

SELECTED TEXAS STATUTES FOR DISASTER REMEDIATION CONTRACTORS

Current as of the 2021 Legislative Session

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Business and Commerce Code Section 58.001

Definitions

In this chapter:

(1) "Disaster remediation" means the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruction to that property caused by a natural disaster.

(2) "Disaster remediation contractor" means a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality for the collection, transportation, treatment, storage, processing, or disposal of solid waste.

(3) "Natural disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property related to any natural cause, including fire, flood, earthquake, wind, storm, or wave action, that results in a disaster declaration by the governor or a local disaster declaration by a county judge under Chapter 418, Government Code.

(4) "Person" means an individual, corporation, trust, partnership, association, or other private legal entity.

Business and Commerce Code Section 58.002

Applicability of Chapter

(a) Except as provided by Subsection (b), this chapter applies to a contract between a person and a disaster remediation contractor for the performance of disaster remediation services on property owned or leased by the person.

(b) This chapter does not apply to a contract between a person and a disaster remediation contractor for the performance of disaster remediation services on property owned or leased by the person if the contractor maintains for at least one year preceding the date of the contract a physical business address in:

- (1) the county in which the property is located; or
- (2) a county adjacent to the county in which the property is located.

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Business and Commerce Code Section 58.003

Disaster Remediation Contract Requirements; Certain Conduct Prohibited

(a) A contract subject to this chapter must be in writing.

(b) A disaster remediation contractor:

(1) may not require a person to make a full or partial payment under a contract before the contractor begins work;

(2) may not require that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered; and

(3) shall include in any contract for disaster remediation services the following statement in conspicuous, boldfaced type of at least 10 points in size: "This contract is subject to Chapter 58, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered."

Business and Commerce Code Section 58.004

Deceptive Trade Practice

A violation of this chapter by a disaster remediation contractor is a false, misleading, or deceptive act or practice as defined by Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is available for a violation of this chapter.

Business and Commerce Code Section 58.005

Waiver of Chapter Prohibited

A person may not waive this chapter by contract or other means. A purported waiver of this chapter is void.

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Business and Commerce Code Section 601.051

Consumer's Right to Cancel

In addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase.

Business and Commerce Code Section 601.052

Notice of Consumer's Right to Cancel Required

(a) A merchant must provide a consumer with a complete receipt or copy of a contract pertaining to the consumer transaction at the time of its execution.

(b) The document provided under Subsection (a) must:

- (1) be in the same language as that principally used in the oral sales presentation;
- (2) contain the date of the transaction;
- (3) contain the name and address of the merchant; and
- (4) contain a statement:

(A) in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used; and

(B) in boldfaced type of a minimum size of 10 points in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

Business and Commerce Code Section 601.053

Completed Cancellation Form Required

(a) A merchant that provides a document under Section 601.052 must attach to the document a completed notice of cancellation form in duplicate. The form must:

- (1) be easily detachable;
- (2) be in the same language as the document provided under Section 601.052; and
- (3) contain the following information and statements in 10-point boldfaced type:

"NOTICE OF CANCELLATION

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(enter date of transaction)

"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

"IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

"IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

"TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(date)

(buyer's signature)"

(b) A merchant may not fail to include on both copies of the form described by Subsection (a):

- (1) the name of the merchant;
- (2) the address of the merchant's place of business;
- (3) the date of the transaction; and

(4) a date not earlier than the third business day after the date of the transaction by which the consumer must give notice of cancellation.

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PROPERTY CODE

CHAPTER 12. RECORDING OF INSTRUMENTS

Property Code Section 12.014

Transfer of Judgment or Cause of Action

(a) A judgment or part of a judgment of a court of record or an interest in a cause of action on which suit has been filed may be sold, regardless of whether the judgment or cause of action is assignable in law or equity, if the transfer is in writing.

(b) A transfer under this section may be filed with the papers of the suit if the transfer is acknowledged or sworn to in the form and manner required by law for acknowledgement or swearing of deeds.

(c) If a transfer of a judgment is filed, the clerk shall record the transfer appropriately. If a transfer of a cause of action in which a judgment has not been rendered is filed, the clerk shall note and briefly state the substance of the transfer on the court docket at the place where the suit is entered.

(d) A transfer filed under this section is notice to and is binding on a person subsequently dealing with the judgment or cause of action.

CHAPTER 27. FRAUD

Business and Commerce Code Section 27.02

Certain Insurance Claims for Excessive Charges

(a) A person who sells goods or services commits an offense if:

(1) the person advertises or promises to provide the good or service and to pay:

(A) all or part of any applicable insurance deductible; or

(B) a rebate in an amount equal to all or part of any applicable insurance deductible;

(2) the good or service is paid for by the consumer from proceeds of a property or casualty insurance policy; and

(3) the person knowingly charges an amount for the good or service that exceeds the usual and customary charge by the person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by the person to an insurer on behalf of an insured or remitted to an insured by the person as a rebate.

(b) A person who is insured under a property or casualty insurance policy commits an offense if the person:

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- (1) submits a claim under the policy based on charges that are in violation of Subsection (a) of this section; or
- (2) knowingly allows a claim in violation of Subsection (a) of this section to be submitted, unless the person promptly notifies the insurer of the excessive charges.
- (c) An offense under this section is a Class A misdemeanor.

CHAPTER 41. INTERESTS IN LAND

SUBCHAPTER A. EXEMPTIONS IN LAND DEFINED

Property Code Section 41.001

Interests in Land Exempt from Seizure

- (a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.
- (b) Encumbrances may be properly fixed on homestead property for:
 - (1) purchase money;
 - (2) taxes on the property;
 - (3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);
 - (4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
 - (5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;
 - (6) an extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution; or
 - (7) a reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.
- (c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.

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Property Code Section 41.002

Definition of Homestead

(a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or

(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) A homestead is considered to be urban if, at the time the designation is made, the property is:

(1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and

(2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

(A) electric;

(B) natural gas;

(C) sewer;

(D) storm sewer; and

(E) water.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

Property Code Section 41.007

Home Improvement Contract

Editor's note: The Texas Residential Construction Commission was abolished but this version of the Code still appears on the legislature's web site as of 2-27-21.

(a) A contract for improvements to an existing residence described by Section 41.001(b)(3) must contain:

(1) the contractor's certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission; and

(3) the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(c) A provision of a contract for improvements to an existing residence described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(d) A provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met.

CHAPTER 52. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Property Code Section 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) abutting sidewalks and streets and utilities in or on those sidewalks and streets;

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(B) clearing, grubbing, draining, or fencing of land;

(C) wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;

(D) pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation; and

(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees.

(3) "Labor" means labor used in the direct prosecution of the work.

(4) "Material" means all or part of:

(A) the material, machinery, fixtures, or tools incorporated into the work, consumed in the direct prosecution of the work, or ordered and delivered for incorporation or consumption;

(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 prosecution 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 prosecution 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.

(8) "Residence" means a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes 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. The term does not include retainage under Subchapter E.

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(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 has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor to perform all or part of the work required by an original contract.

(14) "Work" means any part of construction or repair 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.

Property Code Section 53.002

More Than One Original Contractor

On any work there may be more than one original contractor for purposes of this chapter.

Property Code Section 53.003

Notices

(a) This section applies to notices required by Subchapters B through G and K.

(b) Any notice or other written communication may be delivered in person to the party entitled to the notice or to that party's agent, regardless of the manner prescribed by law.

(c) If notice is sent by registered or 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.

SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

Property Code Section 53.021

Persons Entitled to Lien

(a) A person has a lien if:

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(1) the person labors, specially fabricates material, or furnishes labor or materials for construction or repair in this state of:

(A) a house, building, or improvement;

(B) a levee or embankment to be erected for the reclamation of overflow land along a river or creek; or

(C) a railroad; and

(2) the person labors, specially fabricates the material, or furnishes the labor or materials under or by virtue of a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

(b) A person who specially fabricates material has a lien even if the material is not delivered.

(c) An architect, engineer, or surveyor who prepares a plan or plat under or by virtue of a written contract with the owner or the owner's agent, trustee, or receiver in connection with the actual or proposed design, construction, or repair of improvements on real property or the location of the boundaries of real property has a lien on the property.

(d) A person who provides labor, plant material, or other supplies for the installation of landscaping for a house, building, or improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation, under or by virtue of a written contract with the owner or the owner's agent, contractor, subcontractor, trustee, or receiver has a lien on the property.

(e) A person who performs labor as part of, or who furnishes labor or materials for, the demolition of a structure on real property under or by virtue of a written contract with the owner of the property or the owner's agent, trustee, receiver, contractor, or subcontractor has a lien on the property.

Property Code Section 53.022

Property to Which Lien Extends

(a) The lien extends to the house, building, fixtures, or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed.

(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 house, building, or 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 house, building, or improvement is situated or on which the labor was performed.

Property Code Section 53.023

Payment Secured by Lien

The lien secures payment for:

- (1) the labor done or material furnished for the construction or repair;
- (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; or
- (3) the preparation of a plan or plat by an architect, engineer, or surveyor in accordance with Section 53.021(c).

Property Code Section 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.

Property Code Section 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.

Property Code Section 53.026

Sham Contract

(a) A person who labors, specially fabricates materials, or furnishes labor or materials under a direct contractual relationship with another person is considered to be in direct contractual relationship with the owner and has a lien as an original contractor, if:

(1) the owner contracted with the other person for the construction or repair of a house, building, or improvements and the owner can effectively control that person through ownership of voting stock, interlocking directorships, or otherwise;

(2) the owner contracted with the other person for the construction or repair of a house, building, or improvements and that other person can effectively control the owner through ownership of voting stock, interlocking directorships, or otherwise; or

(3) the owner contracted with the other person for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that the other person was to perform the contract.

(b) In this section, "owner" does not include a person who has or claims a security interest only.

SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

Property Code Section 53.051

Necessary Procedures

To perfect the lien, a person must comply with this subchapter.

Property Code Section 53.052

Filing of Affidavit

(a) Except as provided by Subsection (b), the person claiming the lien must file an affidavit with the county clerk of the county in which the property is located or into which the railroad extends not later than the 15th day of the fourth calendar month after the day on which the indebtedness accrues.

(b) A person claiming a lien arising from a residential construction project must file an affidavit with the county clerk of the county in which the property is located not later than the 15th day of the third calendar month after the day on which the indebtedness accrues.

(c) 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.

Property Code Section 53.053

Accrual of Indebtedness

(a) For purposes of Section 53.052, indebtedness accrues on a contract under which a plan or plat is prepared, labor was performed, materials furnished, or specially fabricated materials are to be furnished in accordance with this section.

(b) Indebtedness to an original contractor accrues:

(1) on the last day of the month in which a written declaration by the original contractor or the owner is received by the other party to the original contract stating that the original contract has been terminated; or

(2) on the last day of the month in which the original contract has been completed, finally settled, or abandoned.

(c) Indebtedness to a subcontractor, or to any person not covered by Subsection (b) or (d), who has furnished labor or material to an original contractor or to another subcontractor accrues on the last day of the last month in which the labor was performed or the material furnished.

(d) Indebtedness for specially fabricated material accrues:

(1) on the last day of the last month in which materials were delivered;

(2) on the last day of the last month in which delivery of the last of the material would normally have been required at the job site; or

(3) on the last day of the month of any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

(e) A claim for retainage accrues on the earliest of the last day of the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, terminated, or abandoned.

Property Code Section 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.

Property Code Section 53.055

Notice of Filed Affidavit

(a) A person who files an affidavit must send a copy of the affidavit by registered or certified mail 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.

Property Code Section 53.056

Derivative Claimant: Notice to Owner or Original Contractor

(a) Except as provided by Subchapter K, a claimant other than an original contractor must give the notice prescribed by this section for the lien to be valid.

(b) If the lien claim arises from a debt incurred by a subcontractor, the claimant must give to the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 15th day of the second month following each month in which all or part of the claimant's labor was performed or material delivered. The claimant must give the same notice to the owner or reputed

owner and the original contractor not later than the 15th day of the third month following each month in which all or part of the claimant's labor was performed or material or specially fabricated material was delivered.

(c) If the lien claim arises from a debt incurred by the original contractor, the claimant must give notice to the owner or reputed owner, with a copy to the original contractor, in accordance with Subsection (b).

(d) To authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the claim remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:

- (1) the owner withholds payments from the contractor for payment of the claim; or
- (2) the claim is otherwise paid or settled.

(e) The notice must be sent by registered or certified mail and must be addressed to the owner or reputed owner or the original contractor, as applicable, at his last known business or residence address.

(f) A copy of the statement or billing in the usual and customary form is sufficient as notice under this section.

Property Code Section 53.057

Derivative claimant: Notice for Contractual Retainage Claim

(a) A claimant may give notice under this section instead of or in addition to notice under Section 53.056 or 53.252 if the claimant is to labor, furnish labor or materials, or specially fabricate materials, or has labored, furnished labor or materials, or specially fabricated materials, under an agreement with an original contractor or a subcontractor providing for retainage.

(b) The claimant must give the owner or reputed owner notice of contractual retainage not later than the earlier of:

- (1) the 30th day after the date the claimant's agreement providing for retainage is completed, terminated, or abandoned; or
- (2) the 30th day after the date the original contract is terminated or abandoned.

(b-1) If an agreement for contractual retainage is with a subcontractor, the claimant must also give the notice of contractual retainage to the original contractor within the period prescribed by Subsection (b).

(c) The notice must generally state the existence of a requirement for retainage and contain:

- (1) the name and address of the claimant; and
- (2) if the agreement is with a subcontractor, the name and address of the subcontractor.

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(d) The notice must be sent to the last known business or residence address of the owner or reputed owner or the original contractor, as applicable.

(e) If a claimant gives notice under this section and Section 53.055 or, if the claim relates to a residential construction project, under this section and Section 53.252, the claimant is not required to give any other notice as to the retainage.

(f) A claimant has a lien on, and the owner is personally liable to the claimant for, the retained 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 earliest of:

(i) the date required for filing an affidavit under Section 53.052;

(ii) the 40th day after the date stated in an affidavit of completion as the date of completion of the work under the original contract, if the owner sent the claimant notice of an affidavit of completion in the time and manner required;

(iii) the 40th day after the date of termination or abandonment of the original contract, if the owner sent the claimant a notice of such termination or abandonment in the time and manner required; or

(iv) the 30th day after the date the owner sent to the claimant to the claimant's address provided in the notice for contractual retainage, as required under Subsection (c), a written notice of demand for the claimant to file the affidavit claiming a lien; and

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

(g) The written demand under Subsection (f)(1)(B)(iv):

(1) must contain the owner's name and address and a description, legally sufficient for identification, of the real property on which the improvement is located;

(2) must state that the claimant must file the lien affidavit not later than the 30th day after the date the demand is sent; and

(3) is effective only for the amount of contractual retainage earned by the claimant as of the day the demand was sent.

Property Code Section 53.058

Derivative Claimant: Notice for Specially Fabricated Items

(a) Except as provided by Subchapter K, a claimant who specially fabricates material must give notice under this section for the lien to be valid.

(b) The claimant must give the owner or reputed owner notice not later than the 15th day of the second month after the month in which the claimant receives and accepts the order for the material. If

the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

(c) The notice must contain:

- (1) a statement that the order has been received and accepted; and
- (2) the price of the order.

(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or the reputed owner or the original contractor, as applicable.

(e) In addition to notice under this section, the claimant must give notice under Section 53.056 if delivery has been made or if the normal delivery time for the job has passed.

(f) The lien of a claimant who accepts an order but fails to give notice under this section is valid as to delivered items if the claimant has given notice under Section 53.056.

(g) If a retainage agreement consists in whole or part of an obligation to furnish specially fabricated materials and the claimant has given notice under Section 53.057, the claimant is not required to give notice under this section.

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SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

Property Code Section 53.081

Authority to Withhold Funds for Benefit of Claimants

(a) If an owner receives notice under Section 53.056, 53.057, 53.058, 53.252, or 53.253, the owner may withhold from payments to the original contractor an amount necessary to pay the claim for which he receives notice.

(b) If notice is sent in a form that substantially complies with Section 53.056 or 53.252, 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) If notice is sent under Section 53.058, the owner may withhold funds immediately on receipt of the notices sent under Subsection (e) of that Section. If notice is sent as provided by Section 53.253(b), the owner may withhold funds immediately on receipt of the notice sent as required by Section 53.252.

Property Code Section 53.082

Time for Which Funds are Withheld

Unless payment is made under Section 53.083 or 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, until the lien claim has been satisfied or released.

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Property Code Section 53.083

Payment to Claimant on Demand

(a) The claimant may make written demand for payment of the claim to an owner authorized to withhold funds under this subchapter. The demand must give notice to the owner that all or part of the claim has accrued under Section 53.053 or is past due according to the agreement between the parties.

(b) The claimant must send a copy of the demand to the original contractor. The original contractor may give the owner written notice that the contractor intends to dispute the claim. The original contractor must give the notice not later than the 30th day after the day he receives the copy of the demand. If the original contractor does not give the owner timely notice, he is considered to have assented to the demand and the owner shall pay the claim.

(c) The claimant's demand may accompany the original notice of nonpayment or of a past-due claim and may be stamped or written in legible form on the face of the notice.

(d) Unless the lien has been secured, the demand may not be made after expiration of the time within which the claimant may secure the lien for the claim.

Property Code Section 53.084

Owner's Liability

(a) Except for the amount required to be retained 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 the notices required by Subchapter C or K, 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 he is liable under Subchapter E.

Property Code Section 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.

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SUBCHAPTER E. REQUIRED RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS

Property Code Section 53.101

Required Retainage

(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 is completed, the owner shall retain:

- (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.

Property Code Section 53.102

Payment Secured by Retainage

The retained 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.

Property Code Section 53.103

Lien on Retained Funds

A claimant has a lien on the retained 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.

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Property Code Section 53.104

Preferences

(a) Individual artisans and mechanics are entitled to a preference to the retained 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 retained funds.

Property Code Section 53.105

Owner's Liability for Failure to Retain

(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 retained from the original contract under which they are claiming, against the house, building, structure, fixture, or improvement 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.

Property Code Section 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 not later than the 40th day after the date the work under the original contract is completed.

(b) A copy of the affidavit must be sent by certified or registered mail to the original contractor not later than the date the affidavit is filed and to each claimant who sends a notice of lien liability to the

owner under Section 53.056, 53.057, 53.058, 53.252, or 53.253 not later than 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) Except as provided by this subsection, an affidavit filed under this section on or before the 10th day after the date of completion of the improvements is prima facie evidence of the date the work under the original contract is completed for purposes of this subchapter and Section 53.057. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter and Section 53.057 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.

Property Code Section 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, 53.057, or 53.058; or

(2) sent to the owner by certified or registered mail 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 not later than the 40th day after the date of the termination or abandonment.

(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.

SUBCHAPTER F. PRIORITIES AND PREFERENCES

Property Code Section 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.

Property Code Section 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.

Property Code Section 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.

Property Code Section 53.121

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.

SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

Property Code Section 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.

Property Code Section 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.

Property Code Section 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.

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Property Code Section 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.

Property Code Section 53.155

Transfer of Property Sold

If the house, building, improvement, or any piece of railroad property is sold separately, the officer making the sale shall place the purchaser in possession. The purchaser is entitled to a reasonable time after the date of purchase within which to remove the purchased property.

Property Code Section 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.

Property Code Section 53.157

Discharge of Lien

A mechanic's lien or 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 property 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

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(6) recording a certified copy of the order removing the lien under Section 53.160 and a certificate from the clerk of the court that states 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.

Property Code Section 53.158

Period of Bringing Suit to Foreclose Lien

(a) Except as provided by Subsection (b), suit must be brought to foreclose the lien within two years after the last day a claimant may file the lien affidavit under Section 53.052 or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later.

(b) For a claim arising from a residential construction project, suit must be brought to foreclose the lien within one year after the last day a claimant may file a lien affidavit under Section 53.052 or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later.

Property Code Section 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

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(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.

Property Code Section 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.

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(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 furnished to the owner or original contractor as required by Section 53.056, 53.057, 53.058, 53.252, or 53.253;

(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 21 days before the date of the hearing on the motion. A motion may not be heard before the 21st day after the date the claimant answers or appears in the proceeding.

(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.

Property Code Section 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:

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(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.

Property Code Section 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.

SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

Property Code Section 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

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

Property Code Section 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 Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas 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.

Property Code Section 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 United States mail, return receipt requested, 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.

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Property Code Section 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.

Property Code Section 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.

SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

Property Code Section 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.

Property Code Section 53.202

Bond Requirements

The bond must:

- (1) be in a penal sum at least equal to the total of the original contract amount;

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- (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.

Property Code Section 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.

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Property Code Section 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.

Property Code Section 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, if the claim relates to a residential construction project, under Subchapter K; 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.

Property Code Section 53.206

Perfection of Claim

- (a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C or K for fixing a lien, a person must:
 - (1) give to the original contractor all applicable notices under the appropriate subchapter; and
 - (2) give to the surety on the bond, instead of the owner, all notices under the appropriate subchapter required to be given to the owner.
- (b) To perfect a claim under this section, a person is not required to:
 - (1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;

(2) give notice to the surety under Section 53.058(b) or, if the claim relates to a residential construction project, under Section 53.253(c); or

(3) file any affidavit with the county clerk.

(c) For the claim to be valid, a person must give notice in the time and manner required by this section, but the content of the notices need only provide fair notice of the amount and the nature of the claim asserted.

(d) A person satisfies the requirements of this section relating to providing notice to the surety if the person mails the notice by certified or registered 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.

Property Code Section 53.207

Owner's Notice of Claim to Surety

(a) If the owner receives any of the notices or a lien is fixed under Subchapter C or K, 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.

Property Code Section 53.208

Action on Bond

(a) A claimant may sue the principal and surety on the bond either jointly or severally, if his 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.

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Property Code Section 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.

Property Code Section 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.

SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

Property Code Section 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.

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Property Code Section 53.232

To Whom Notice Given; Manner

The lien claimant must send written notice of his claim by registered or 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.

Property Code Section 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.

Property Code Section 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.

Property Code Section 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.

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Property Code Section 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.

Property Code Section 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.

Property Code Section 53.238

Notice of Bond

The official with whom the bond is filed shall send an exact copy of the bond by registered mail or certified mail, return receipt requested, to all claimants.

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Property Code Section 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.

SUBCHAPTER K. RESIDENTIAL CONSTRUCTION PROJECTS

Property Code Section 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.

Property Code Section 53.252

Derivative claimant: Notice to Owner or Original Contractor

- (a) A claimant other than an original contractor must give the notice prescribed by this section for the lien to be valid. If the property that is the subject of the lien is a homestead, the notice must also comply with Section 53.254.
- (b) The claimant must give to the owner or reputed owner and the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 15th day of the second month following each month in which all or part of the claimant's labor was performed or material or specially fabricated material was delivered.
- (c) To authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the claim remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:
 - (1) the owner withholds payments from the contractor for payment of the claim; or
 - (2) the claim is otherwise paid or settled.
- (d) The notice must be sent by registered or certified mail and must be addressed to the owner or reputed owner and the original contractor, as applicable, at the person's last known business or residence address.

(e) A copy of the statement or billing in the usual and customary form is sufficient as notice under this section.

Property Code Section 53.253

Derivative Claimant: Notice for Specially Fabricated Items

(a) If specially fabricated materials have not been delivered to the property or incorporated in the residential construction project, the claimant who specially fabricates material for incorporation in the residential construction project must give notice under this section for the lien to be valid.

(b) Once the specially fabricated materials have been delivered, the claimant must give notice under Section 53.252.

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

(d) The notice must contain:

- (1) a statement that the order has been received and accepted; and
- (2) the price of the order.

(e) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or the reputed owner or the original contractor, as applicable.

(f) The lien of a claimant who accepts an order but fails to give notice under this section is valid as to delivered items if the claimant has given notice under Section 53.252.

Property Code Section 53.254

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 Section 53.252 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 construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

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

Property Code Section 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.

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"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 retainage 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.

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"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 withhold or cause your lender to withhold 10 percent of the amount of payments made for the work performed by your contractor. This is sometimes referred to as 'statutory retainage.' If you choose not to withhold 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 withhold.

"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 fully complied with the law regarding statutory retainage, 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.

Property Code Section 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."

Property Code Section 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.

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Property Code Section 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.

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Property Code Section 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.

Property Code Section 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.

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

Property Code Section 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 notarized; and

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

Property Code Section 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.

Property Code Section 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.

Property Code Section 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

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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. _____

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"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 _____

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(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

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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)"

Property Code Section 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.

Property Code Section 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.