



INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

The information included in this column is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.



An Introduction to Mechanic's Liens

Mechanics, artisans, and materialmen enjoy certain rights and protections under Texas law, specifically, liens that give them a claim or interest in the buildings and articles made or repaired by them for the value of labor done or material furnished. Chapter 53 of the Texas Property Code further governs mechanic's lien rights by providing a detailed procedure for assertion and enforcement of a claim.



Protecting your right to payment begins as soon as you execute a contract.

Due to the complexity of Texas lien law, however, contractors can unknowingly lose their lien rights. If you provide labor and/or materials, or if you are the recipient of labor or materials, you should familiarize yourself with the mechanic's lien assertion and enforcement procedures outlined in the Texas Constitution and the Texas Property Code.

GETTING STARTED

Protecting your right to payment begins as soon as you execute a contract. Once a contract is executed, or soon afterward, you should request the following in writing from the property owner and all parties who precede you in the contracting chain: (a) a legal description of the real property being improved; (b) a copy of any contracts executed for the project; (c) a copy of the surety bond, if any, including the name and last known address of the surety; and (d) documentation demonstrating if the real property is encumbered by any prior recorded liens or security interests, and, if so, the name and last known address of any persons having such lien or security interest.

Your correspondence should state that the Texas Property Code requires a response within 10 days of receipt of the request. There is no deadline for requesting this information; however, you will need the information to perfect a statutory lien claim. Delay could cause you to miss a mandatory deadline, resulting in forfeiture of your statutory lien rights.

EARLY NOTICES

Two types of notices should be sent shortly after you begin work on a project.

Contractors who do not have a contract with the property owner must send a notice of contractual retainage agreement to all parties who precede them in the contracting chain (including the property owner), so that they may withhold a corresponding amount of retainage.

This notice is not required to protect your lien; however, if you send this notice within the prescribed time frame, you are not obligated to send a notice of unpaid account — unless your claim involves more than one contractual retainage, i.e., unpaid monthly draws.

The second notice, a notice of specially fabricated materials, applies only to those contractors who will be furnishing materials that cannot be easily reused on other projects. This protects a contractor's right to perfect a lien on these materials, even when they have not been delivered or incorporated into the project. The notice must be sent to the owner and to the original contractor if the contractor providing these materials does not have a direct contract with the original contractor.

NOTICES OF UNPAID ACCOUNT

To properly perfect a lien, all contractors (other than original contractors) are required to provide certain notices to the owner and the original contractor. If your contract is with someone other than the original contractor, you must send notices to the original contractor of the unpaid account, as well as to the owner of an unpaid account, for each month that you were not paid. This notice may be required on a recurring basis. A copy of this notice should also be sent to the person or entity with which the claimant has a direct contract. In order to alert the owner of an unpaid account to retain funds from the original contractor to cover your claim, the notice must also include specific "fund trapping" language as expressly required by Chapter 53.

LIEN AFFIDAVITS

After you have provided the required notices protecting your right to file a claim, you must file an affidavit of mechanic's lien — the document claiming a lien on the owner's property — with the county clerk's office in the county in which

the owner's property is located. You only need file one lien affidavit.

ENFORCEMENT

A mechanic's lien may be enforced only through the judgment of a court of competent jurisdiction. A suit to foreclose upon a mechanic's lien must be filed within four years of the accrual of a claim. ✦

This article is excerpted from *An Introduction to Mechanic's Liens*, prepared as a public service by the Texas Young Lawyers Association and distributed by the State Bar. For a complete copy of the pamphlet, contact Public Information Department, State Bar of Texas, P.O. Box 12487, Austin 78711-2487; call (800) 204-2222, Ext. 1800; or visit www.tyla.org or texasbar.com.



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