waiver and release that substantially complies with a form required by Section 53.284 may be combined with a bills-paid affidavit that substantially conforms to the requirements of Section 53.085 or 53.259.

SECTION 41. Section 53.283, Property Code, is amended to read as follows:

Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT REQUIRED. (a) A person may not require a claimant or potential claimant to execute an unconditional waiver and release for a progress payment or final payment amount unless the claimant or potential claimant received payment in that amount in good and sufficient funds.

(b) Notwithstanding Subsection (a), a contractual requirement for a claimant to waive or release the claimant's lien rights under this chapter before performance of the work for which the claim for payment is asserted is void.

(c) A claimant may tender an unconditional waiver and release for payment before the actual receipt of a payment to be delivered in trust to an attorney, title insurance company, title insurance agent, or federally insured financial institution acting as an

escrow agent. The escrow agent may deliver the waiver and release only after the claimant has confirmed receipt of payment in good and sufficient funds.

SECTION 42. Section 53.284, Property Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (f) to read as follows:

(b) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project \_\_\_\_\_

"Job No. \_\_\_\_\_

"On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the

property of \_\_\_\_\_ (owner) H.B. No. 3065 located at \_\_\_\_\_ (location) for [~~to~~] the following project [~~extent~~]: \_\_\_\_\_ (project [~~job~~] description).

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention or [~~or~~] pending modifications and changes [~~, or other items furnished~~].

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date \_\_\_\_\_

"\_\_\_\_\_ (Company name)

"By \_\_\_\_\_ (Signature)

"\_\_\_\_\_ (Title)

"(Insert acknowledgment)"

(c) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of

good and sufficient funds for a progress payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the progress payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project \_\_\_\_\_

"Job No. \_\_\_\_\_

"The signer of this document has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) for ~~to~~ the following project ~~extent~~: \_\_\_\_\_ (project ~~job~~ description). The signer therefore waives and releases any mechanic's lien right, any

right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention or [~~7~~] pending modifications and changes [~~7~~ ~~or other items furnished~~].

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date \_\_\_\_\_

"\_\_\_\_\_ (Company name)

"By \_\_\_\_\_ (Signature)

"\_\_\_\_\_ (Title)

"(Insert acknowledgment)"

(d) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the

payment of a final payment and is not paid in good and sufficient funds in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project \_\_\_\_\_

"Job No. \_\_\_\_\_

"On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) for ~~[to]~~ the following project ~~[extent]~~: \_\_\_\_\_ (project ~~[job]~~ description).

"This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted).

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the

signer.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

"Date \_\_\_\_\_

"\_\_\_\_\_ (Company name)

"By \_\_\_\_\_ (Signature)

"\_\_\_\_\_ (Title)

"(Insert acknowledgment)"

(e) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not

been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project \_\_\_\_\_

"Job No. \_\_\_\_\_

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) for ~~[tø]~~ the following project ~~[extent]~~: \_\_\_\_\_ (project ~~[jøb]~~ description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

"Date \_\_\_\_\_

" \_\_\_\_\_ (Company name)

"By \_\_\_\_\_ (Signature)

" \_\_\_\_\_ (Title)

"(Insert acknowledgment)"

(f) If the owner has filed and posted a notice of commencement as required by Section 53.125, the owner may require, as a condition for final payment, a claimant who has filed a notice of furnishing to file with the lien website a conditional waiver and release on final payment described by Subsection (d).

SECTION 43. The following provisions of the Property Code are repealed:

- (1) Section 53.001(11);
- (2) Section 53.022(b);
- (3) Section 53.025;
- (4) Section 53.053;
- (5) Section 53.056;
- (6) Section 53.057;
- (7) Section 53.058;
- (8) Section 53.083;
- (9) Section 53.084;
- (10) Subchapter E, Chapter 53;
- (11) Section 53.206(c);
- (12) Section 53.252;
- (13) Section 53.253; and
- (14) Section 53.254(g).

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SECTION 44. The changes in law made by this Act apply only to an original contract entered into on or after the effective date of this Act. An original contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 45. This Act takes effect May 1, 2018.