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Texas Mechanic's & Materialmen's Liens

*A Guide for Self-Employed Contractors and
Construction Workers*

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Texas Mechanic's & Materialmen's Liens:

*A Guide for Self-Employed Contractors and
Construction Workers*

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Acknowledgments

Texas C-BAR is a project of Texas RioGrande Legal Aid. Texas C-BAR provides free legal counsel, legal representation, pro bono referrals, community education, and legal resources to income-eligible self-employed persons and microentrepreneurs in Texas. Texas RioGrande Legal Aid provides free legal services and information to low-income individuals.

This publication is a guide for self-employed contractors and sub-contractors in understanding the mechanisms for filing and enforcing a mechanic's or materialmen's lien. It contains only basic, general information and guidance, and is not a substitute for the advice of an attorney.

The deadlines for filing these liens are short. If you need legal advice about your specific situation, seek the advice of an attorney.

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We welcome your suggestions and comments for its improvement.

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Introduction

All too frequently, property owners fail to pay contractors, subcontractors, construction workers and others in the building trades for the work they've completed. What legal tools are available for people in these trades to help guarantee payment for labor and materials? Leaving a project unfinished won't force an owner to pay, and may create even more legal problems. It would be costly and impractical for a mason to demolish a newly-built wall. A painter can't un-paint a house. Custom cabinets made to order can't be used in another remodeling project.

This is a practical guide for people in the building trades on how file a Mechanic's and Materialmen's lien, (called an M & M Lien or Mechanic's lien) as a way to secure payment for their work. A mechanic's lien covers nearly everything associated with the building trades from start to finish, including surveys, labor, materials, rental equipment, and other resources used in building, remodeling, and repairs. to real property. Collectively, these are referred to as "improvements" to real property. A mechanic's lien is a cost-effective method for contractors to collect from owners, and for subcontractors to collect from contractors. It can even be used by self-employed construction workers to recover unpaid wages.

Some notes on the organization of this guide:

- The legal requirements and procedures involved in getting a mechanic's lien vary depending upon whether the property is commercial or residential and on the role of the claimant. For ease of use, this guide is organized according to the role of the lien filer - original contractor, subcontractor, or maker of specially fabricated materials.
- Where the laws or procedures are the same, the information is repeated under each section.
- Certain topics, like contractual retainage agreements or liens on public works are beyond the scope of this guide.
- All legal citations are to specific sections ("§") of [Chapter 53 of the Texas Property Code](#) unless otherwise stated.

Reminder: Texas Mechanic's lien laws can be a complicated. This guide contains general legal information only. It cannot substitute for sound legal advice from an attorney about your specific situation.

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1. Terms

Several terms associated with mechanic's liens have a special legal meaning. If you are considering filing a mechanic's lien, review these terms before you start.

Affidavit

An affidavit is a written statement of fact signed by the person making the statement, sworn before a notary. [Tex. Gov't Code 312.001\(1\)](#)

Claimant

The person filing the mechanic's lien is called the "claimant".

Commercial Construction Project

A commercial construction project is a construction project that is not a residential construction project.

Completion

Completion means completion of an original contract; the actual completion of the work, including any extras or change orders required other than warranty work, replacement or repair of work already performed under the contract. §53.001(15).

Constitutional Lien

A constitutional lien is another lien option for situations where the original contractor has missed all the deadlines for filing a statutory lien. An original contractor will also have the right to claim a constitutional lien for nonpayment for work done or materials supplied for the improvement or construction on the real property.

General Contractor

A general contractor is an original contractor who, as part of the contract with the owner, is responsible overseeing the overall coordination of a project. There is usually only one general contractor on a project. A person or company is an original contractor if they are in privity with the owner – that is, they have an oral or written agreement with the property owner.

Homestead

A homestead is a residential property that is owned by one or more adults and is used by at least one of the owners as his or her principal residence. It includes the land, house, and outbuildings. A homestead can also be a multifamily residence, such as a condominium.

Improvements

Improvements are labor and materials, construction and remodeling, fabrication of custom-made items and other work associated with the building trades. §53.001(2). Improvements include nearly every kind of work on real property that improves the property from the condition that it was in before the improvements were made. Improvements include:

- abutting sidewalks and streets and utilities in or on those sidewalks and streets;
- clearing, grubbing, draining, or fencing of land;
- wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;
- pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation; and
- planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees.

Independent Contractor

Subcontractors, contract laborers, construction workers, and landscapers are often misclassified as independent contractors. Whether you are an independent contractor depends on the conditions of your employment, not your job title or work schedule. Labor laws (including minimum wage and overtime pay) apply to only to employees.

Materials

For purposes of mechanic's liens, material means all or part of:

- the material, machinery, fixtures, or tools incorporated into the work, consumed in doing the work, or ordered and delivered to for the project;
- rent at a reasonable rate and repairs at a reasonable cost for construction equipment used or delivered for use on the construction site; or

Power, water, fuel, and lubricants used or ordered and delivered to the site to be used in the project. §53.001(4)

Mechanics and Materialmen

“Mechanics” and “materialmen” are the legal names for people who have provided labor or materials to make improvements to real estate. Mechanics and materialmen can be contractors, subcontractors and, in some cases, suppliers.

Original Contract

An agreement to which an owner is a party either directly or by implication of law. §53.001(6).

Original Contractor

An original contractor is person or business that enters into a contract directly with the owner or the owner's agent. There can be more than one original contractor. §53.001(7). There can be more than one original contractor on a project. §53.002. A person is a general contractor or original contractor if they are in privity with the owner – that is, they have a contract with the owner of the property.

Owner

The owner of the real property or someone authorized to act in the owner's behalf (agent).

Privity

A person who has a contract with the property owner is said to be in privity with the owner. In the building trades, general and original contractors have privity of contract with the owner. Subcontractors, and those who work for subcontractors, do not. This is important for purposes of liens, because a subcontractor's right to get paid through a lien depends upon the agreement the contractor has made with the owner.

Residence

A "residence" includes a single-family house, duplex, triplex, quadruplex, or condominium that is owned by one or more adults and used or intended to be used as a dwelling by one of the owners. A residence is a homestead if it is the owner's principal place of residence. §53.001(8)

Residential Construction Contract

A contract between an owner and a contractor in which the contractor agrees to construct or repair the owner's residence, including improvements attached to the property. §53.001(9)

Residential Construction Project

A residential construction project is a project for the construction or repair of a new or existing residence, including improvements connected to the residence, as provided in a residential construction contract. §53.001(10)

Subcontractor

A subcontractor is a person who has an agreement with the original contractor to provide labor or materials for a construction or improvement project. 53.001(13)

Example of a subcontractor:

- You are hired to do the drywall on all the units in an apartment complex being remodeled by a general contractor.
- You are hired to do the plumbing on a commercial remodel by a general contractor.

If you are a second tier subcontractor, or someone who works for a subcontractor (such as a construction worker) your legal rights are the same as those of a subcontractor and the same procedures apply.

Example of construction worker or second tier subcontractor:

You are hired by the plumbing subcontractor to do the digging and tunneling as part of a larger remodeling contract.

Specially Fabricated Item

Items specially made for the construction or repair projects that are reasonably unsuitable for use on another job. §53.001(12)

Example of a specially fabricated item:

You made a special frame for a non-standard window opening.

Statutory Lien

For purposes of this guide, a statutory lien is a mechanic's and materialmen's lien under [Chapter 53 of the Texas Property Code](#).

Substantial Completion

Substantial completion is often defined in building contracts. It usually means that only minor, punch list type work remains. It can be important because the date of substantial completion can trigger other parts of the contract, like release of retainage and warranties.

Work

Any part of construction or repair performed under an original contract. §53.001(14)

2. Contracts

What is a contract?

Every mechanic's lien starts with an agreement. A contract is an agreement promising to do something in exchange for a benefit. An agreement to provide labor or materials to make improvements to a property in exchange for money is a contract. A construction or building contract should address, at minimum:

- the scope of the work to complete,
- the timeline for completion,
- the amount you will be paid, and
- the payment schedule.

Good and workmanlike manner. The law requires that work under the contract must be performed in a “good and workmanlike manner.” This means your work must be as good as or better than others who do the same kind of work that you do.

Oral contracts. Generally, a contract can be written or oral. If you don't have a written agreement, you can still take legal action to get paid, even if the work has already been completed. Be sure to keep all of the paperwork related to the work that you did, including dates and hours worked and receipts for materials used, in case you need it to prove that an agreement existed.

Regardless of whether you are an original contractor, subcontractor, or someone who works for a subcontractor, it is *always* a good idea to get a written contract before you start working. No one plans to have to fight to get paid when entering into a deal. An oral or “handshake” agreement can be difficult to prove, because the terms of the agreement are based only on memory of both parties. A written contract also makes it easier to guarantee payment under a mechanic's and materialmen's lien. Finally, if your agreement is oral and you haven't completed the work within one year of the date you made the agreement, you probably can't enforce it. [Tex. Prop. Code 26.01\(b\)\(6\)](#).

What should a written contract contain?

Having a written contract is considered a regular part of doing business. It does not have to be a special legal document drafted by a lawyer and does not need to be typewritten. A handwritten agreement can be perfectly valid. For legal purposes, the terms of the contract are what matters. The following items should be included in your building contract:

- The date of the contract is signed, and the signatures of both parties.
- The printed name, address, and telephone number of the parties.

- The owner's name and address, and the address of the location where you are to do the work.
- The work that you are going to do, described in as much detail as possible.
- The time line for you to complete the work.
- The total amount that you will be paid. If you are going to be paid in stages as the work is being done, include a payment schedule.
- Labor and materials to be used for the project. You may want to list labor and materials as separate items in the contract.
- Who is going to pay for materials, and when.

Mandatory written notices, disclosures, and agreements.

In the building trades, the law requires some notices, disclosures, and agreements to be in writing. If you are an original contractor working on a residential property, you must provide the owner with certain written notices before the work can begin. If the residential property is the owner's primary residence (homestead), the contract to do the work must be in writing and signed by the owner. If the owner is married, the owner's spouse must also sign the contract.

Change to the job after the contract is signed.

If there are any changes to the work you are doing during the course of the job, it is important to write down these job changes along with the difference in the change in price. For example, if your contract is to tile the bathroom floor and now they want you do the kitchen, you should get this extra work in writing. It can be in the form of a written addendum (a written addition to the contract that lists the changes).

Best Practices.

Keep good records! Always keep a copy of the contract, notices, correspondence, receipts, disclosures, and any additional agreements. If you don't have a written contract, maintain a written log of the date, location, and hours that you worked along with other documents related to the job or project.

3. Introduction to Liens

What is a lien?

If you are working in the building trades and have not paid for your work, you have three basic options: do nothing, file a lawsuit, or file a mechanic's *lien* against the property.

A lien is a sworn legal document used by certain creditors as a way to guarantee payment. It describes the debt and how much is owed. If the lien is against real estate, the creditor files the lien document in the property records of the country in which the owner's property is located. When the lien is filed, information about the debt becomes public record. If the debt isn't paid on time, it can affect the owner's credit, ability to sell or refinance the property and other consequences.

There are several types of liens. For example, a mortgage creates a *mortgage lien* against the property. In this case, the bank or mortgage company is the creditor. If the owner fails to make house payments, the bank can foreclose on the mortgage. A local taxing authority can file a *property tax lien* against an owner for unpaid property taxes. Failure to pay federal income taxes might cause the Internal Revenue Service to file a *federal tax lien* against the property.

What is a mechanic's lien?

A contractor, subcontractor, or construction worker hired for a specific job can protect their right to be paid by filing a special type of lien, called a *mechanic's and materialmen's lien*, against the property. The lien covers almost all labor, materials, supplies, and equipment involved in making improvements to real property. The lien can be filed before the project begins, and released (removed) once payment has been made. It also can be filed as a way to get paid for work already done. For people in the building trades, a mechanic's and materialmen's lien is often the least expensive and most effective option way to get paid.

Examples of "improvements" to property for a mechanic's lien:

You build a deck for a home.

You build a fence for an apartment complex.

You paint a building.

You replace the roof for a building.

You provide lumber for an addition to a home.

Who are considered mechanics and materialmen?

“Mechanics” and “materialmen” are the legal names for building tradespeople who have provided labor or materials to make improvements to real estate. These can include contractors, subcontractors, and certain suppliers. *If you are a construction worker who has provided labor for a specific project, you can file a mechanic’s lien to get paid for your work.*

Who is entitled to a mechanic’s lien?

A mechanic's lien can be filed by any person who provides labor, materials, machinery, fixtures, or tools for construction, repair, or improvement to a house, building, levee, or embankment. Most work that you would associate with home or commercial building is covered. §53.021(a); 53.023(1). Other eligible people include:

- Makers of specially fabricated materials, even if the material is not delivered or installed. 53.021(b)
- Architects, engineers, and surveyors who prepare a plan or plat under a written agreement with the owner. §53.021(c); 53.023(3)
- Landscapers and related tradespeople under a written contract to provide labor, plant material or other supplies for installation or construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar services. §53.021(d)
- Demolition specialists who provide labor or materials for demolition of a structure on real property under a written contract with the owner. §53.021(e)

Does a mechanic’s lien require a written contract?

Every lien starts with an agreement or contract. Whether a lien to get paid requires a *written contract* depends on several factors, including:

- Whether you are a contractor or subcontractor;
- The type of work you are doing;
- Whether the property that you’re working on is commercial or residential; and
- If residential, whether the property is a homestead.

How does a lien get an owner to pay?

A lien carries with it a threat of foreclosure. In the extreme case, a creditor can file a lawsuit (“foreclosure suit”) to force a sale of the property, then paid from the proceeds of the sale. Most property owners would rather pay the debt secured by the lien than run the risk of foreclosure.

The document is a type of *affidavit* or sworn statement by you stating that the owner owes you money. The document is filed in the property records with the clerk of the county where the property is located. These records are open to the public. Liens against a piece of property create a “cloud” on the title, which means the owner will have a hard

time selling or refinancing the property until the lien is paid. A lien filed in public records creates a strong incentive for the owner to pay the debt and regain clear title.

Once filed and perfected, a mechanic's lien creates a *security interest* in the property for the amount the creditor is owed. The lien is not against the owner, it is against the owner's property. A mechanic's lien might be one of several creditor liens filed against a single piece of real estate. If there is more than one lien against the same property, the law determines the order in which each lien is paid.

If I file a mechanic's lien, when will I get paid?

Often it is enough to send a letter demanding payment for your work. The demand letter warns the owner (and contractor, if you are a subcontractor) that you will file a mechanic's lien against the property if you are not paid by the deadline. Filing the lien won't force the owner to pay you right away, but it will make it difficult for the owner to do anything with the property as long as the lien exists. The lien is in the public records. Depending on the amount of money at stake, you can choose to file a lawsuit to "foreclose" on the lien. A foreclosure lawsuit forces the sale of the property in order to pay creditors. You may be one of many creditors with liens on the same property. In the case of several liens, the law determines who gets paid first (often in the order of filing).

Can I file a mechanic's lien if the work isn't completed?

Yes. The work you were hired to do must be "substantially complete" for the lien to be valid. This means that the work must be substantially finished. If you are a maker of specially fabricated materials (something that cannot easily be used in another project), you are entitled to a lien even if the materials have not been delivered or the item has not been installed.

4. Original and General Contractors

An *original contractor* is a person or business who enters into a contract directly with the owner or the owner's agent. There can be more than one original contractor. §§ 53.001(7); 53.002. A *general contractor* is an original contractor who, as part of the contract with the owner, is responsible overseeing the overall coordination of a project. There is usually only one general contractor on a project.

A. Commercial and Non-Residential Projects – Original Contractor

If you are an original contractor and the property you're working on is not a homestead (not the owner's principal residence), the agreement with the owner does not have to be in writing for you to file a lien.

B. Residential Projects – Original Contractor

In Texas, special laws apply to residential construction projects. A contractor must provide certain notices to the owner of a residential property before starting the work. A written contract is required if the property is the owner's homestead.

1. Contractor's Mandatory list of Subcontractors and Suppliers to Owner.

Before starting work on any residential construction project, an original contractor must provide:

- A written list with the name, address, and telephone number of each subcontractor and supplier the contractor intends to use (on page 50), or
- Get a waiver of the list from the owner (on page 49).

2. Contractor's Mandatory Disclosure Statement to Owner.

For any residential construction project, an original contractor must give the homeowner the Mandatory Disclosure Statement (on page 46) as required by law. If there is a written contract, it must be attached.

3. Contractor's Required Warnings to Owner.

A residential construction agreement must contain the following warning:

“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.”

C. Contractor's Mandatory Written Contract for Homestead

If the property is a homestead (the owner's principle residence), the contract must

- be in writing, and
- signed by the original contractor and the owner before work begins, and
- if the owner is married, signed by both spouses.

D. Information Sharing – Original Contractor

You can protect your legal rights by getting certain information before you start. Then, if payment becomes a problem later on, you'll already have the information that you need to file a mechanic's lien affidavit. As a contractor, you have the right to make a formal request of the property owner to provide certain information that you might need to file a lien. You must also respond to requests from subcontractors asking you for information.

1. Contractor's Request for Information to Owner.

If you are a *contractor* (you have a contract directly with the owner) who furnished labor or materials, you should first request this information from the owner informally.

If that doesn't work, make a formal, written request asking for:

1. A legal description of property;
2. Whether there is a surety bond;
3. The name and address of the surety and a copy of the bond;
4. Whether there are any prior recorded liens or security interests on the property;
5. The name and address of the person having the security interest; and
6. The date of execution of the original contract for the project.

NOTE: You are not *required* to make a formal request, but if you do, *the owner must provide the information within 10 days of your written request*. A written request for information form from a contractor to the owner is [on page 34](#).

2. Subcontractor's Request for Information to Contractor.

By law, a subcontractor is entitled to ask the original contractor for certain information. The request can be formal or informal. If you receive a formal written request for information, you must respond to the subcontractor *within 10 days of the written request*. You must provide the following:

1. The name and address of the person to whom the contractor furnished labor or materials for the project;
2. Whether the contractor furnished a payment bond;
3. The name and address of the surety and a copy of the bond;
4. The date of execution of the original contract for the project; and
5. The date of termination of the original contract with the owner.

3. Contractor or Owner's Request for Information to Subcontractor.

An original contractor or an Owner may also request information from subcontractors and those who work for subcontractors. An owner, original contractor, surety or someone else hired by a subcontractor can request the following information from the subcontractor:

1. The name and address of each person who is the subcontractor's sub-subcontractor;
2. name and address of person to whom the subcontractor furnished labor or materials for the project;
3. whether the subcontractor has furnished or has been furnished a payment bond, and
4. the name and address of the surety and a copy of the bond.

If a formal, written request for information is made to the subcontractor or lower-tier subcontractor, *the subcontractor must provide the information to you within 10 days of receipt of the written request.* Written forms to request information are [on page 34 and 35.](#)

E. Contents of Mechanic's Lien - Original Contractor

To get a legally valid mechanic's lien, you must follow certain legal procedures. Deadlines for filing it differ depending on who is making the claim for money - contractor, subcontractor, or someone hired by the subcontractor. There are also special rules for makers of specially fabricated materials.

The law sets forth the information that must be included in the mechanic's lien. The person filing the lien is the called the "claimant". The form for mechanics lien affidavit [on page 41](#) tracks the legal requirements. The Affidavit must contain:

- a sworn statement of the amount of the claim;
- the name and last known address of the owner or reputed owner;
- 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;
- 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;
- the name and last known address of the original contractor;
- a description, legally sufficient for identification, of the property sought to be charged with the lien;
- the claimant's name, mailing address, and, if different, physical address; and

- 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.

The claimant filing a lien may (but is not required to) attach a copy of the written agreement or contract and a copy of each notice sent to the owner. §53.054

F. Steps to File Mechanic’s Lien – Original Contractor

The procedures for making a lien claim depend on your position on the construction “food chain”. If you are an original or general contractor, you are not required to give notice to the owner before filing a mechanic’s lien. If you are a subcontractor, you are required to provide certain notices before the lien can be filed. These are addressed in Section 5. [Subcontractors and Other Claimants](#).

You must have an agreement or contract.

You must have an agreement with the owner to do the work. Special legal rules apply to residential construction contracts. See Section 4.B., [B. Residential Projects – Original Contractor](#). *For homesteads, the contract must be in writing and signed by the owner, or, if married, by both spouses.* See Section [4.C. Contractor’s Mandatory Written Contract for Homestead](#) Failure to have a written contract for a homestead or comply with the required disclosures and warnings for a residential construction contract could defeat your claim for payment under a mechanic’s lien. See Section 2. on [Contracts](#) and the sample [Contract for Construction Services](#).

Check the deadline for filing a mechanic’s lien.

You only have a certain amount of time to file a mechanic’s lien after you’ve stopped the work. Even if you missed the deadline to file a mechanic’s lien, you might be able to file another kind of lien, called a constitutional lien. See Section VI on Constitutional Liens.

- If the project is a *residential construction project*, you must file the lien affidavit by the *15th day of 3rd month* following written termination, abandonment, settlement, or completion of the contract.
- If the property is a *commercial construction project*, you must file the lien affidavit by the *15th day of 4th month* following written termination, abandonment, settlement, or completion of the contract.

Optional notice to owner of intent to file a mechanic’s lien.

As a contractor, you are not required by law to notify the owner before filing the lien although you may want to give them one last chance to pay you before you file the lien. For the mechanic’s lien to be valid, the work under your contract must be “substantially complete,” which means that the work you agreed to do must be substantially finished. You can’t get a valid lien for work that you have not done. If you choose to notify the owner (form on page [37](#)), you should state that:

- you have substantially completed the work agreed to in the contract, and
- you have not received payment, and
- you will be filing a mechanic's lien affidavit, and
- you intend to enforce the mechanic's lien against the property in order to be paid.

☐ Prepare and file the lien affidavit.

If sending a notice does not result in payment,

- Prepare the Mechanic's Lien Affidavit on page 41.
- Attach a copy of your construction contract as an Exhibit.
- Make 2 copies of all of the documents (one for the owner and the other for your files).
- File the lien affidavit and attached contract with the clerk of the county where the property is located. You must pay a filing fee.

☐ Send a copy to the owner within 5 days.

You must send a copy of the lien affidavit to the owner *by certified mail, return receipt requested, within 5 days of filing*. Because the deadline is short, it's best just to send it to the owner the same day that you file it.

☐ Enforce the lien.

Sometimes filing the lien will not be enough for you to be paid. You also have the option of filing a lawsuit to foreclose on the lien. There are deadlines for filing a lawsuit.

- For *commercial projects*, the lawsuit must be filed within *2 years* of the last day for filing a lien affidavit, or within 2 years from the date of completion, termination, or abandonment of work under the original contract, whichever is later.
- For *residential projects*, the lawsuit must be filed within *1 year* of the last day for filing a lien affidavit or from the date of completion, termination, or abandonment of work under the original contract, whichever is later.

☐ Release the lien.

After you are paid, you need to release the lien by filing a [Release of Mechanic's Lien](#) in the same place that you filed the original lien. If you receive a written request to release the lien, you must file the Release form within ten (10) days from the date you receive the request. Send a copy of the Release to the person who made the written request.

5. Subcontractors and Other Claimants

A subcontractor is a person who has an agreement with the original contractor to provide labor or materials for a construction or improvement project. 53.001(13)

Example of a subcontractor:

- You are hired to do the drywall on all the units in an apartment complex being remodeled by a general contractor.
- You are hired to do the plumbing on a commercial remodel by a general contractor.

If you are a second tier subcontractor, or someone who works for a subcontractor (such as a construction worker) your legal rights are the same as those of a subcontractor and the same lien procedures apply.

Example of construction worker or second tier subcontractor:

You are hired by the plumbing subcontractor to do the digging and tunneling as part of a larger remodeling contract.

A. Commercial and Residential Projects - Subcontractor

In the building trades, general and original contractors have privity of contract with the owner. Subcontractors, and those who work for subcontractors do not. This is important for purposes of liens, because a subcontractor's right to get paid through a lien depends upon the agreement (written or oral) between the original contractor and the owner.

For residential projects, the contractor must provide certain disclosures and notices to the owner. If the residential project is a homestead, the contractor's agreement with the owner must be in writing.

B. Residential Homestead – Subcontractor

A homestead is a property that is the owner's principle place of residence. Texas provides special legal protections to homestead owners. If the work to be done is on a homestead, the original or general *contractor must have a written contract* with the owner. The contract must

- be in writing, and
- signed by the original contractor and the owner before work begins, and
- signed by both spouses if the owner is married.

IMPORTANT: If the homestead contract isn't in writing, you, as subcontractor, cannot create a valid mechanic's lien against the homestead property. This is because your claim depends on the legal validity of the contract between the original contractor and

the homestead owner. If the underlying contract with the owner isn't valid, you cannot create a valid lien based on it.

C. Information Sharing – Subcontractor

Whether you are subcontractor or someone who works for a subcontractor, you can protect your legal rights by gathering certain information from other parties involved in the project. Then if payment becomes a problem later on, you'll already have the information that you need to file a mechanic's lien. The owner and contractor are also entitled to request information from you. Start with an informal request. If you can't get the information that way, you can send a formal, written request. If your request is in writing, the law requires the owner and contractor to respond.

1. Subcontractor's Request for Information to Contractor.

If you are a subcontractor (you an agreement with the contractor but not the owner), request the following information from the contractor informally. If that doesn't work, you can make a formal, written request to the contractor asking for:

1. The name and address of the person to whom the contractor furnished labor or materials for the project;
2. Whether the contractor furnished a payment bond;
3. The name and address of the surety and a copy of the bond;
4. The date of execution of the original contract for the project; and
5. The date of termination of the original contract with the owner.

This list may not include all of the information that you might need from the contractor in every circumstance. NOTE: You are not *required* to make a formal request, but if you do, the *contractor must provide the information to you within 10 days of your written request*. You can use the formal request for information form [on page 35](#).

2. Owner, Contractor, or other Claimant's Request for Information to Subcontractor.

Owners and contractors can request information from subcontractors, but so can the people hired by the subcontractor for the job, like construction workers and other lower-tier workers.

The name and address of each person who is the subcontractor's sub-subcontractor;

1. name and address of person to whom the subcontractor furnished labor or materials for the project;
2. whether the subcontractor has furnished or has been furnished a payment bond, and
3. the name and address of the surety and a copy of the bond.

If you, as subcontractor, receive a written request for information from the owner, original contractor, surety, second-tier subcontractor or other claimant, you *must provide the information within 10 days of receipt of the written request*.

D. Contents of Mechanic's Lien - Subcontractors and Other Claimants

A subcontractor is someone who has an agreement to do work for a contractor. A person with an agreement to work for a subcontractor is sometimes called a second-tier subcontractor. Many construction workers and laborers fall into this category. When it comes to mechanic's liens, the rights of second or third-tier claimants are no different from a subcontractor, and the notice and filing procedures are virtually the same.

You must follow specific legal procedures and meet all deadlines to create a valid mechanic's lien. Special procedures apply to the makers of specially fabricated materials, covered in Section 6, [Makers of Specially Fabricated Materials](#).

The law sets forth the information required for the mechanic's lien. The person filing the lien is called the "claimant". The form [Affidavit for Mechanic's and Materialmen's Lien](#) on page 30 tracks the requirements for a valid lien affidavit. It must contain:

- a sworn statement of the amount of the claim;
- the name and last known address of the owner or reputed owner;
- 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;
- 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;
- the name and last known address of the original contractor;
- a description, legally sufficient for identification, of the property sought to be charged with the lien;
- the claimant's name, mailing address, and, if different, physical address; and
- 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.

The claimant may attach a copy of the written agreement or contract (if any) and a copy of each notice sent to the owner. §53.054.

E. Steps to file Mechanic's Lien - Subcontractors and Other Claimants

The procedures for making a lien claim depend on your position on the construction "food chain". An original contractor is not required to give the owner notice of the lien before filing. *If you are a subcontractor, someone who works for a subcontractor, or a lower-tier supplier, you must provide notice to the owner and the contractor before you file. The notice requirements below are mandatory.*

- You must have an agreement or contract.*

If you are a subcontractor, you have an agreement with the contractor to do certain work. If you are a person hired by a subcontractor (second-tier subcontractor or construction worker), you have an agreement with the subcontractor. The agreement can be written or oral. It is much easier to prove what you are owed if it is in writing. See Section 2. on [Contracts](#) and the sample [Contract for Construction Services](#).

Check the deadline for filing the lien.

You have only a short time to file a mechanic's lien.

- For a *residential construction project*, you must file the lien affidavit by the 15th day of 3rd month following the month in which the labor was performed or materials were provided.
- If the project is a *commercial construction project*, you must file the lien affidavit by the 15th day of 4th month following the month in which the labor was performed or materials were provided.

As a subcontractor, you do not have the option of filing a constitutional lien if you miss the deadline for a mechanic's lien. Consider filing a lawsuit to enforce your original agreement with the person or company that hired you.

Send required written legal notices to the owner and contractor.

Check to see if you've missed the deadline to file a mechanic's lien. See Section 8. [Calendar of Lien Filing Deadlines](#). If you are still within the deadline, you *must* send the required legal notices to the contractor and owner before you can file. If you are a second-tier contractor, construction worker or other claimant, send notices to the owner, contractor, and subcontractor. The notices must include a demand for payment and state that you intend file mechanic's lien against the property if you are not paid

Deadlines for Notices:

- *Notice to contractor:* You must give legal notice (form on page 39) to the contractor no later than the 15th day of the 2nd month following each month in which all or part of your labor was performed, or material delivered.
- *Notice to owner:* You must give the same notice to the owner (form on page 37) no later than the 15th day of the 3rd month following each month in which all or part of your labor was performed or the materials were delivered. §53.252 (residential projects) §53.056 (other projects).

Send all notices and other letters by both certified mail, return receipt requested and by regular mail (in case the certified mail is not claimed). Be sure to keep copies for your records.

Prepare and file the lien affidavit.

If sending a notice does not result in payment,

- Prepare the Mechanic's Lien Affidavit (on page 41)

- Attach a copy of your construction contract (or statement of work performed, if you have no written contract) as an Exhibit. Attach copies of any notices previously sent.
- Make 3 copies of all of the documents: one for the owner, one for the contractor, and the third for your files. If you work for the subcontractor, make 4 copies: once for the owner, one for the contractor, one for the subcontractor and one for your files.
- File the original mechanic's lien affidavit and attachments with the clerk of the county where the property is located. You must pay a filing fee.

□ Send a copy to the owner and contractor within 5 days.

You must send a copy of the lien affidavit to the owner and contractor *by certified mail, return receipt requested*, within 5 days of filing. If you are a second-tier subcontractor or construction worker, send a third copy to the subcontractor that hired you. Because the deadline is short, it's best just to send copies of the lien affidavit the same day that you file it.

□ Enforce the lien – foreclosure suit.

Often just filing the lien will result in payment. If you are still not paid, you have the option of filing a lawsuit to foreclose on the lien. There are deadlines for filing foreclosure lawsuit:

- For *commercial projects*, the lawsuit must be filed within *2 years* of the last day for filing a lien affidavit, or within 2 years from the date of completion, termination, or abandonment of work under the original contract, whichever is later.
- For *residential projects*, the lawsuit must be filed within *1 year* of the last day for filing a lien affidavit or from the date of completion, termination, or abandonment of work under the original contract, whichever is later.

□ Release the lien.

After you are paid, you need to release the lien by filing a [Release of Mechanic's Lien](#) in the same place that you filed the original lien. If you receive a written request to release the lien, you must file the Release form within ten (10) days from the date you receive the request. Send a copy of the Release to the person who made the written request.

6. Makers of Specially Fabricated Materials

A. Specially Fabricated Materials

Under Texas law, a “specially fabricated material” is something fabricated to use in a specific project; a custom-made or made-to-order item that is unsuitable for use in another project.

Examples of specially fabricated materials:

- A custom-fabricated kitchen countertop to specific dimensions.
- Wrought iron porch railings made-to-order according to architectural plans.

B. Materials Not Delivered.

For makers of specially fabricated materials, the right to a lien exists even if the item or materials are not delivered or incorporated into the project. §§53.021(2)(b); 53.023(2).

C. Original Fabricator’s Written Contract for Homestead

If you have a contract with the owner to make a specially fabricated item and the property is a homestead (the owner’s principle residence), the contract must

- be in writing, and
- signed by the original contractor and the owner before work begins, and
- if the owner is married, signed by both spouses.

D. Subcontractors – Residential and Homestead.

- If you are a subcontractor making a specially fabricated item, you must send a notice to both the owner and contractor in order to take a lien for the entire amount owed. Use the [Notice of Specially Fabricated Materials](#) on page 36.
- If the residential project is also a homestead, your lien depends on the validity of original contractor’s contract with the owner. For homesteads, the original contractor’s agreement with the owner must be in writing, and signed by both spouses if the owner is married.

C. Steps to file a Mechanic’s Lien – Specially Fabricated Materials

You must have an agreement to do the work.

You must have a contract or agreement to provide specially fabricated materials for the work done on the property. It does not have to be in writing for you to enforce it with a mechanic’s lien.

Check the deadline for filing the lien.

You have only a short time to file a mechanic's lien for specially fabricated items.

- For *residential construction projects*, file the lien affidavit no later than the *15th day of 3rd month* following the date the materials were delivered, would have been delivered, or the time the breach of contract occurred.
- For *commercial construction projects*, file the lien affidavit no later than the *15th day of 4th month* following the date the materials were delivered, would have been delivered or the time the breach of contract occurred.

□ Send required notices.

The deadline for giving notice of specially fabricated items depends on 1) whether the items have been delivered or installed and 2) if the project is residential or commercial.

Residential projects: If it is a residential project you must provide an extra notice, otherwise you can only get a lien for what was actually delivered to or installed in the project. Use the [Notice of Specially Fabricated Materials](#) on page 36.

Contractor's Notice to Owner. Give written notice to the owner no later than the 15th day of the second month after the month in which you receive and accept the order for the material.

- The notice must contain a statement that the order has been received and accepted, and the price of the order must be included.
- The notice must be sent by registered or certified mail. §53.253

Subcontractor's Notice to Contractor and Owner: A subcontractor who has an agreement with a contractor to provide specially fabricated materials for a project must give legal notice to both the contractor and the owner.

- *Notice to contractor:* You must give legal notice (form on page 39) to the contractor no later than the *15th day of the 2nd month* following each month in which all or part of your labor was performed, or specially fabricated material was delivered.
- *Notice to owner:* You must give the same notice to the owner (form on page 37) no later than the *15th day of the 3rd month* following each month in which all or part of the labor was performed or specially fabricated material was delivered. §§53.056, 53.252.
- The notice must include a demand for payment, and state that if you're not paid you might place a lien on the property.

□ Prepare and file the lien affidavit.

If sending a notice does not result in payment,

- Prepare the Mechanic's Lien Affidavit (on page 41)

- Attach a copy of your construction contract (or statement of work performed, if you have no written contract) as an Exhibit. Attach copies of any notices previously sent.
- Make copies. File the original mechanic's lien affidavit and attachments with the clerk of the county where the property is located. You must pay a filing fee.

The lien affidavit must be filed in the real property records of the county clerk in the county where property is located, along with a filing fee.

☐ *Send a copy to the owner and contractor within 5 days.*

You must send a copy of the lien affidavit to the owner and contractor *by certified mail, return receipt requested*, within 5 days of filing. If you are a second-tier subcontractor, construction worker, or other claimant, send a third copy to the person that hired you. It is best just to mail your copies to everyone on the same day that you file them with the clerk of the court.

☐ *Enforcing the lien – foreclosure lawsuit.*

Sometimes filing the lien will not be enough for you to be paid. You also have the option of filing a lawsuit to foreclose on the lien. There are deadlines for filing a lawsuit.

- For *commercial projects*, the lawsuit must be filed within 2 years of the last day for filing a lien affidavit, or within 2 years from the date of completion, termination, or abandonment of work under the original contract, whichever is later.
- For *residential projects*, the lawsuit must be filed within 1 year of the last day for filing a lien affidavit or from the date of completion, termination, or abandonment of work under the original contract, whichever is later.

☐ *Releasing the lien.*

After you are paid, you need to release the lien by filing a [Release of Mechanic's Lien](#) in the same place that you filed the original lien. If you receive a written request to release the lien, you must file the Release form within ten (10) days from the date you receive the request. Send a copy of the Release to the person who made the written request.

7. Constitutional Liens

This section applies only to original or general contractors, not subcontractors.

If you are a contractor who missed the deadline for filing a mechanic's lien, there is another kind of lien, called a constitutional lien. The Texas Constitution provides that:

Mechanics, artisans and materialmen of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.
[Tex. Const. Art. XVI, Sec. 37.](#)

A constitutional lien is limited and does not protect your legal rights as effectively as a mechanic's lien. For this reason, it should be used only as a last resort by contractors who have missed the deadline for a mechanic's lien. The constitutional lien affidavit is filed in property records of the county in which the labor was performed or the material was provided.

A constitutional lien applies only to labor or materials supplied for a project *attached to a building or structure*. Examples of work covered by a constitutional lien include:

- laying a roof
- building an addition to the home

Examples of work not a part of the building or attached to it, and therefore NOT covered by a constitutional lien include:

- working on a well
- laying sewer and water lines
- clearing brush and building a road to the property.

Regarding constitutional liens, it's important to keep the following in mind:

- A constitutional lien is available only to original or general contractors.
- A constitutional lien is a remedy for getting paid even if deadline for the mechanic's lien has passed.
- A constitutional lien does not require any of the notices required for statutory mechanic's lien.

A constitutional lien does not cover all of the materials supplied and labor provided that would be covered under a mechanic's lien.

8. Calendar of Lien Filing Deadlines

The following calendar illustrates the statutory deadlines for filing a mechanic's lien. **Note:** these are the deadlines for *filing the lien*. There are different deadlines for providing the required *legal notices* before the lien can be filed.

Work Last Performed In:	Residential Liens Due:	Non-Residential Liens Due:
January	April 15th	May 15th
February	May 15th	June 15th
March	June 15th	July 15th
April	July 15th	August 15th
May	August 15th	September 15th
June	September 15th	October 15th
July	October 15th	November 15th
August	November 15th	December 15th
September	December 15th	January 15th
October	January 15th	February 15th
November	February 15th	March 15th
December	March 15th	April 15th

9. Checklist for Getting Paid

- If you are a contractor, get a written agreement signed by the owner of the property (and spouse, if a homestead) or the owner's agent before beginning the work.
- If you are a subcontractor, get a written agreement or contract with the contractor before beginning the work.
- Get a legal description of the property and information about surety bonds and prior liens. This information can be requested informally, or you can make a formal written request. The recipient has 10 days to provide the requested information.
- If the owner or contractor requests information from you, provide it within the required time limits.
- If you do not get paid, send a legal notice within the legal deadline stating that you intend to file a mechanic's lien. If you are a contractor, notice is optional. If you are a subcontractor or other claimant, notices are required before you can file a lien.
- Prepare the Mechanic's Lien Affidavit. Attach a copy of your contract or statement of work, and copies of notices, if any.
- File the Mechanic's Lien Affidavit and attachments with the clerk of the county where the property is located before the legal deadline for filing has passed.
- Send a copy of the Mechanic's Lien Affidavit and attachments by certified mail to the owner (and the contractor, if you are a subcontractor).
- If you are still not paid, file a foreclosure lawsuit within 1 year (if the project is a residential project), or 2 years (if the project is a commercial project).
- If you are paid, file a Release of Lien with the clerk's office within 10 days from the date of the written request for release.

10. Forms

1. Contract for Construction Services
2. Formal Request to Furnish Information (property owner)
3. Formal Request to Furnish Information (original contractor)
4. Notice of Specially Fabricated Materials
5. Notice to Property Owner of Unpaid Balance and Demand for Payment for Labor Performed and/or Materials Provided
6. Notice to Original Contractor of Unpaid Balance for Labor Performed and/or Materials Delivered
7. Notice to Subcontractor of Unpaid Balance for Labor Performed and/or Materials Delivered
8. Affidavit for Mechanic's And Materialmen's Lien – Original Contractor
9. Notice of Mechanic's Lien Filing
10. Release of Lien and Acknowledgment of Payment
11. Disclosure Statement for Residential Construction Contract
12. List of Subcontractors/Suppliers
13. Waiver of the List of Subcontractors And Suppliers

Business Name

Business Address

Business phone, fax and website/email of sender

Contract for Construction Services

This agreement is between _____ “Owner,” the owner(s) or original contractor or agent of the owner(s) of the premises where the work is to be performed, located at _____ and _____, referred to as “Contractor.” Owner and Contractor agree as follows:

Section I. Contract Documents.

(a) The contract documents consist of this agreement; as well as any drawings, specifications, and addenda issued prior to execution of this agreement; as follows:

[list any additional documents that form part of the agreement].

(b) The contract documents constitute the entire agreement between the Owner and Contractor, and are all as fully a part of the contract as if attached to or repeated in this agreement.

Section II. Description of Work

The Contractor shall furnish all the materials and perform all of the work described in this section: _____

[describe the type of work to be performed, and the materials to be provided]

The location where the work is to be performed is:
_____.

Section III. Time of Commencement and Completion

The work to be performed under this contract shall, barring inclement weather, material shortages, acts of God, or other circumstances beyond control of Contractor, begin on _____, 20____, and will be substantially completed on or before _____, 20____.

Section IV. Contract Price.

Owner will pay Contractor a total of \$ _____ (US Dollars) for the material and labor to be performed under the contract, subject to any additions and/or deductions made pursuant to authorized written changes.

Section V. Method of Payment.

(a) Progress Payments. Select one:

- The Owner agrees to pay _____ percent (\$ _____) of the total Contract Price to Contractor _____ days before construction begins, with the remainder to be paid upon substantial completion of the project.

- The Owner agrees to pay the total Contract Price in _____ installments to the Contractor. The first installment of \$_____ is due _____ days before construction begins. The additional installments are due as follows:

The last installment of \$_____ is due upon substantial completion of the project.

(b) Final Payment.

- (i) The Owner agrees to pay the entire unpaid balance of the contract amount due the Contractor for labor performed or materials furnished no later than _____ days after substantial completion of the work.
- (ii) The making of the final payment shall constitute a waiver of claims by the Owner.
- (iii) The Contractor shall waive any and all liens upon receipt of final payment.

(c) Late Fee.

If payment is not made by Owner in accordance with the requirements of sections (a) and (b), Contractor will set forth its claim against Owner through notice by registered or certified mail. Ten (10) days after the receipt of any notice Owner shall be liable for a late fee of \$_____ per day the payment is overdue.

Section VI. Lien.

In the event of nonpayment by the Owner, pursuant to Texas Property Code §53.254, a mechanics lien will issue against the property owner of the premises where the work is to be performed.

Section VIII. Work Changes

Owner may order work changes in the nature of additions, deletions, or modifications, without invalidating the Agreement, and agrees to make corresponding adjustments in contract price and time allowed for completion. Any adjustment in contract price and time of completion shall be determined by mutual agreement of Owner and Contractor in writing before starting the work involved in the change.

Section IX. Termination or Suspension

Contractor's Termination: Contractor, on _____ day's written notice to Owner, may terminate this contract, when Owner fails to make a payment. On termination, Contractor may recover from Owner payment for all work completed, and for any loss sustained by contractor for materials, equipment, tools, or machinery, to the extent of actual loss plus loss of a reasonable profit.

Owner's Termination: Owner, on _____ day's written notice to Contractor, may terminate this contract when Contractor fails to carry out the construction in accordance with the provisions of

the contract documents. On termination, Owner may take possession of the worksite and all materials thereon, (but not Contractor's tools or work equipment) and finish the work in whatever reasonable way Owner deems expedient.

Section X. Jurisdiction

This Agreement and any litigation between the parties shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas, and the parties submit to the jurisdiction of the Courts of _____ County, Texas.

Section XII. Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance, and this Agreement shall be construed to effect the intent of the parties.

Date

Date

Contractor

Owner

Contractor's Company Name

Owner/ Agent/ Original Contractor Name

Formal Request to Furnish Information - *[Original Contractor to Property Owner]*

To: _____
(name, address of owner)

Re: _____
(describe nature of work done/materials provided to premises)

Dear _____,

This contractor _____, in regards to its work on the
_____ construction project, formally requests:
Project name & description

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 property being improved and if so, the name and address of the holder of the lien or security interest; and
4. The date on which the original contract for the project was executed.

Pursuant to Tex. Prop. Code §53.159, you are legally obliged to furnish the foregoing information within a reasonable time, but no later than the 10th day after this request is received.

Sincerely,

Signature of Sender

Name: _____

Address: _____

Formal Request to Furnish Information *[Subcontractor to Original Contractor]*

To: _____ (*name, address of owner*)

Re: _____ (*describe nature of work done/materials provided to premises*)

Dear _____,

This subcontractor _____, in regards to his work on the _____
Project name &
_____ construction project, formally requests:
description

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 been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond; and
3. The date on which the original contract for the project was executed.

Pursuant to Tex. Prop. Code § 53.159, you are legally obliged to furnish the foregoing information within a reasonable time, but no later than the 10th day after this request is received.

Sincerely,

Signature of Sender

Name: _____

Address: _____

Notice of Specially Fabricated Materials

_____, 20____

Via certified mail no. _____
Return receipt requested ,and first class mail

Owner's Name

Street, Apt No.

City, State, Zip Code

Via certified mail no. _____
Return receipt requested and first class mail

Original Contractor's Name

Street, Apt No.

City, State, Zip Code

Re: *Notice of Specially Fabricated Materials Project:* _____
Project Description

Our company is providing labor and/or materials to the above-referenced project. It is our understanding that you are the owner of the project and/or the original contractor of improvements thereon. If this is incorrect, please advise us immediately.

In accordance with the Texas Property Code, please be advised that we have received and accepted an order from _____ for specially
Name of Party Placing Order

fabricated items to be incorporated in the project. The price agreed upon for said items is \$_____. A copy of the order is enclosed for your reference.

Regards,

Signature of Sender

Name: _____

Enclosure

Notice to Property Owner of Unpaid Balance and Demand for Payment for Labor Performed and/or Materials Provided

(Date) _____

To: _____ (name, address of owner)

Via: regular US mail and certified mail, return receipt requested

Re: _____ (describe nature of work done/materials provided to premises)

1. Pursuant to the Texas Property Code, you are notified that the invoice, statement or billing attached to this notice is a true and accurate account of _____ (describe labor performed or materials supplied) to:

_____ (name, address) your original contractor, during the month of _____, 20__.

OR (for subcontractor claim)

_____ (name and address) a subcontractor of _____, (name and address) your original contractor, during the month of _____, 20__.

OR (for claim by maker of specially fabricated materials that have not yet been delivered)

Pursuant to the Texas Property Code, you are notified that the invoice, statement or billing attached to this notice is a true and accurate account of an order received and accepted for specially fabricated materials consisting of _____ (description of specially fabricated materials), the price of which is \$_____.

2. The amount of \$_____ is now unpaid and past due on this account.

3. You are further notified that if this account remains unpaid, you may be personally liable and your property subjected to a lien unless you withhold payments from your original contractor, in an amount necessary to pay this claim or unless this claim is otherwise paid or settled.

4. Claimant, the undersigned, hereby makes demand on you for the payment of \$_____, the amount due on the attached invoice statement or billing.

5. If a subcontractor or supplier who furnished 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 supplier for any amount paid to your contractor before you received written notice of the claim.

_____ Claimant (*name*)
By: _____ (*signature*)

Authorized representative of _____ (*if necessary*)

cc: _____ (*name of original contactor*)

Notice to Original Contractor of Unpaid Balance for Labor Performed and/or Materials Delivered

(Date) _____

To: _____ (name, address of original contractor)

Via: regular mail and certified mail, return receipt requested

Re: _____ (describe nature of work done/materials provided to premises) on
_____ (street address and legal description of the property)

Pursuant to Texas Property Code Section 53.053, you are hereby notified that the invoice statement or billing attached to this notice is a true and accurate account of

(describe work or materials), labor performed for **or** materials supplied to **or** labor and materials furnished to **or** materials specially fabricated for and delivered to _____, (name and address) your subcontractor, during the month of _____, 20____, in connection with improvements on the referenced jobsite.

The amount of \$_____ is now unpaid and due on this account.

Claimant (name)

By: _____
(signature)

Authorized representative of _____ (if necessary)

Notice to Subcontractor of Unpaid Balance for Labor Performed and/or Materials Delivered

(Date) _____

To: _____ (name, address of subcontractor)

Via: regular mail and certified mail, return receipt requested

Re: _____ (describe nature of work done/materials provided to premises)

on _____ (street address and legal description of the property)

Pursuant to Texas Property Code Section 53.053, you are hereby notified that the invoice statement or billing attached to this notice is a true and accurate account of

(describe work or materials), labor performed for **or** materials supplied to **or** labor and materials furnished _____, during the month of _____, 20__, in connection with improvements on the referenced jobsite.

The amount of \$ _____ is now unpaid and due on this account.

Claimant (name)

By: _____
(signature)

Authorized representative of _____ (if necessary)

Affidavit for Mechanic's and Materialmen's Lien

THE STATE OF TEXAS
COUNTY OF _____

AFFIDAVIT FOR
MECHANIC'S AND
MATERIALMAN'S LIEN

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

BEFORE ME, the undersigned authority, personally appeared _____, who upon his oath, deposed and stated the following:

1. My name is _____, hereinafter sometimes referred to as "Claimant". I have personal knowledge of the facts set forth below and am competent and authorized to make this affidavit. The facts contained in this Affidavit are true and correct.
2. Claimant's business address: (your business address) _____.
3. Pursuant to a contract by and between Claimant and (name of contractor or subcontractor who hired you for the job) _____, Claimant has performed labor and/or furnished material to improve the following described real property located in _____ County, Texas, which is more particularly described as follows:

Location/Street Address: _____

Legal Description: (ex. Lot 24 & W 1/2 of Lot 23 Block 6 Pleasant Hill Addition)

4. Claimant was employed by and/or furnished materials or labor to _____ for the improvements for which a lien is claimed. _____'s last known address is _____.
5. The labor and/or materials were furnished by Claimant in the month(s) of _____, in 20_____ and are generally described as follows:

(ex: Provided construction and improvements to aforementioned property, including installation of doors, windows and trim)

6. A copy of the statement of work is attached hereto as Exhibit A. (If you have a written contract for the work, attach it along with Exhibit A.)
7. The owner or reputed owner of the above-described real property is (name of owner) _____ whose last known address is (address of owner) _____.
8. The original contractor for the improvements for which a lien is claimed is (name of contractor who has contract with owner to do the work) _____ whose last known address is (last known business name and address of contractor) _____.
9. Claimant sent notices of its claim or claims to the owner and original contractor on each of the following dates: (list dates you sent notices to original contractor and owner) _____, 20____. Each notice was sent by certified mail.
10. After allowing all just credits, offsets, and payments, the amount of (amount you are owed) \$_____ remains unpaid and is due and owing to Claimant and I, (your name) _____, claim a lien on the above-referenced real property and improvements to secure payment of said amount.

(your name) _____, Claimant
 (your address) _____

SUBSCRIBED AND SWORN TO BEFORE ME on this the
 ____ day of _____, 20____, by _____.

 NOTARY PUBLIC,
 STATE OF TEXAS

Translator's Certificate

I certify that I am fluent in English and Spanish, that I translated this document to the Claimant in Spanish, and that the Claimant indicated that the Claimant clearly understood its contents and significance.

Translator: _____ Date: _____

Exhibit A: Statement of Work

Location: _____

Legal Description: _____

Labor Furnished: _____.

Amount Promised: \$ _____

Month(s) Labor Furnished: _____, 20____.

Amount paid: \$ _____ Unpaid amount owed: \$ _____

TOTAL SUM UNPAID AND OWED TO (your name) _____

FOR LABOR FURNISHED AT (address where you did work) _____

(total amount that you are owed) \$ _____

I hereby certify that the above statements are, to my personal knowledge, just and true.

(your signature) _____

Claimant

SUBSCRIBED AND SWORN TO BEFORE ME on this the

_____ day of _____, 20__ by _____.

(add this for homesteads)

Notice of Mechanic's Lien Filing

_____, 20____

Via Certified Mail No. _____
Return Receipt Requested and First Class Mail

Owner's Name

Street, Apt No.

City, State, Zip Code

Via Certified Mail No. _____
Return Receipt Requested and First Class Mail

Original Contractor's Name

Street, Apt No.

City, State, Zip Code

Re: Lien Affidavit of _____
Claimant's Name & Project Description

Enclosed is a copy of our mechanic's lien, which we are filing with the county clerk. Demand is hereby made for the immediate payment of the amount claimed in the affidavit. In addition to this principal sum, interest may be accruing on this debt at the applicable statutory rate.

You are hereby advised that if this account remains unpaid, your property may be subject to foreclosure for satisfaction of the lien. We will be pleased to release the same upon receipt of the balance due and owing. Please contact us immediately so that this matter can be resolved without formal legal action.

Please submit a return receipt to this correspondence.

Regards,

Company: _____

Name: _____

Release of Mechanic's Lien

STATE OF TEXAS

COUNTY OF _____

RELEASE OF MECHANIC'S LIEN

I, _____, hereby acknowledge receipt of \$_____ from _____ and in consideration for this payment I hereby release in full the Mechanic's and Materialmen's lien, _____ County, Texas, _____, that I placed upon the following property on _____, 20_____

Location: _____

Legal Description:

Dated this _____ day of _____, 20_____

Claimant

SUBSCRIBED AND SWORN TO BEFORE ME on this the _____ day of _____, 20_____

NOTARY PUBLIC, STATE OF TEXAS

Translator's Certificate

I certify that I am fluent in English and Spanish, that I translated this document to the Claimant in Spanish, and that the Claimant indicated that the Claimant clearly understood its contents and significance.

Translator: _____ Date: _____

Disclosure Statement for Residential Construction Contract

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 them 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 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 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 must 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 the policy 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.

ACKNOWLEDGED:

Owner's signature

Owner's printed name

Owner's signature

Owner's printed name

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.

Owner

Owner

List of Subcontractors/Suppliers

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.

(list of name, address and phone number of each subcontractor and supplier intended to be used):

Texas Mechanic's & Materialmen's Liens

*A Guide for Self-Employed Contractors and
Construction Workers*

2016 Edition

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and
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