

AN ACT

relating to retainage under certain construction contracts.

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

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

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

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

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

- 12 (1) the name and address of the claimant; and
13 (2) if the agreement is with a subcontractor, the name
14 and address of the subcontractor [~~the sum to be retained,~~
15 [~~(2) the due date or dates, if known; and~~
16 [~~(3) a general indication of the nature of the~~
17 ~~agreement~~].

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

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

- 24 (1) gives notice in accordance with this section and:
25 (A) complies with Subchapter E; or
26 (B) files an affidavit claiming a lien not later
27 than the earliest of:

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

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

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

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

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

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

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

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

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

27 SECTION 3. Section 53.103, Property Code, is amended to

1 read as follows:

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

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

6 (2) except as allowed by Section 53.057(f), files an
7 affidavit claiming a lien not later than the 30th day after the
8 earliest [~~earlier~~] of the date:

9 (A) the work is completed;

10 (B) the original contract is terminated; or

11 (C) the original contractor abandons performance
12 under the original contract.

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

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

22 SECTION 5. Sections 53.106(a) and (d), Property Code, are
23 amended to read as follows:

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

27 (1) the name and address of the owner;

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

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

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

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

10 (6) a conspicuous statement that a claimant may not
11 have a lien on retained funds unless the claimant files an [~~the~~
12 affidavit claiming a lien not later than the 40th [~~30th~~] day after
13 the date the work under the original contract is completed [~~of~~
14 ~~completion~~].

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

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

26 (b) The notice must contain:

27 (1) the name and address of the owner;

- 1 (2) the name and address of the original contractor;
- 2 (3) a description, legally sufficient for
- 3 identification, of the real property on which the improvements are
- 4 located;
- 5 (4) a general description of the improvements agreed
- 6 to be furnished under the original contract;
- 7 (5) a statement that the original contract has been
- 8 terminated or that performance under the contract has been
- 9 abandoned;
- 10 (6) the date of the termination or abandonment; and
- 11 (7) a conspicuous statement that a claimant may not
- 12 have a lien on the retained funds unless the claimant files an
- 13 affidavit claiming a lien not later than the 40th [~~30th~~] day after
- 14 the date of the termination or abandonment.

15 (d) If an owner is required to send a notice to a [A]
16 subcontractor under this section and fails to send the notice, the
17 subcontractor is not required to comply with Section 53.057 to
18 claim retainage and may claim a lien by filing a lien affidavit as
19 prescribed by Section 53.052 [~~who fails to file a lien affidavit in~~
20 ~~the time prescribed by Section 53.103(2) has a lien to the extent~~
21 ~~authorized under this subchapter if:~~

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

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

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

1 as follows:

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

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

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

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

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

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

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

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

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

1 project was executed.

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

7 SECTION 8. Section 53.160(b), Property Code, is amended to
8 read as follows:

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

12 (1) notice of claim was not furnished to the owner or
13 original contractor as required by Section 53.056, 53.057, 53.058,
14 53.252, or 53.253;

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

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

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

23 (A) the claimant perfected the lien claim; and

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

26 (5) all funds subject to the notice of a claim to the
27 owner and a notice regarding the ~~[perfection of a claim against the~~

1 ~~statutory]~~ retainage have been deposited in the registry of the
2 court and the owner has no additional liability to the claimant;

3 (6) when the lien affidavit was filed on homestead
4 property:

5 (A) no contract was executed or filed as required
6 by Section 53.254;

7 (B) the affidavit claiming a lien failed to
8 contain the notice as required by Section 53.254; or

9 (C) the notice of the claim failed to include the
10 statement required by Section 53.254; and

11 (7) the claimant executed a valid and enforceable
12 waiver or release of the claim or lien claimed in the affidavit.

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1390 was passed by the House on May 2, 2011, by the following vote: Yeas 139, Nays 7, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1390 was passed by the Senate on May 16, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor