

Amend CSHB 1390 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 53.053(e), Property Code, is amended to read as follows:

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

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

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

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

(1) the 30th ~~[15th]~~ day after the date the claimant's agreement providing for retainage is completed, terminated, or abandoned; or

(2) the 30th day after the date the original contract is terminated or abandoned ~~[of the second month following the delivery of materials or the performance of labor by the claimant that first occurs after the claimant has agreed to the contractual retainage].~~

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

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

(1) the name and address of the claimant; and

(2) if the agreement is with a subcontractor, the name and address of the subcontractor ~~[the sum to be retained,~~

~~[(2) the due date or dates, if known, and  
[(3) a general indication of the nature of the  
agreement].~~

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

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

(1) gives notice in accordance with this section and  
complies with Subchapter E;

(2) files an affidavit claiming a lien not later than  
the earliest of:

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

(B) 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;

(C) 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

(D) the 30th day after the owner sent to the  
claimant in accordance with Section 53.003 to the claimant's  
address provided in the notice for contractual retainage as  
required under Subsection (c) a written demand for the claimant to  
file the affidavit claiming a lien; and

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

(g) The written demand under Subsection (f)(2)(D):

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

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

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

SECTION 3. Section 53.103, Property Code, is amended to read as follows:

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

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

(2) except as provided by Section 53.057(f), files an affidavit claiming a lien not later than the 30th day after the earliest [~~earlier~~] 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.

SECTION 4. Section 53.105(a), Property Code, is amended to read as follows:

(a) If the owner fails or refuses to comply with this subchapter, the claimants complying with Subchapter C or this subchapter [~~chapter~~] have a lien, at least to the extent of the amount that should have been retained from the original contract under which they are claiming, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected.

SECTION 5. Sections 53.106(a) 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 ~~[the]~~ affidavit claiming a lien not later than the 40th ~~[30th]~~ day after the date the work under the original contract is completed ~~[of completion]~~.

(d) Except as provided by this subsection, an affidavit filed under this section on or before the 10th day after the date of completion of the improvements is prima facie evidence of the date the work under the original contract is completed for purposes of this subchapter and Section 53.057. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter and Section 53.057 is the date the affidavit is filed. This subsection does not apply to a person to whom the affidavit was not sent as required by this section.

SECTION 6. Sections 53.107(b) and (d), Property Code, are amended to read as follows:

(b) The notice must contain:

(1) the name and address of the owner;

(2) the name and address of the original contractor;

(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a general description of the improvements agreed to be furnished under the original contract;

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

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

(7) a conspicuous statement that a claimant may not have a lien on the retained funds unless the claimant files an affidavit claiming a lien not later than the 40th ~~[30th]~~ day after the date of the termination or abandonment.

(d) If an owner is required to send a notice to a [A] subcontractor under this section and fails to send the notice, the subcontractor is not required to comply with Section 53.057 to

claim retainage and may claim a lien by filing a lien affidavit as prescribed by Section 53.052 ~~[who fails to file a lien affidavit in the time prescribed by Section 53.103(2) has a lien to the extent authorized under this subchapter if:~~

~~[(1) the subcontractor otherwise complies with this chapter, and~~

~~[(2) the owner did not provide the subcontractor notice as required by this section].~~

SECTION 7. Section 53.159, Property Code, is amended by amending Subsections (a) and (b) and adding Subsection (g) to read as follows:

(a) An owner, on written request, shall furnish the following information within a reasonable time, but not later than the 10th day after the date the request is received, to any person furnishing labor or materials for the project:

(1) a description of the real property being improved legally sufficient to identify it;

(2) whether there is a surety bond and if so, the name and last known address of the surety and a copy of the bond; ~~[and]~~

(3) whether there are any prior recorded liens or security interests on the real property being improved and if so, the name and address of the person having the lien or security interest; and

(4) the date on which the original contract for the project was executed.

(b) An original contractor, on written request by a person who furnished work under the original contract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of the person to whom the original contractor furnished labor or materials for the construction project; ~~[and]~~

(2) whether the original contractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond; and

(3) the date on which the original contract for the

project was executed.

(g) A subcontractor who does not receive information requested under Subsection (a)(4) within the period prescribed by Subsection (a) is not required to comply with Section 53.057 and may perfect a lien for retainage by filing a lien affidavit under Section 53.052. This subsection expires September 1, 2013.

SECTION 8. Section 53.160(b), Property Code, is 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 furnished to the owner or original contractor as required by Section 53.056, 53.057, 53.058, 53.252, or 53.253;

(2) an affidavit claiming a lien failed to comply with Section 53.054 or was not filed as required by Section 53.052;

(3) notice of the filed affidavit was not furnished to the owner or original contractor as required by Section 53.055;

(4) the deadlines for perfecting a lien claim for retainage under this chapter have expired and the owner complied with the requirements of Section 53.101 and paid the retainage and all other funds owed to the original contractor before:

(A) the claimant perfected the lien claim; and

(B) the owner received a notice of the claim as required by this chapter;

(5) all funds subject to the notice of a claim to the owner and a notice regarding the ~~[perfection of a claim against the statutory]~~ 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.

SECTION 9. Chapter 53, Property Code, as amended by this Act, applies only to a lien claim for labor or materials furnished under a subcontract where the original contract was entered into on or after the effective date of this Act. A lien claim for labor or materials furnished under a subcontract where the original contract was entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2011.