

Perfecting Texas Mechanic's Liens

Chapter 53 of the Property Code Governs Mechanic's and Materialman's Liens in Texas

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Broadly speaking, a mechanic's lien is a lien on private property to enforce payment for labor and/or materials provided to a private construction project.

There are four important parties involved in mechanic's liens: a) the owner, who owns the property where the construction project is built; b) the original contractor, who contracts directly with the owner; c) the first-tier subcontractor (or supplier), who contracts directly with the original contractor; and d) the second-tier subcontractor, who is essentially any subcontractor or supplier that is not a first-tier subcontractor.

This article will discuss the steps required for each party to perfect a mechanic's lien under Chapter 53. Please note that requirements for lien claims on retainage, specially fabricated materials, and residential construction projects do not lie within the scope of this article.

Second-Tier Subcontractors

In order to understand the complexities of mechanic's liens, it is best to begin with the requirements for second-tier subcontractors.

A second-tier subcontractor is required to send "pre-lien" notice of claim letters for each month that it provides labor or material to the project for which payment is not received. A pre-lien notice must be sent to both the original contractor and to the owner. The pre-lien notice for the original contractor must be sent no later than the 15th day of the second month after the month in which the labor or materials were provided to the project, and the pre-lien notice for the owner must be sent no later than the 15th day of the third month after the month in which the labor or materials were provided to the project. For example, if a second-tier subcontractor provided materials to a project in January, a pre-lien notice must be sent to the original contractor on or before March 15th, and to the owner on or before April 15th. The notice must identify the project, the subcontractor who the second-tier subcontractor contracted with, the amount claimed, and the labor provided. It is also good practice to attach the unpaid payment applications or invoices to the notices.

A second-tier subcontractor can file an affidavit claiming a lien

against the owner's property for labor or materials provided for each month that it sent timely pre-lien notices to the original contractor and owner. The affidavit must be filed in the county where the subject property is located. The filing deadline is the 15th day of the fourth month after the last month in which a second-tier subcontractor provided labor or materials to the project. Therefore, if a second-tier subcontractor provided labor in the months February through June, and the required notices were timely sent, the lien filing deadline would be October 15. The second-tier subcontractor must also send notice of the affidavit and a copy of the affidavit to the owner and original contractor no later than five days after the affidavit was filed. If each of these steps is followed and the requirements satisfied, a second-tier subcontractor should have a perfected lien claim. The content of the affidavit is outlined in section 53.054 of the Property Code.

First-Tier Subcontractors

All the requirements for a second-tier subcontractor also apply to a first-tier subcontractor, except that pre-lien notices to the original contractor are not required of the first-tier subcontractor.

Original Contractors

An original contractor is not required to send any pre-lien notices. Instead, it must file a lien affidavit by the 15th day of the fourth month after the month in which the original contract with the owner was terminated in writing by the owner or original contractor, or was completed, finally settled, or abandoned. The affidavit content requirements are the same as those for



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first- and second-tier contractors found in section 53.054 of the Property Code. In addition, an original contractor is afforded a constitutional mechanic's lien pursuant to Article XVI, Section 37 of the Texas Constitution. The constitutional lien is automatically perfected, but should be included in the lien affidavit. The requirement and deadline for notifying the owner of the lien affidavit discussed above apply equally to an original contractor.

Additional Tips

Always send lien notices USPS Certified Mail Return Receipt Requested. Not only is it required, it provides evidence that notices sent were indeed received. Also, if the 15th day of a month falls on a weekend or official state holiday, the applicable deadline is the first preceding day that is not a weekend or official state holiday. **AL**

