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Texas Mechanic's Lien Law After the 87th Texas Legislative Session

Presented by:
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REVISIONS TO THE LIEN LAWS

- **Definitions**
- **Persons Entitled to Lien**
- **Notice Requirements**
- **Contractors Obligation to Respond to Demand**
- **Deadlines to File Liens**
- **Enforcement of a Lien**
- **Statutory Waivers**

NEW LAW

**Applies to Prime Contracts entered into on
or after January 1, 2022**

KEY DEFINITIONS

“Improvement” includes

- (A) a house, building, structure, parking structure, physical appurtenance, pool, utility, railroad, well, storage facility, abutting sidewalks and streets, utilities in or on those sidewalks and streets, land reclaimed from overflow, and other fixtures or modifications to real property;
- (B) clearing, grubbing, draining, or fencing of land;
- (C) machinery or apparatuses used for raising water or for supplying or storing water for stock, domestic use, or irrigation;
- (D) work described by Section 53.021(4) (landscaping and irrigation); and
- (E) a design, drawing, plan, plat, survey, or specification provided by a licensed architect, engineer, or surveyor.

“Labor” means: (A) labor used in the direct **performance** of the work, or (B) **professional services used in the direct preparation for the work of a design, drawing, plan, plat, survey, or specification.**

KEY DEFINITIONS (CONT.)

“**Material**” means all or part of:

- (A) the material, machinery, fixtures, or tools (i) incorporated into the work, (ii) **used** in the direct performance of the work, (iii) **specially fabricated for an improvement**; or (iv) ordered and delivered for incorporation or use;
- (B) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used or reasonably required and delivered for use in the direct **performance** of the work at the site of construction or repair; or
- (C) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct performance of the work.”

“**Retainage**” means an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is delivered.

Prior Law: definition does not apply to statutory retainage under Subchapter E.

New Law: definition includes statutory retainage under Subchapter E, to be referred to as “Reserved Funds”.

“**Work**” means any part of construction or repair **of an improvement** performed under an original contract.

WHO IS ENTITLED TO A LIEN?

Pursuant to Section 53.021 of the Texas Property Code.

- (a) A person has a lien if the person, under a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor:
- (1) labors or furnishes labor or materials for construction or repair of **an improvement**;
 - (2) specially fabricates material, even if the material is not delivered;
 - (3) **is a licensed architect, engineer, or surveyor providing services to prepare a design, drawing, plan, plat, survey, or specification;**¹
 - (4) provides labor, plant material, or other supplies for the installation of landscaping for an improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation; or
 - (5) performs labor as part of, or furnishes labor or materials for, the demolition of an improvement on real property.

¹ Under prior law, the architect, engineer or surveyor must have a written contract directly with the owner to have lien rights.

DEADLINES

PRIOR LAW:

- All deadlines are hard deadlines and do not take into account weekends or holidays

NEW LAW:

- If deadline falls on a legal holiday or weekend, the deadline extends to the next day that is not a weekend or legal holiday

METHOD OF SENDING NOTICES

PRIOR LAW:

CM/RRR or Registered Mail



NEW LAW:

In person, by certified mail, or by any other form of traceable, private delivery or mailing service that can confirm proof of receipt

PRE-LIEN NOTICES

Original Contractor: None

Subcontractor:

- If you contracted with the Original Contractor, must give the Owner notice, with a copy to the Original Contractor, by the **15th day of the THIRD MONTH** following EACH month during which labor or material was furnished to the Project.
- If you contracted with a Subcontractor, in addition to the “Third Month” Notice, you must give the Original Contractor notice by the **15th day of the SECOND MONTH** following EACH month during which labor or material was furnished to the Project.

***2nd month notice no longer required under new law**

NOTICE OF SPECIALLY FABRICATED MATERIALS

PRIOR LAW:

- A claimant must give the owner or reputed owner notice not later than the 15th day of the second month after the month in which the claimant receives and accepts an order for the material.
- If the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

Tex. Prop. Code Sec. 53.058.

***2nd month notice no longer required under new law**

NEW STATUTORY FORM NOTICE – PRE-LIEN NOTICE

NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

WARNING: This notice is provided to preserve lien rights.

Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.

Date: _____

Project description and/or address: _____

Claimant's name: _____

Type of labor or materials provided: _____

Original contractor's name: _____

Party with whom claimant contracted if different from original contractor:

Claim amount: _____

_____ (Claimant's contact person)

_____ (Claimant's address)

NOTICE OF RETAINAGE

Timing of Notice of Retainage Letter to Owner

Send the earlier of:

1. 30th day after the claimant's contract is completed terminated or abandoned; OR
2. 30th day after the prime contract is terminated or abandoned.

***Must send notice to prime contractor also under new law**

NEW STATUTORY FORM NOTICE – RETAINAGE NOTICE

NOTICE OF CLAIM FOR UNPAID RETAINAGE

WARNING: This notice is provided to preserve lien rights.

Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.

Date: _____

Project description and/or address: _____

Claimant's name: _____

Type of labor or materials provided: _____

Original contractor's name: _____

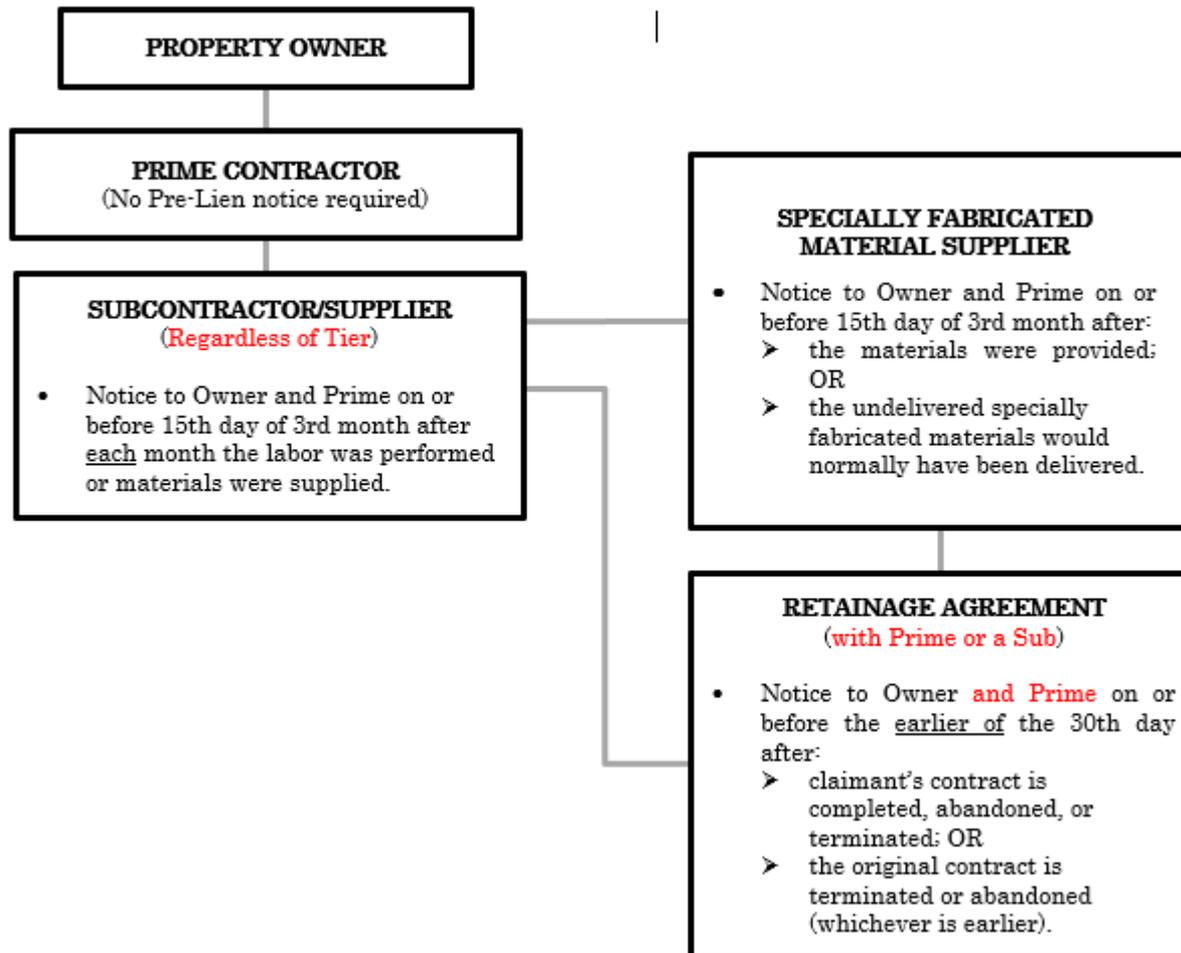
Party with whom claimant contracted if different from original contractor:

Total retainage unpaid:| _____

_____ (Claimant's contact person)

_____ (Claimant's address)

NEW PRE-LIEN NOTICE DEADLINES (NON-RESIDENTIAL):



CONTRACTOR'S OBLIGATION ON RECEIPT OF DEMAND FOR PAYMENT

If GC does not notify Owner of claim dispute within 30 days, GC considered to have agreed to Owner paying claim.

***NO LONGER AVAILABLE UNDER NEW
LAW**

TEXAS PROP. CODE § 53.083

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ORIGINAL CONTRACTOR'S LIEN

Statutory Lien (prior law):

- For commercial construction, Lien Affidavit must be filed not later than the **15th day of the FOURTH MONTH** following the month in which the original contract has been: (a) terminated; (b) completed; (c) finally settled; or (d) abandoned.

Statutory Lien (new law):

- For commercial construction, Lien Affidavit must be filed not later than the **15th day of the FOURTH MONTH** following the month in which the original contract has been: (a) completed; (b) terminated; or (c) abandoned.

SUBCONTRACTOR/SUPPLIER LIEN

There are two monetary funds that the lien secures payment from:

- (1) 10% statutory retainage (called “reserved funds” under new law); and
- (2) Funds trapped in the hands of the Owner by a fund-trapping letter.

SUBCONTRACTOR/SUPPLIER LIEN

PRIOR LAW:

GENERAL RULE: Claimant must file not later than the **15th day of the FOURTH MONTH** following the last month in which labor was performed or material was furnished.

NEW LAW:

GENERAL RULE: For commercial construction, the claimant must file lien affidavit not later than the **15th day of the FOURTH MONTH** after the later of:

1. the month the claimant last provided labor or materials; or
2. the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

PRIOR LAW - LIENS ON RETAINAGE

If notice is sent timely, Lien Affidavit deadline is the earlier of:

1. 15th day of the 4th Month after the month the prime contract is complete; or
2. 40th day after the general contract is terminated or abandoned (if the Owner sent notice of termination or abandonment); or
3. 40th day after the date stated in Owner's Affidavit of Completion, if filed before the 10th day after the date of completion; or
4. 40th day after the Owner's Affidavit of Completion is filed, if the Affidavit is filed after the 10th day after the date of completion; or
5. 30th day after date Owner demands Lien Affidavit filed; or
6. 30th day after the earliest of the date the work is completed, or the original contract is terminated or abandoned.

TEX. PROP. CODE §53.057(f)

NEW LAW - LIENS ON "RESERVED FUNDS"

If notice is sent timely, Lien Affidavit deadline is:

1. 30th day after the earliest of the date the original contract is completed, terminated or abandoned

OR

1. 15th day of the 3rd Month after the month the prime contract is completed, terminated or abandoned

AFFIDAVIT OF COMPLETION

An Owner may file with the county clerk in the county in which the project is located an affidavit of completion, which must contain:

1. the name and address of the owner;
2. the name and address of the original contractor;
3. a description, legally sufficient for identification, of the real property on which the improvements are located;
4. a description of the improvements furnished under the original contract;
5. a statement that the improvements under the original contract have been completed and the date of completion; and
6. a conspicuous statement that a claimant may not have a lien on retained funds unless the claimant files an affidavit claiming a lien **in the time and manner required by this chapter.**

Tex. Prop. Code Sec. 53.106.

AFFIDAVIT OF COMPLETION (CONT.)

- If the affidavit is filed on or before the 10th day after the date of completion of the improvements, the date stated in the affidavit is prima facie evidence of the date the work under the original contract is completed.
- If the affidavit is filed after the 10th day after the date of completion of the improvements, the date of completion is the date the affidavit is filed.



ENFORCEMENT OF LIEN CLAIM

PRIOR LAW:

Claimant must file suit within two (2) years after the last day claimant could have filed a timely Lien Affidavit

or

Within one (1) year after completion, termination or abandonment of the prime/original contract, whichever is later.

ENFORCEMENT OF LIEN CLAIM

NEW LAW:

Claimant must file suit within one (1) year after the last day claimant could have filed a timely Lien Affidavit

Owner and Claimant can agree to 2 years but the agreement (1) must be in writing, (2) be entered into before the first anniversary of the lien filing deadline, and (3) must be recorded with the County Clerk where the lien is recorded

STATUTORY LIEN WAIVERS

OLD LAW: The conditional and unconditional waivers and release on progress and final payment under Section 53.284 must be notarized to be enforceable.

NEW LAW: Eliminates the requirement that these forms must be notarized.

CONTACT INFORMATION

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