PROPERTY CODE

TITLE 5. EXEMPT PROPERTY AND LIENS

SUBTITLE B. LIENS

CHAPTER 53. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Contract price" means the cost to the owner for any part of construction or repair performed under an original contract.

(2) "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); and

(E) a design, drawing, plan, plat, survey, or specification provided by a licensed architect, engineer, or surveyor.

(3) "Labor" means:

(A) labor used in the direct performance of the work; or

(B) a professional service used in the direct preparation for the work of a design, drawing, plan, plat, survey, or specification.

(4) "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 the construction or repair; or

(C) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct performance of the work.

(5) "Mechanic's lien" means the lien provided by this chapter.

(6) "Original contract" means an agreement to which an owner is a party either directly or by implication of law.

(7) "Original contractor" means a person contracting with an owner either directly or through the owner's agent.

(7-a) "Purported original contractor" means an original contractor who can effectively control the owner or is effectively controlled by the owner through common ownership of voting stock or ownership interests, interlocking directorships, common management, or otherwise, or who was engaged by the owner for the construction or repair of improvements without a good faith intention of the parties that the purported original contractor was to perform under the contract. For purposes of this subdivision, the term "owner" does not include a person who has or claims a security interest only.

(8) "Residence" means the real property and improvements for a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes in which title to the individual units is transferred to the owners under a condominium or cooperative system that is:

(A) owned by one or more adult persons; and

(B) used or intended to be used as a dwelling by one of the owners.

(9) "Residential construction contract" means a contract between an owner and a contractor in which the contractor

agrees to construct or repair the owner's residence, including improvements appurtenant to the residence.

(10) "Residential construction project" means a project for the construction or repair of a new or existing residence, including improvements appurtenant to the residence, as provided by a residential construction contract.

(11) "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.

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

(13) "Subcontractor" means a person who labors or 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 construction or repair of an improvement performed under an original contract.

(15) "Completion" of an original contract means the actual completion of the work, including any extras or change orders reasonably required or contemplated under the original contract, other than warranty work or replacement or repair of the work performed under the contract.

Acts 1983, 68th Leg., p. 3533, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 2, eff. January 1, 2022.

Sec. 53.002. MORE THAN ONE ORIGINAL CONTRACTOR. On any work there may be more than one original contractor for purposes of this chapter.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.003. NOTICES. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(1), eff. January 1, 2022.

(b) Except as provided by Subsection (c) or (d), any notice or other written communication required by this chapter must be delivered:

(1) in person to the party entitled to the notice or to that party's agent;

(2) by certified mail; or

(3) by any other form of traceable, private delivery or mailing service that can confirm proof of receipt.

(c) If notice is sent by certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(d) If a written notice is received by the person entitled to receive it, the method by which the notice was delivered is immaterial.

(e) In computing the period of days in which to provide a notice or to take any 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.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 3, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(1), eff. January 1, 2022.

SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

Sec. 53.021. PERSONS ENTITLED TO LIEN. 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;

(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.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 395, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 16.01, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 851, Sec. 1, 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 896, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 410, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 1, eff. January 1, 2012.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 4, eff. January 1, 2022.

Sec. 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien extends to the improvements and to each lot of land necessarily connected.

(b) The lien does not extend to abutting sidewalks, streets, and utilities that are public property.

(c) A lien against land in a city, town, or village extends to each lot on which the improvement is situated or on which the labor was performed.

(d) A lien against land not in a city, town, or village extends to not more than 50 acres on which the improvement is situated or on which the labor was performed.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 5, eff. January 1, 2022.

Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures payment for:

(1) the labor done or material furnished for the construction, repair, design, survey, or demolition; or

(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1995, 74th Leg., ch. 851, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 6, eff. January 1, 2022.

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 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.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.025. LIMITATION ON ORDINARY RETAINAGE LIEN. A lien for retainage is valid only for the amount specified to be retained in the contract, including any amendments to the contract, between the claimant and the original contractor or between the claimant and a subcontractor.

Acts 1983, 68th Leg., p. 3537, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 2, eff. Sept. 1,

1989.

Sec. 53.026. SHAM CONTRACT.

(a) A person who labors or furnishes labor or materials under a direct contractual relationship with a purported original contractor is considered to be an original contractor for purposes of perfecting a mechanic's lien.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(2), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3537, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 7, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(2), eff. January 1, 2022.

SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

Sec. 53.051. NECESSARY PROCEDURES. To perfect the lien, a person must comply with this subchapter.

Acts 1983, 68th Leg., p. 3538, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.052. FILING OF AFFIDAVIT. (a) An original contractor claiming the lien must file an affidavit with the county clerk:

(1) for projects other than residential construction projects, not later than the 15th day of the fourth month after the month in which the original contractor's work was completed, terminated, or abandoned; or

(2) for residential construction projects, not later than the 15th day of the third month after the month in which the original contractor's work was completed, terminated, or abandoned.

(b) Except as provided by Subsection (c) or (d), a claimant other than an original contractor claiming the lien must file an

affidavit with the county clerk 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.

(c) A claimant other than an original contractor claiming a lien arising from a residential construction project must file an affidavit with the county clerk not later than the 15th day of the third 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.

(d) A claimant other than an original contractor claiming a lien for retainage must file an affidavit with the county clerk not later than the 15th day of the third month after the month in which the original contract under which the claimant performed was completed, terminated, or abandoned.

(e) An affidavit under this chapter must be filed in the county where the improvements are located. 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.

Acts 1983, 68th Leg., p. 3538, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 8, eff. January 1, 2022.

Sec. 53.054. CONTENTS OF AFFIDAVIT. (a) The 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 the claim was sent to the owner and the method by which the notice was sent.

(b) The claimant may attach to the affidavit a copy of any applicable written agreement or contract and a copy of each notice sent to the owner.

(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 abbreviations or symbols customary in the trade.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 6, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 6, eff. Sept. 1, 1997.

Sec. 53.055. NOTICE OF FILED AFFIDAVIT. (a) A person who files an affidavit must send a copy of the affidavit to the owner or reputed owner at the owner's last known business or residence address not later than the fifth day after the date the affidavit is filed with the county clerk.

(b) If the person is not an original contractor, 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 within the same period.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 7, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 526, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 9, eff. January 1, 2022.

Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER AND ORIGINAL CONTRACTOR. (a) Except as provided by Section 53.057, a claimant other than an original contractor must give the notice prescribed by Subsections (a-1) and (a-2) for the lien to be valid.

(a-1) For all unpaid labor or materials provided, the claimant must send a notice of claim for unpaid labor or materials to the owner or reputed owner and the original contractor. The notice must be sent:

(1) for projects other than residential construction projects, not later than the 15th day of the third month after the month during which:

(A) the labor or materials were provided; or

(B) the undelivered specially fabricated materials would normally have been delivered; or

(2) for residential construction projects, not later than the 15th day of the second month after the month during which:

(A) the labor or materials were provided; or

(B) the undelivered specially fabricated materials would normally have been delivered.

(a-2) The notice must be in substantially the following form:

"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)"

(a-3) The notice may include an invoice or billing statement.

(a-4) A claimant may give to the original contractor a written notice of an unpaid labor or materials invoice that is past due. A notice under this subsection is not required for a lien to be valid.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 8, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 10, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 11, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE OF CLAIM FOR UNPAID RETAINAGE. (a) To the extent that a claim for unpaid retainage is not included wholly or partly in a notice provided under Section 53.056, a claimant other than an original contractor whose contract provides for retainage must give notice under this section for a lien for unpaid retainage to be valid.

(a-1) The claimant must send the notice of claim for unpaid retainage to the owner or reputed owner and the original contractor not later than the earlier of:

(1) the 30th day after the date the claimant's contract is completed, terminated, or abandoned; or

(2) the 30th day after the date the original contract is terminated or abandoned.

(a-2) The notice must be in substantially the following form:

"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)"

(a-3) The notice may include an invoice or billing statement.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(b-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(f) A claimant has a lien on, and the owner is personally liable to the claimant for, the reserved funds under Subchapter E if the claimant:

(1) gives notice in accordance with this section and:

(A) complies with Subchapter E; or

(B) files an affidavit claiming a lien not later than the date required for filing an affidavit under the applicable provision of Section 53.052; and

(2) gives the notice of the filed affidavit as required by Section 53.055.

(g) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3541, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 9, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 2, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 12, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 13, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF CLAIMANTS. (a) If an owner receives notice under Section 53.056 or 53.057, the owner may withhold from payments to the original

contractor an amount necessary to pay the claim for which he receives notice. The withholding may be in addition to any reserved funds.

(b) If notice is sent under Section 53.056, 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) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(7), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3543, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 12, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 14, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(7), eff. January 1, 2022.

Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. Unless the claim is otherwise settled, discharged, indemnified against under Subchapter H or I, 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, the lien claim has been satisfied or released.

Acts 1983, 68th Leg., p. 3544, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 13, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 15, eff. January 1, 2022.

Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount the owner fails to reserve under Subchapter E, the owner is not

liable for any amount paid to the original contractor before the owner is authorized to withhold funds under this subchapter.

(b) If the owner has received a notice required by Section 53.056 or 53.057, if the lien has been secured, and if the claim has been reduced to final judgment, the owner is liable and the owner's property is subject to a claim for any money paid to the original contractor after the owner was authorized to withhold funds under this subchapter. The owner is liable for that amount in addition to any amount for which the owner is liable under Subchapter E.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 12, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 16, eff. January 1, 2022.

Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who furnishes labor or materials for the construction of improvements on real property shall, if requested and as a condition of payment for such labor or materials, provide to the requesting party, or the party's agent, an affidavit 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 and materials provided to the seller through the date specified in the affidavit for any construction 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 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 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

(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.

(e) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit.

Added by Acts 1987, 70th Leg., ch. 578, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 14, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 2, eff. January 1, 2012.

SUBCHAPTER E. FUNDS RESERVED FOR BENEFIT OF LIEN CLAIMANTS

Sec. 53.101. FUNDS REQUIRED TO BE RESERVED. (a) During the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work under the contract is completed, the owner shall reserve:

(1) 10 percent of the contract price of the work to the owner; or

(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

(b) In this section, "owner" includes the owner's agent, trustee, or receiver.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 15, eff. Sept. 1, 1989.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS. The reserved funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of the work.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.103. LIEN ON RESERVED FUNDS. A claimant has a lien on the reserved funds if the claimant:

(1) sends the notices required by this chapter in the time and manner required; and

(2) except as allowed by Section 53.057(f), files an affidavit claiming a lien not later than the 30th day after the

earliest of the date:

(A) the work is completed;

(B) the original contract is terminated; or

(C) the original contractor abandons performance under the original contract.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2005, 79th Leg., Ch. 1003 (H.B. 629), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.104. PREFERENCES. (a) Individual artisans and mechanics are entitled to a preference to the reserved funds and shall share proportionately to the extent of their claims for wages and fringe benefits earned.

(b) After payment of artisans and mechanics who are entitled to a preference under Subsection (a), other participating claimants share proportionately in the balance of the reserved funds.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 16, eff. Sept. 1, 1989.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RESERVE FUNDS. (a) If the owner fails or refuses to comply with this subchapter, the claimants complying with Subchapter C or this subchapter have a lien, at least to the extent of the amount that should have been reserved from the original contract under which they are claiming, against the improvements and all of its properties and against the lot or lots of land necessarily connected.

(b) The claimants share the lien proportionately in

accordance with the preference provided by Section 53.104.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 13.02, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 17, eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 4, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may file with the county clerk of the county in which the property is located an affidavit of completion. The affidavit 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.

(b) A copy of the affidavit must be sent to the original contractor and to each claimant who sends a notice to the owner under Section 53.056 or 53.057 not later than the third day after the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later.

(c) A copy of the affidavit must also be sent to each person who furnishes labor or materials for the property and who furnishes the owner with a written request for the copy. The owner must furnish the copy to the person not later than the date the affidavit is filed or the 10th day after the date the request is received, whichever is later.

(d) An affidavit filed under this section is prima facie evidence of the date the work under the original contract is completed for purposes of this chapter. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter is the date the affidavit is filed. This subsection does not apply to a person to whom the affidavit was not sent as required by this section.

(e) Repealed by Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 18, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 5, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 19, eff. January 1, 2022.

Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER. (a) Not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, the owner shall give notice to each subcontractor who, before the date of termination or abandonment, has:

(1) given notice to the owner as provided by Section 53.056 or 53.057; or

(2) sent to the owner a written request for notice of termination or abandonment.

(b) The notice 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 general description of the improvements agreed to be furnished under the original contract;

(5) a statement that the original contract has been terminated or that performance under the contract has been abandoned;

(6) the date of the termination or abandonment; and

(7) a conspicuous statement that a claimant may not have a lien on the retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter.

(c) A notice sent in compliance with this section on or before the 10th day after the date of termination or abandonment is prima facie evidence of the date the original contract was terminated or work was abandoned for purposes of this subchapter.

(d) If an owner is required to send a notice to a subcontractor under this section and fails to send the notice, the subcontractor is not required to comply with Section 53.057 to claim retainage and may claim a lien by filing a lien affidavit as prescribed by Section 53.052.

(e) This section does not apply to a residential construction project.

Added by Acts 2005, 79th Leg., Ch. 1003 (H.B. 629), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 6, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 20, eff. January 1, 2022.

SUBCHAPTER F. PRIORITIES AND PREFERENCES

Sec. 53.121. PREFERENCE OVER OTHER CREDITORS. All subcontractors, laborers, and materialmen who have a mechanic's lien have preference over other creditors of the original contractor.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.122. EQUALITY OF MECHANIC'S LIENS. (a) Except as provided by Subchapter E and Section 53.124(e), perfected

mechanic's liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

(b) If the proceeds of a foreclosure sale of property are insufficient to discharge all mechanic's liens against the property, the proceeds shall be paid pro rata on the perfected mechanic's liens on which suit is brought.

(c) This chapter does not affect the contract between the owner and the original contractor as to the amount, manner, or time of payment of the contract price.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 851, Sec. 4, eff. Sept. 1, 1995.

Sec. 53.123. PRIORITY OF MECHANIC'S LIEN OVER OTHER LIENS. (a) Except as provided by this section, a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the land on which it is located, and the person enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately.

(b) The mechanic's lien does not affect any lien, encumbrance, or mortgage on the land or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien.

Acts 1983, 68th Leg., p. 3547, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.124. INCEPTION OF MECHANIC'S LIEN. (a) Except as provided by Subsection (e), for purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction 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.

(b) The construction or materials under Subsection (a) must be visible from inspection of the land on which the improvements are being made.

(c) 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) 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 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 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.

Acts 1983, 68th Leg., p. 3547, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 19, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 851, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 896, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 410, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

Sec. 53.151. ENFORCEMENT OF REMEDIES AGAINST MONEY DUE ORIGINAL CONTRACTOR OR SUBCONTRACTOR. (a) A creditor of an

original contractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the original contractor or the contractor's surety from the owner, and a creditor of a subcontractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the subcontractor, to the prejudice of the subcontractors, mechanics, laborers, materialmen, or their sureties.

(b) A surety issuing a payment bond or performance bond in connection with the 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.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 20, eff. Sept. 1, 1989.

Sec. 53.152. RELEASE OF CLAIM OR LIEN. (a) When a debt for labor or materials is satisfied or paid by collected funds, the person who furnished the labor or materials shall, not later than the 10th day after the date of receipt of a written request, furnish to the requesting person a release of the indebtedness and any lien claimed, to the extent of the indebtedness paid. An owner, the original contractor, or any person making the payment may request the release.

(b) A release of lien must be in a form that would permit it to be filed of record.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 21, eff. Sept. 1, 1989.

Sec. 53.153. DEFENSE OF ACTIONS. (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 his own expense a suit brought on the claim.

(b) If the suit results in judgment on the lien against the owner or the owner's property, the owner is entitled to deduct the

amount of the judgment and costs from any amount due the original contractor. If the owner has settled with the original contractor in full, the owner is entitled to recover from the original contractor any amount paid for which the original contractor was originally liable.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.154. FORECLOSURE. 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.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the improvement is sold separately from the land, the officer making the sale shall provide the purchaser a reasonable time after the date of purchase within which to remove and take possession of the purchased improvement.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 21, eff. January 1, 2022.

Sec. 53.156. COSTS AND ATTORNEY'S FEES. In any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H, I, or J or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just. With respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 4(a), eff. Oct. 2, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 22, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 51 (S.B. 539), Sec. 1, eff.

September 1, 2011.

Sec. 53.157. DISCHARGE OF LIEN. An 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 improvement 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, provided 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.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 15, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 22, eff. January 1, 2022.

Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN. (a) Except as provided by Subsection (a-2), suit must be brought to foreclose the lien not later than the first anniversary of the last day a claimant may file the lien affidavit under Section 53.052.

(a-1) Notwithstanding Section 16.069, Civil Practice and Remedies Code, or any other law, if suit is pursued solely to discharge a lien because limitations have expired on bringing a lien foreclosure suit, the lien claimant's rights to pursue a suit

to foreclose a lien are not revived.

(a-2) The limitations period established under Subsection (a) may be extended to not later than the second anniversary of the date the claimant filed the lien affidavit under Section 53.052 if, before the expiration of the limitations period established under Subsection (a), the claimant enters into a written agreement with the then-current record owner of the property to extend the limitations period. The agreement must be recorded with the clerk of the same county where the lien was recorded and is considered to be notice of the extension to any subsequent purchaser.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(9), eff. January 1, 2022.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 23, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(9), eff. January 1, 2022.

Sec. 53.159. OBLIGATION TO FURNISH INFORMATION. (a) 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) 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.

(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.

(e) If a person from whom information is requested does not have a direct contractual relationship on the project with the person requesting the information, the person from whom information is requested, other than a claimant requested to furnish information under Subsection (d), may require payment of the actual costs, not to exceed $25, in furnishing the requested information.

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

(g) Expired.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 7, eff. September 1, 2011.

Sec. 53.160. SUMMARY MOTION TO REMOVE INVALID OR UNENFORCEABLE LIEN. (a) In a suit brought to foreclose a lien or to declare a claim or lien invalid or unenforceable, a party objecting to the validity or enforceability of the claim or lien may file a motion to remove the claim or lien. The motion must be verified and state the legal and factual basis for objecting to the validity or enforceability of the claim or lien. The motion may be accompanied by supporting affidavits.

(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 claim was not timely furnished to the owner or original contractor as required by Section 53.056 or 53.057;

(2) 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 affidavit was not furnished to the owner or original contractor as required by Section 53.055;

(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 affidavit was filed on homestead property:

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

(B) the 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

(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 by at least 30 days before the date of the hearing on the motion. A motion may not be heard before the 30th day after the date the claimant answers or appears in the proceeding. The claimant must be allowed expedited discovery regarding information relevant to the issues listed under Subsection (b).

(d) At the hearing on the motion, the burden is on:

(1) the claimant to prove that the notice of claim and affidavit of lien were furnished to the owner and original contractor as required by this chapter; and

(2) the movant to establish that the lien should be removed for any other ground authorized by this section.

(e) The court shall promptly determine a motion to remove a

claim or lien under this section. If the court determines that the movant is not entitled to remove the lien, the court shall enter an order denying the motion. If the court determines that the movant is entitled to remove the lien, the court shall enter an order removing the lien claimed in the lien affidavit. A party to the proceeding may not file an interlocutory appeal from the court's order.

(f) Any admissible evidence offered at the hearing may be admitted in the trial of the case. The court's order under Subsection (e) is not admissible as evidence in determining the validity and enforceability of the claim or lien.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 8, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 24, eff. January 1, 2022.

Sec. 53.161. BOND REQUIREMENTS AFTER ORDER TO REMOVE. (a) In the order removing a lien, the court shall set the amount of security that the claimant may provide in order to stay the removal of the claim or lien. The sum must be an amount that the court determines is a reasonable estimate of the costs and attorney's fees the movant is likely to incur in the proceeding to determine the validity or enforceability of the lien. The sum may not exceed the amount of the lien claim.

(b) The court shall stay the order removing the lien if the claimant files a bond or a deposit in lieu of a bond in the amount set in the order with the clerk of the court not later than the 30th day after the date the order is entered by the court unless, for good cause, the court orders a later date for filing the bond or the deposit in lieu of a bond. If the court fails to set the amount of the security required, the amount required is the amount of the lien claim.

(c) The bond must be:

(1) executed by a corporate surety authorized to do business in this state and licensed by this state to execute bonds

as surety; and

(2) conditioned on the claimant's payment of any final judgment rendered against the claimant in the proceeding for attorney's fees and costs to the movant under Section 53.156.

(d) In lieu of filing a bond, the claimant may deposit in the amount set by the court for the surety bond:

(1) cash;

(2) a negotiable obligation of the federal government or a federal agency; or

(3) a negotiable obligation of a financial institution chartered by the federal or state government that is insured by the federal government or a federal agency.

(e) A deposit made under Subsection (d) must be conditioned in the same manner as a surety bond. Any interest accrued on the deposit amount is a part of the deposit.

(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 within 30 days after the date the order was entered by the court; and

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

(g) The claim or lien is removed and extinguished as to a creditor or subsequent purchaser for valuable consideration who obtains an interest in the property after the certified copy of the order and certificate of the clerk of the court are filed with the county clerk. The removal of the lien does not constitute a release of the liability of the owner, if any, to the claimant.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

Sec. 53.162. REVIVAL OF REMOVED LIEN. (a) If an order removing the lien is not stayed as provided by Section 53.161 and the claimant later obtains a final judgment in the suit

establishing the validity and ordering the foreclosure of the lien, the claimant may file a certified copy of the final judgment with the county clerk.

(b) The filed judgment revives the lien, and the claimant may foreclose the lien.

(c) A lien revived under this section is void as to a creditor or subsequent purchaser for valuable consideration who obtained an interest in the property:

(1) after the order removing the lien and the certificate from the clerk of the court was filed with the county clerk; and

(2) before the final judgment reviving the lien was filed with the county clerk.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

Sec. 53.171. BOND. (a) If a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the property subject to the lien is located.

(c) A mechanic's lien claim against an owner's property is discharged after:

(1) a bond that complies with Section 53.172 is filed;

(2) the notice of the bond is issued as provided by Section 53.173; and

(3) the bond and notice are recorded as provided by Section 53.174.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 24, 39(1), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 18, eff. Sept. 1, 1997.

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 $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 $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 Subchapter A, Chapter 3503, 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.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 25, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1132, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 6, eff. May 29, 2023.

Sec. 53.173. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail addressed to the claimant at the address stated in the lien affidavit for the obligee.

(d) If the claimant's lien affidavit does not state the claimant's address, the notice is not required to be mailed to the

claimant.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 26, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 19, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 25, eff. January 1, 2022.

Sec. 53.174. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

(b) In acquiring an interest in or insuring title to real property, a purchaser, insurer of title, or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 27, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 20, eff. Sept. 1, 1997.

Sec. 53.175. ACTION ON BOND. (a) A party making or holding a lien claim may not sue on the bond later than one year after the date on which the notice is served or after the date on which the underlying lien claim becomes unenforceable under Section 53.158.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any court of jurisdiction in the county in which the real property is located.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 28, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 21, eff. Sept. 1, 1997.

SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

Sec. 53.201. BOND. (a) An original contractor who has a written contract with the owner may furnish at any time a bond for the benefit of claimants.

(b) If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of obligations under Subchapter D or E.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 22, eff. Sept. 1, 1997.

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 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, 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.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 29, eff. Sept. 1,

1989; Acts 1997, 75th Leg., ch. 1132, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 380, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.158, eff. September 1, 2005.

Sec. 53.203. RECORDING OF BOND AND CONTRACT. (a) The bond and the contract between the original contractor and the owner shall be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction or repair is being performed or is to be performed. A memorandum of the contract or a copy of the contract may be substituted for the original.

(b) The plans, specifications, and general conditions of the contract are not required to be filed.

(c) The county clerk shall record the bond and place the contract on file in the clerk's office and shall index and cross-index both in the names of the original contractor and the owner in records kept for that purpose.

(d) On request and payment of a reasonable fee, the county clerk shall furnish a copy of the bond and contract to any person.

(e) In any court of this state or in the United States, a copy of the bond and contract certified by the county clerk constitutes prima facie evidence of the contents, execution, delivery, and filing of the originals.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 683, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 1138, Sec. 30, eff. Sept. 1, 1989.

Sec. 53.204. RELIANCE ON RECORD. A purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title is entitled to rely on the record of the bond and contract as constituting payment of all claims and liens for labor, subcontracts, materials, or specially fabricated materials incurred by the original contractor as if the purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title were the owner who approved, accepted, and

endorsed the bond and as if each person furnishing labor or materials for the work performed under the original contract, other than the original contractor, had filed a complete release and relinquishment of lien of record.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 31, eff. Sept. 1, 1989.

Sec. 53.205. ENFORCEABLE CLAIMS. (a) The bond protects all persons with a claim that is:

(1) perfected in the manner prescribed for fixing a lien under Subchapter C; or

(2) perfected in the manner prescribed by Section 53.206.

(b) A claim or the rights to a claim under the bond may be assigned.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 26, eff. January 1, 2022.

Sec. 53.206. PERFECTION OF CLAIM. (a) Except as provided by Subsection (b), to perfect a claim against a bond in a manner other than that prescribed by Subchapter C for fixing a lien, a person must give notice under Sections 53.056 and 53.057, as applicable, to the original contractor and surety on the bond.

(b) To perfect a claim for retainage under this section, a claimant is not required to give notice to the surety under Section 53.057 if the claimant has a direct contractual relationship with the original contractor.

(c) A claimant that provides the notices described by this section is not required to file an affidavit claiming a mechanic's lien to perfect a claim under the bond.

(d) A person satisfies the requirements of this section relating to providing notice to the surety if the person mails the

notice by certified mail to the surety:

(1) at the address stated on the bond or on an attachment to the bond;

(2) at the address on file with the Texas Department of Insurance; or

(3) at any other address allowed by law.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 32, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 889, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 380, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 27, eff. January 1, 2022.

Sec. 53.207. OWNER'S NOTICE OF CLAIM TO SURETY. (a) If the owner receives any of the notices or a lien is fixed under this chapter, the owner shall mail to the surety on the bond a copy of all notices received.

(b) Failure of the owner to send copies of notices to the surety does not relieve the surety of any liability under the bond if the claimant has complied with the requirements of this subchapter, nor does that failure impose any liability on the owner.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 28, eff. January 1, 2022.

Sec. 53.208. ACTION ON BOND. (a) A claimant may sue the principal and surety on the bond either jointly or severally, if the claim remains unpaid for 60 days after the claimant perfects the claim.

(b) The claimant may sue for the amount of the claim and court costs.

(c) The suit must be brought in the county in which the

property being improved is located.

(d) If the bond is recorded at the time the lien is filed, the claimant must sue on the bond within one year following perfection of his claim. If the bond is not recorded at the time the lien is filed, the claimant must sue on the bond within two years following perfection of his claim.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 33, eff. Sept. 1, 1989.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 29, eff. January 1, 2022.

Sec. 53.210. CLAIMS IN EXCESS OF BOND AMOUNT. If valid claims against the bond exceed the penal sum of the bond, each claimant is entitled to a pro rata share of the penal sum.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.211. ATTEMPTED COMPLIANCE. (a) A bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter, if the bond:

(1) is furnished and filed in attempted compliance with this subchapter; or

(2) evidences by its terms intent to comply with this subchapter.

(b) Any provision in any payment bond furnished or filed in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this chapter shall be disregarded and the provisions of this subchapter shall be read into that bond.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 34, eff. Sept. 1, 1989.

SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

Sec. 53.231. LIEN. (a) A person who furnishes material or labor to a contractor under a prime contract with a governmental entity other than a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code, that does not exceed $25,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

(b) A person who furnishes material or labor to a contractor under a prime contract with a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code, that does not exceed $50,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 2, eff. September 1, 2009.

Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien claimant must send written notice of his claim by certified mail to:

(1) the officials of the state, county, town, or municipality whose duty it is to pay the contractor; and

(2) the contractor at the contractor's last known business or residence address.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 30, eff. January 1, 2022.

Sec. 53.233. CONTENTS OF NOTICE. (a) Whether based on written or oral agreement, the notice must contain:

(1) the amount claimed;

(2) the name of the party to whom the materials were delivered or for whom the labor was performed;

(3) the dates and place of delivery or performance;

(4) a description reasonably sufficient to identify the materials delivered or labor performed and the amount due;

(5) a description reasonably sufficient to identify the project for which the material was delivered or the labor performed; and

(6) the claimant's business address.

(b) The notice must be accompanied by a statement under oath that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 35, eff. Sept. 1, 1989.

Sec. 53.234. TIME FOR NOTICE. The lien claimant must give notice not later than the 15th day of the second month following the month in which the labor was performed or the material furnished.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 36, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 3, eff. September 1, 2009.

Sec. 53.235. OFFICIAL TO RETAIN FUNDS. A public official who receives the notice may not pay all of the money, bonds, or warrants due the contractor, but shall retain enough to pay the claim for which notice is given.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.236. BOND FOR RELEASE OF LIEN. (a) If a claim is filed attempting to fix a lien under this subchapter, the contractor against whom the claim is made may file a bond with the officials of the state, county, town, or municipality whose duty it is to pay the money, bonds, or warrants to the contractor.

(b) If the bond is approved by the proper official, its filing releases and discharges all liens fixed or attempted to be fixed by the filing of a claim, and the appropriate officials shall pay the money, bonds, or warrants to the contractor or the contractor's assignee.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.237. BOND REQUIREMENTS. The bond must be:

(1) in an amount double the amount of the claims filed;

(2) payable to the claimants;

(3) executed by:

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

(B) a corporate surety authorized, admitted to do business, and licensed by the law of this state to execute the bond as surety; and

(4) conditioned that:

(A) the principal and surety will pay to the obligees named or to their assignees the amount of the claims or the portions of the claims proved to be liens under this subchapter; and

(B) the principal and surety will pay all court costs adjudged against the principal in actions brought by a claimant on the bond.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 37, eff. Sept. 1, 1989.

Sec. 53.238. NOTICE OF BOND. The official with whom the bond is filed shall send an exact copy of the bond by certified mail, return receipt requested, to all claimants.

Acts 1983, 68th Leg., p. 3556, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 31, eff. January 1, 2022.

Sec. 53.239. ACTION ON BOND. (a) A claimant must sue on the bond within six months after the bond is filed.

(b) The bond is not exhausted by one action on it. Each obligee or his assignee may maintain a separate suit on the bond in any court of jurisdiction.

Acts 1983, 68th Leg., p. 3556, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER K. RESIDENTIAL CONSTRUCTION PROJECTS

Sec. 53.251. PROCEDURES FOR RESIDENTIAL CONSTRUCTION PROJECTS. (a) This subchapter applies only to residential construction projects.

(b) A person must comply with this subchapter in addition to the other applicable provisions of this chapter to perfect a lien that arises from a claim resulting from a residential construction project.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.254. CONTRACTUAL REQUIREMENTS FOR LIEN ON HOMESTEAD. (a) To fix a lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.

(b) The contract must be executed before the material is furnished or the labor is performed.

(c) If the owner is married, the contract must be signed by both spouses.

(d) If the contract is made by an original contractor, the contract inures to the benefit of all persons who labor or furnish material for the original contractor.

(e) The contract must be filed with the county clerk of the county in which the homestead is located. The county clerk shall record the contract in records kept for that purpose.

(f) An affidavit for lien filed under this subchapter that relates to a homestead must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent, at the top of the page:

"NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN."

(g) For the lien on a homestead to be valid, the notice required to be given to the owner under Subchapter C must 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 your contractor's work, you fail to reserve 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 reservation of 10 percent of the contract price or value of work 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 reservation, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim."

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 32, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 33, eff. January 1, 2022.

Sec. 53.255. DISCLOSURE STATEMENT REQUIRED FOR RESIDENTIAL CONSTRUCTION CONTRACT. (a) Before a residential construction contract is executed by the owner, the original contractor shall deliver to the owner a disclosure statement described by this section.

(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 reservation of funds 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 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 avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, 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 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.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should reserve or cause your lender to reserve 10 percent of the amount of payments made for the work performed by your contractor. If you choose not to reserve 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 reserve.

"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. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have withheld the 10 percent of the contract price or value of work, 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 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."

(c) 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.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 8, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 34, eff. January 1, 2022.

Sec. 53.256. LIST OF SUBCONTRACTORS AND SUPPLIERS. (a) Except as provided by Subsection (d), for the construction of improvements under a residential construction contract, the

original contractor shall:

(1) furnish to the owner before the commencement of construction a written list that identifies by name, address, and telephone number each subcontractor and supplier the contractor intends to use in the work to be performed; and

(2) provide the owner with an updated list of subcontractors and suppliers not later than the 15th day after the date a subcontractor or supplier is added or deleted.

(b) The list must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent:

"NOTICE: THIS LIST OF SUBCONTRACTORS AND SUPPLIERS MAY NOT BE A FINAL LISTING. UNLESS YOU SIGN A WAIVER OF YOUR RIGHT TO RECEIVE UPDATED INFORMATION, THE CONTRACTOR IS REQUIRED BY LAW TO SUPPLY UPDATED INFORMATION, AS THE INFORMATION BECOMES AVAILABLE, FOR EACH SUBCONTRACTOR OR SUPPLIER USED IN THE WORK PERFORMED ON YOUR RESIDENCE."

(c) 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.

(d) An owner may waive the right to receive the list of subcontractors and suppliers or any updated information required by this section only as provided by this subsection. The waiver must be in writing and may be included in the residential construction contract. If the waiver is not included as a provision of the residential construction contract, the separate waiver statement must be signed by the owner. The waiver must be conspicuously printed in at least 10-point bold-faced type and read substantially similar to the following:

"WAIVER OF THE LIST OF SUBCONTRACTORS AND SUPPLIERS. AN OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY SECTION 53.256, PROPERTY CODE, TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS.

"BY SIGNING THIS DOCUMENT, I AGREE TO WAIVE MY RIGHT TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS.

"I UNDERSTAND AND ACKNOWLEDGE THAT, AFTER SIGNING THIS

DOCUMENT, THIS WAIVER MAY NOT BE CANCELED AT A LATER DATE.

"I HAVE VOLUNTARILY CONSENTED TO THIS WAIVER."

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 9, eff. Sept. 1, 1999.

Sec. 53.257. PROVISIONS RELATED TO CLOSING OF LOAN FOR CONSTRUCTION OF IMPROVEMENTS. (a) If the owner is obtaining third-party financing for the construction of improvements under a residential construction contract, the lender shall deliver to the owner all documentation relating to the closing of the loan not later than one business day before the date of the closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(b) The lender shall provide to the owner the disclosure statement described by Section 53.255(b). The disclosure statement must be provided to the owner before the date of closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the disclosure statement at the closing. The lender shall retain a signed and dated copy of the disclosure statement with the closing documents.

(c) The failure of a lender to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.258. DISBURSEMENTS OF FUNDS. (a) At the time the original contractor requests payment from the owner or the owner's lender for the construction of improvements under a residential construction contract, the original contractor shall provide to the owner a disbursement statement. The statement may include any information agreed to by the owner and the original contractor and must include at least the name and address of each person who subcontracted directly with the original contractor and who the

original contractor intends to pay from the requested funds. The original contractor shall provide the disbursement statement:

(1) in the manner agreed to in writing by the owner and original contractor; or

(2) if no agreement exists, by depositing the statement in the United States mail, first class, postage paid, and properly addressed to the owner or by hand delivering the statement to the owner before the original contractor receives the requested funds.

(b) If the owner finances the construction of improvements through a third party that advances loan proceeds directly to the original contractor, the lender shall:

(1) obtain from the original contractor the signed disbursement statement required by Subsection (a) that covers the funds for which the original contractor is requesting payment; and

(2) provide to the owner a statement of funds disbursed by the lender since the last statement was provided to the owner.

(c) The lender shall provide to the owner the lender's disbursement statement and the disbursement statement the lender obtained from the contractor before the lender disburses the funds to the original contractor. The disbursement statements may be provided in any manner agreed to by the lender and the owner.

(d) The lender is not responsible for the accuracy of the information contained in the disbursement statement obtained from the original contractor.

(e) The failure of a lender or an original contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

(f) A person commits an offense if the person intentionally, knowingly, or recklessly provides false or misleading information in a disbursement statement required 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.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 10, eff. Sept. 1, 1999.

Sec. 53.259. FINAL BILLS-PAID AFFIDAVIT REQUIRED. (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 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.

(b) The seller of any real property on which a structure of not more than four units is constructed and that is intended as the principal place of residence for the purchaser shall, at the closing of the purchase of the real property, execute and deliver to the purchaser, or the purchaser's agent, an affidavit stating that the seller has paid each person in full for all labor and materials used in the construction of improvements on the real property and that the seller is not indebted to any person by reason of any construction. In the event that the seller has not paid each person in full, the seller 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.

(d) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or

incorrect information in the affidavit.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.260. CONVEYANCE TO CONTRACTOR NOT REQUIRED. An original contractor may not require an owner of real property to convey the real property to the original contractor or an entity controlled by the original contractor as a condition to the performance of the residential construction contract for improvements to the real property.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 889, Sec. 11, eff. Sept. 1, 1999.

SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) 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

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 35, eff. January 1, 2022.

Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to waive, release, or otherwise adversely affect a lien or payment

bond claim is not enforceable and does not create an estoppel or impairment of a lien or payment bond claim unless:

(1) the statement is in writing and substantially complies with a form prescribed by Section 53.284;

(2) the claimant has actually received payment in good and sufficient funds in full for the lien or payment bond claim; or

(3) the statement is:

(A) in a written original contract or subcontract for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex; and

(B) made before labor or materials are provided under the original contract or subcontract.

(b) The filing of a lien rendered unenforceable by a lien waiver under Subsection (a)(3) does not violate Section 12.002, Civil Practice and Remedies Code, unless:

(1) an owner or original contractor sends a written explanation of the basis for nonpayment, evidence of the contractual waiver of lien rights, and a notice of request for release of the lien to the claimant at the claimant's address stated in the lien affidavit; and

(2) the lien claimant does not release the filed lien affidavit on or before the 14th day after the date the owner or the original contractor sends the items required by Subdivision (1).

(c) Subsection (a)(3) does not apply to a person who supplies only material, and not labor, for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT REQUIRED. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

(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) located at _____ (location) to the following extent: _____ (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, 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)"

(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) to the following

extent: _____ (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, pending modifications and changes, 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)"

(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) to the following extent: _____ (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)"

(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) to the following extent: _____ (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.

"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)"

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien or claim created under this chapter is void as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3,

eff. January 1, 2012.

Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter does not apply to a written agreement to subordinate, release, waive, or satisfy all or part of a lien or bond claim in:

(1) an accord and satisfaction of an identified dispute;

(2) an agreement concerning an action pending in any court or arbitration proceeding; or

(3) an agreement that is executed after an affidavit claiming the lien has been filed or the bond claim has been made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.