



## INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

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# What to Know Before Filing a Lien on a Homestead

BY PATRICK N. SMITH

Like the cowboy's lasso, contractor's liens are one of the tools used to rope the property of a homeowner who has not paid for labor or materials, including specially fabricated material for construction or repair to a house, building, or improvement. A lien is a legal right or interest that a creditor has in another's property. It usually lasts until a debt or duty that it secures is satisfied.

The purpose of a lien is to ensure that the debt for such services and materials is paid before the homeowner can have clear title. Make sure your construction contract meets these basic requirements under the Texas Property Code *before* you begin throwing that lasso:

### Contract Must Be in Writing

To fix a valid lien on a homestead, the person who is to furnish material or perform labor and the owner must sign a written contract setting forth the terms of the agreement.

### Contract Must Be Executed Before Material is Furnished Or Labor Performed

Both the contractor and the homeowner must execute the contract.

### If the Owner is Married, Both Spouses Must Sign the Contract

This requirement protects a spouse from the possible loss of the homestead without his or her consent. The contract should also require those who sign as owners to warrant that there are no other individuals with an ownership interest.

### Contract Must Be Filed With the County Clerk

The contract must be filed with the county clerk in the county where the homestead is located and recorded among the records kept for that purpose.



The statute is silent as to when the contract must be filed, but in any event, it should be filed before, or contemporaneously with, any notice claiming a lien.

### Mandatory Notice Language

Texas law mandates contractors to have the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent:

Important notice: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. Know your rights and duties under the law.

If a contractor attempts to enforce a lien without this mandatory notice provision, not only is the lien unenforceable, but the homeowner can also sue the contractor.

The required notice to be given to the owner under Section 53.254 of the Texas Property Code must also include or have attached the following statement:

If a subcontractor or supplier who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if:

- (1) After receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or



(2) During construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not liable to a subcontractor or supplier for any amount paid to your contractor before

you received written notice of the claim.

#### Disclosure Statement

Before the owner executes a residential construction contract, the original contractor shall deliver to the owner a disclosure statement described by Section 53.255 of the Texas Property Code. However, Section (c) of this statute also provides that “the failure of a contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.”

#### Contract Must Be Substantially Completed

A contractor cannot have a valid lien upon a homestead unless the work contract has been substantially completed. This is true whether the person claiming

the lien is the original contractor, or the contractor’s assignee.

#### Residential Construction Commission Complaint Information

The Texas Residential Construction Commission has been “sunsetting” by the Legislature, but the requirement to disclose the contractor’s certificate of registration number, address, and telephone number is still in the Texas Property Code. Until this is removed or revised, it would be wise to include this information. ✦



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