

1-1 By: Deuell S.B. No. 1332
1-2 (In the Senate - Filed March 9, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 13, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 13, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1332 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the waiver and release of a mechanic's, contractor's, or
1-11 materialman's lien or payment bond claim.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (c), Section 53.085, Property Code,
1-14 is amended to read as follows:

1-15 (c) The affidavit may include:

1-16 (1) a waiver or release of lien rights or payment bond
1-17 claims by the affiant that is conditioned on the receipt of actual
1-18 payment or collection of funds when payment is made by check or
1-19 draft, as provided by Subchapter L;

1-20 (2) a warranty or representation that certain bills or
1-21 classes of bills will be paid by the affiant from funds paid in
1-22 reliance on the affidavit; and

1-23 (3) an indemnification by the affiant for any loss or
1-24 expense resulting from false or incorrect information in the
1-25 affidavit.

1-26 SECTION 2. Chapter 53, Property Code, is amended by adding
1-27 Subchapter L to read as follows:

1-28 SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

1-29 Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND
1-30 CLAIM. (a) Any waiver and release of a lien or payment bond claim
1-31 under this chapter is unenforceable unless a waiver and release is
1-32 executed and delivered in accordance with this subchapter.

1-33 (b) A waiver and release is effective to release the owner,
1-34 the owner's property, the contractor, and the surety on a payment
1-35 bond from claims and liens only if:

1-36 (1) the waiver and release substantially complies with
1-37 one of the forms prescribed by this subchapter;

1-38 (2) the waiver and release is signed by the claimant or
1-39 the claimant's authorized agent and notarized; and

1-40 (3) in the case of a conditional release, evidence of
1-41 payment to the claimant exists.

1-42 Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT
1-43 OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to
1-44 waive, release, or otherwise adversely affect a lien or payment
1-45 bond claim is not enforceable and does not create an estoppel or
1-46 impairment of a lien or payment bond claim unless:

1-47 (1) the statement is in writing and complies with this
1-48 subchapter;

1-49 (2) the claimant has actually received payment in good
1-50 and sufficient funds in full for the lien or payment bond claim; or

1-51 (3) the statement is:

1-52 (A) in a written original contract or subcontract
1-53 for the construction, remodel, or repair of a single-family house
1-54 or duplex; and

1-55 (B) made before labor or materials are provided
1-56 under the original contract or subcontract and a good faith dispute
1-57 exists regarding the quality of the labor or material provided by
1-58 the original contractor or subcontractor that has resulted in the
1-59 nonpayment of the original contractor or subcontractor.

1-60 (b) This section does not affect the enforceability of an
1-61 accord and satisfaction regarding a bona fide dispute or any
1-62 agreement made in settlement of an action pending in any court if
1-63 the accord and satisfaction or agreement made in settlement makes

specific reference to the lien or payment bond claim.

(c) The filing of a lien rendered unenforceable by a lien waiver under Subsection (a)(3) does not violate Section 12.002, Civil Practice and Remedies Code.

Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT REQUIRED. A person may not require a claimant or potential claimant to execute an unconditional waiver and release for a progress payment or final payment amount unless the claimant or potential claimant received payment in that amount in good and sufficient funds.

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

(b) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

(c) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a progress payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the progress payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. This document may be enforceable against you if you sign it, even if you have not been paid. It is unlawful for a person to require you to sign this

document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid and has received a progress payment in the sum of \$_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

(d) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a final payment and is not paid in good and sufficient funds in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

"This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided

for or to the above referenced project up to the date of this waiver and release.

"Date _____

"_____

(Company name)

"By _____ (Signature)

"_____

(Title)"

(e) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. This document may be enforceable against you if you sign it, even if you have not been paid. It is unlawful for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

"Date _____

"_____

(Company name)

"By _____ (Signature)

"_____

(Title)"

Sec. 53.285. ATTEMPTED COMPLIANCE. (a) A waiver or release shall be construed to comply with this subchapter and is enforceable in the same manner as a waiver and release under this subchapter if the waiver or release:

(1) is furnished in attempted compliance with this subchapter; or

(2) evidences by its terms intent to comply with this subchapter.

(b) Any provision in any waiver or release furnished in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this subchapter shall be disregarded, and the provisions of this subchapter shall be read into that waiver or release.

(c) This section expires August 31, 2012.

Sec. 53.286. PUBLIC POLICY. (a) Notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien or claim created under this chapter is void as against public policy.

(b) This subchapter does not apply to a written agreement to subordinate, release, or satisfy all or part of a lien claimed after

5-1 a notice of lien has been filed.

5-2 SECTION 3. The changes in law made by this Act apply only to
5-3 a contract executed on or after September 1, 2011. A contract
5-4 executed before September 1, 2011, is covered by the law applicable
5-5 to the contract immediately before the effective date of this Act,
5-6 and the former law is continued in effect for that purpose.

5-7 SECTION 4. This Act takes effect September 1, 2011.

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