

AN ACT

relating to mechanic's, contractor's, or materialman's liens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3503.051(3), Insurance Code, is amended to read as follows:

(3) "Notice of claim" means a written notification by a claimant who makes a claim for payment from the surety company. The term does not include a routine statutory notice required by Section 53.056 or [~~53.056(b)~~], 53.057, [~~53.058, 53.252(b), or 53.253,~~] Property Code, or Section 2253.047, Government Code.

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (3), (4), (8), (11), (13), and (14) and adding Subdivision (7-a) to read as follows:

(2) "Improvement" includes:

(A) a house, building, structure, parking structure, physical appurtenance, pool, utility, railroad, well, storage facility, abutting sidewalks and streets, ~~[and]~~ utilities in or on those sidewalks and streets, land reclaimed from overflow, and other fixtures or modifications to real property;

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

(C) machinery or apparatuses used for raising water or for supplying or storing water for stock, domestic use, or irrigation [~~wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water~~];

(D) work described by Section 53.021(4) [~~pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation~~]; and

(E) a design, drawing, plan, plat, survey, or specification provided by a licensed architect, engineer, or surveyor [~~planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees~~].

(3) "Labor" means:

(A) labor used in the direct performance [~~prosecution~~] of the work; or

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

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

(A) the material, machinery, fixtures, or tools:  
(i) incorporated into the work;  
(ii) used [~~, consumed~~] in the direct performance [~~prosecution~~] of the work;  
(iii) specially fabricated for an improvement; [~~7~~] or  
(iv) ordered and delivered for incorporation or use [~~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 performance [~~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 performance [~~prosecution~~] of the work.

(7-a) "Purported original contractor" means an original contractor who can effectively control the owner or is effectively controlled by the owner through common ownership of

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

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

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

(B) used or intended to be used as a dwelling by

one of the owners.

(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.~~]

(13) "Subcontractor" means a person who labors or has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor of any tier to perform all or part of the work required by an original contract.

(14) "Work" means any part of construction or repair of an improvement performed under an original contract.

SECTION 3. Section 53.003, Property Code, is amended by amending Subsections (b) and (c) and adding Subsection (e) to read as follows:

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

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

(2) by certified mail; or

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

(e) In computing the period of days in which to provide a notice or to take any action required under this chapter, if the last day of the period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

SECTION 4. Section 53.021, Property Code, is amended to read as follows:

Sec. 53.021. PERSONS ENTITLED TO LIEN. [~~(a)~~] A person has a lien if[~~+~~

[~~(1)~~] the person, under a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor:

(1) labors [~~, specially fabricates material,~~] or furnishes labor or materials for construction or repair of an improvement; [~~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;~~

~~.(3) is a licensed [-~~

~~[(c) An] architect, engineer, or surveyor providing services to prepare a design, drawing, [who prepares a] plan, ~~[or] plat, survey, or specification;~~~~

~~.(4) [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 an ~~[a house, building, or] improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation; or~~~~

~~.(5) [~~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 an improvement ~~[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].~~~~

SECTION 5. Sections 53.022(a), (c), and (d), Property Code, are amended to read as follows:

(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].~~

(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.~~

SECTION 6. Section 53.023, Property Code, is amended to read as follows:

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

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

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

~~.(3) the preparation of a plan or plat by an architect, engineer, or surveyor in accordance with Section 53.021(c)].~~

SECTION 7. Section 53.026(a), Property Code, is amended to read as follows:

(a) A person who labors ~~[specially fabricates materials,] or furnishes labor or materials under a direct contractual relationship with a purported original contractor [another person] is considered to be [in direct contractual relationship with the owner and has a lien as] an original contractor for purposes of perfecting a mechanic's lien [~~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].~~

SECTION 8. Section 53.052, Property Code, is amended to read as follows:

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

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

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

(b) Except as provided by Subsection (c) or (d) ~~[(b)]~~, a claimant other than an original contractor ~~[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 later of:

(1) the month the claimant last provided labor or materials; or

(2) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered ~~[day on which the indebtedness accrues]~~.

(c) ~~[(b)]~~ A claimant other than an original contractor ~~[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 later of:

(1) the month the claimant last provided labor or materials; or

(2) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

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

(e) An affidavit under this chapter must be filed in the county where the improvements are located ~~[day on which the indebtedness accrues]~~.

~~[(e)]~~ 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.

SECTION 9. Section 53.055(a), Property Code, is amended to read as follows:

(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.

SECTION 10. The heading to Section 53.056, Property Code, is amended to read as follows:

Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER AND ~~[OR]~~ ORIGINAL CONTRACTOR.

SECTION 11. Section 53.056, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a) Except as provided by Section 53.057 [~~Subchapter K~~], a claimant other than an original contractor must give the notice prescribed by Subsections (a-1) and (a-2). [~~this section~~] for the lien to be valid.

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

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

(A) the labor or materials were provided; or

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

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

(A) the labor or materials were provided; or

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

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

"NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

"WARNING: This notice is provided to preserve lien rights.

"Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.

"Date: \_\_\_\_\_

"Project description and/or address: \_\_\_\_\_

"Claimant's name: \_\_\_\_\_

"Type of labor or materials provided: \_\_\_\_\_

"Original contractor's name: \_\_\_\_\_

"Party with whom claimant contracted if different from original contractor: \_\_\_\_\_

"Claim amount: \_\_\_\_\_

"\_\_\_\_\_ (Claimant's contact person).

"\_\_\_\_\_ (Claimant's address)."

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

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

SECTION 12. The heading to Section 53.057, Property Code, is amended to read as follows:

Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE OF CLAIM FOR UNPAID [~~CONTRACTUAL~~] RETAINAGE [~~CLAIM~~].

SECTION 13. Section 53.057, Property Code, is amended by amending Subsections (a) and (f) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) To the extent that a claim for unpaid retainage is not included wholly or partly in a notice provided under Section 53.056, a claimant other than an original contractor whose contract provides for retainage must [~~A claimant may~~] give notice under this section for a lien for unpaid retainage to be valid [~~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~~].

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

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

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

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

"NOTICE OF CLAIM FOR UNPAID RETAINAGE

"WARNING: This notice is provided to preserve lien rights. Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.

"Date: \_\_\_\_\_

"Project description and/or address: \_\_\_\_\_

"Claimant's name: \_\_\_\_\_

"Type of labor or materials provided: \_\_\_\_\_

"Original contractor's name: \_\_\_\_\_

"Party with whom claimant contracted if different from original contractor: \_\_\_\_\_

"Total retainage unpaid: \_\_\_\_\_

"\_\_\_\_\_ (Claimant's contact person)

"\_\_\_\_\_ (Claimant's address)"

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

(f) A claimant has a lien on, and the owner is personally liable to the claimant for, the reserved [~~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 the applicable provision of Section 53.052 [~~7~~

[~~(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.

SECTION 14. Sections 53.081(a) and (b), Property Code, are amended to read as follows:

(a) If an owner receives notice under Section 53.056 or [~~7~~] 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. The withholding may be in addition to any reserved funds.

(b) If notice is sent under [~~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.

SECTION 15. Section 53.082, Property Code, is amended to read as follows:

Sec. 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.

SECTION 16. Section 53.084, Property Code, is amended to read as follows:

Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount the owner fails to reserve ~~[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 a notice ~~[the notices]~~ required by Section 53.056 or 53.057 ~~[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 the owner ~~[he]~~ is liable under Subchapter E.

SECTION 17. The heading to Subchapter E, Chapter 53, Property Code, is amended to read as follows:

SUBCHAPTER E. FUNDS RESERVED ~~[REQUIRED RETAINAGE]~~ FOR BENEFIT OF LIEN CLAIMANTS

SECTION 18. Sections 53.101, 53.102, 53.103, 53.104, and 53.105, Property Code, are amended to read as follows:

Sec. 53.101. FUNDS REQUIRED TO BE RESERVED ~~[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 under the contract is completed, the owner shall reserve ~~[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.

Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS ~~[RETAINAGE]~~. The reserved ~~[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.

Sec. 53.103. LIEN ON RESERVED ~~[RETAINED]~~ FUNDS. A claimant has a lien on the reserved ~~[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.

Sec. 53.104. PREFERENCES. (a) Individual artisans and mechanics are entitled to a preference to the reserved ~~[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 reserved ~~[retained]~~ funds.

Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RESERVE FUNDS ~~[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 reserved [~~retained~~] from the original contract under which they are claiming, against the improvements [~~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.

SECTION 19. Sections 53.106(a), (b), and (d), Property Code, are amended to read as follows:

(a) An owner may file with the county clerk of the county in which the property is located an affidavit of completion. The affidavit must contain:

(1) the name and address of the owner;  
(2) the name and address of the original contractor;  
(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a description of the improvements furnished under the original contract;

(5) a statement that the improvements under the original contract have been completed and the date of completion; and

(6) a conspicuous statement that a claimant may not have a lien on retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter [~~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 or [~~7~~] 53.057 [~~, 53.058, 53.252, or 53.253~~] not later than the third day after the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later.

(d) An [~~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 chapter [~~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.

SECTION 20. Sections 53.107(a) and (b), Property Code, are amended to read as follows:

(a) Not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, the owner shall give notice to each subcontractor who, before the date of termination or abandonment, has:

(1) given notice to the owner as provided by Section 53.056 or [~~7~~] 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 in the time and manner required by this chapter [~~not later than the 40th day after the date of the termination or abandonment~~].

SECTION 21. Section 53.155, Property Code, is amended to read as follows:

Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house, building,~~] improvement [~~, or any piece of railroad property~~] is sold separately from the land, the officer making the sale shall provide [~~place~~] the purchaser [~~in possession. The purchaser is entitled to~~] a reasonable time after the date of purchase within which to remove and take possession of the purchased improvement [~~property~~].

SECTION 22. Section 53.157, Property Code, is amended to read as follows:

Sec. 53.157. DISCHARGE OF LIEN. An [~~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 improvement [~~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

(6) recording a certified copy of the order removing the lien under Section 53.160, provided [~~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.

SECTION 23. Section 53.158, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsection (a-2) [~~(b)~~], suit must be brought to foreclose the lien not later than the first anniversary of [~~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~~].

(a-1) Notwithstanding Section 16.069, Civil Practice and Remedies Code, or any other law, if suit is pursued solely to discharge a lien because limitations have expired on bringing a lien foreclosure suit, the lien claimant's rights to pursue a suit to foreclose a lien are not revived.

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

SECTION 24. Sections 53.160(b) and (c), Property Code, are amended to read as follows:

(b) The grounds for objecting to the validity or enforceability of the claim or lien for purposes of the motion are limited to the following:

(1) notice of claim was not timely furnished to the owner or original contractor as required by Section 53.056 or [7] 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 30 [~~21~~] days before the date of the hearing on the motion. A motion may not be heard before the 30th [~~21st~~] day after the date the claimant answers or appears in the proceeding. The claimant must be allowed expedited discovery regarding information relevant to the issues listed under Subsection (b).

SECTION 25. Section 53.173(c), Property Code, is amended to read as follows:

(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.

SECTION 26. Section 53.205(a), Property Code, is amended to read as follows:

(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.

SECTION 27. Section 53.206, Property Code, is amended to read as follows:

Sec. 53.206. PERFECTION OF CLAIM. (a) Except as provided by Subsection (b), to [~~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 [+]

[+] give notice under Sections 53.056 and 53.057, as applicable, to the original contractor and surety on the bond [~~all applicable notices under the appropriate subchapter; and~~

[+] [~~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 for retainage under this section, a claimant [person] is not required to [+

~~[(1)] give notice to the surety under Section 53.057 if [ , 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) A claimant that provides the notices described by this section is not required to file an affidavit claiming a mechanic's lien to perfect a claim under the bond ~~[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.

SECTION 28. Section 53.207(a), Property Code, is amended to read as follows:

(a) If the owner receives any of the notices or a lien is fixed under this chapter ~~[Subchapter C or K]~~, the owner shall mail to the surety on the bond a copy of all notices received.

SECTION 29. Section 53.208(a), Property Code, is amended to read as follows:

(a) A claimant may sue the principal and surety on the bond either jointly or severally, if the ~~[his]~~ claim remains unpaid for 60 days after the claimant perfects the claim.

SECTION 30. Section 53.232, Property Code, is amended to read as follows:

Sec. 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.

SECTION 31. Section 53.238, Property Code, is amended to read as follows:

Sec. 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.

SECTION 32. The heading to Section 53.254, Property Code, is amended to read as follows:

Sec. 53.254. CONTRACTUAL REQUIREMENTS FOR LIEN ON HOMESTEAD.

SECTION 33. Section 53.254(g), Property Code, is amended to read as follows:

(g) For the lien on a homestead to be valid, the notice required to be given to the owner under Subchapter C ~~[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 your contractor's work [~~construction~~], you fail to reserve [~~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 reservation of 10 percent of the contract price or value of work [~~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 reservation [~~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."

SECTION 34. Section 53.255(b), Property Code, is amended to read as follows:

(b) The disclosure statement must read substantially similar to the following:

"KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

"CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

"KNOW YOUR CONTRACTOR. Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

"GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory reservation of funds [~~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.

"CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should reserve [~~withhold~~] or cause your lender to reserve [~~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 reserve [~~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 reserve [~~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

withheld the 10 percent of the contract price or value of work [~~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."

SECTION 35. Section 53.281(b), Property Code, is amended to read as follows:

(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.

SECTION 36. The following provisions of the Property Code are repealed:

- (1) Section 53.003(a);
- (2) Section 53.026(b);
- (3) Section 53.053;
- (4) Sections 53.056(b), (c), (d), (e), and (f);
- (5) Sections 53.057(b), (b-1), (c), (d), (e), and (g);
- (6) Section 53.058;
- (7) Section 53.081(d);
- (8) Section 53.083;
- (9) Section 53.158(b); and
- (10) Sections 53.252 and 53.253.

SECTION 37. The changes in law made by this Act apply only to an original contract entered into on or after the effective date of this Act. An original contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 38. This Act takes effect January 1, 2022.

I certify that H.B. No. 2237 was passed by the House on May 8, 2021, by the following vote: Yeas 136, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2237 on May 28, 2021, by the following vote: Yeas 141, Nays 1, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2237 was passed by the Senate, with amendments, on May 22, 2021, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

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Governor