

BILL ANALYSIS

C.S.H.B. 3065
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that current law governing mechanic's, contractor's, and materialman's liens is confusing for both lawyers and laypersons alike and would benefit from certain updates and changes. C.S.H.B. 3065 seeks to provide for these updates and changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 3065 amends the Property Code to require the secretary of state to establish and maintain a lien website through the state electronic Internet portal and to authorize the secretary of state to adopt rules and forms necessary to implement the lien website. The bill requires the lien website to provide an online form for each notice or written communication required by statutory provisions governing mechanic's, contractor's, and materialman's liens that complies with the content requirements of such provisions for the notice or communication and to allow a person to electronically obtain a form and post the notice or written communication on the lien website. The bill also requires the lien website to allow a person to search the notices and written communications posted on the website with a full or partial owner name, project name, project address, project real property legal description, original contractor name, or name of person posting a notice or written communication. The bill prohibits the secretary of state from charging a fee for a person to electronically obtain a form or post a notice or written communication on the lien website or to use the search functions of the lien website, but authorizes the secretary of state to charge a fee for a person to post a notice of commencement of improvements to real property under the bill's provisions on the lien website.

C.S.H.B. 3065 sets out provisions relating to a notice of commencement of improvements to real property an owner of real property may file with the county clerk of the county in which the real property being improved under an original contract is located and a requirement for an owner who elects to file a notice of commencement to post such notice on the lien website. The bill sets out provisions relating to a notice of furnishing a person who contracts with a person other than an owner and who has a lien as an original contractor under statutory provisions relating to sham contracts is required to give to the owner or reputed owner for the lien to be valid and a notice of furnishing a claimant other than an original contractor is required to give to the owner or reputed owner and the original contractor for the claimant's lien to be valid. The bill sets out provisions

relating to a notice of unpaid balance a claimant is required to give to the owner or reputed owner, with a copy to the original contractor, if certain conditions apply and sets out provisions relating to an authorization for an owner who receives such a notice to withhold certain payments necessary to pay the amount of the unpaid balance stated in the notice and an owner's liability in relation to a claim for an unpaid balance. The bill sets out provisions relating to a notice of completion an owner, if the owner has filed and posted on the lien website such a notice of commencement and the work to which such notice pertains has been completed or the original contract for such work has been terminated, is authorized to file with the county clerk of the county in which the owner's property is located and to post the notice on the website. The bill sets out provisions relating to a notice of demand an owner, if work under an original contract has been completed or the original contract has been terminated, is authorized to send to the original contractor or subcontractor requesting the contractor or subcontractor to file a lien claim affidavit. The bill defines "owner" for purposes of statutory provisions governing mechanic's, contractor's, and materialman's liens to mean a person who owns any interest in real property or an authorized agent, trustee, or receiver of the person and defines "reputed owner" to mean a person who is identified as an owner in a notice of commencement required under such statutory provisions or in an original contract for an improvement or a person generally considered or reputed to be the owner of the real property being improved.

C.S.H.B. 3065 revises the applicability of statutory provisions governing notices in connection with mechanic's, contractor's, and materialman's liens to make such provisions applicable to any written communication required under statutory provisions governing such liens. The bill establishes that the effective date of such a written communication sent by registered or certified mail is the date the communication is deposited in the United States mail. The bill authorizes a written communication to an owner to be posted on the lien website under the protocols established for the website for receipt of the communication, authorizes a communication to be sent by an owner by posting the communication on the lien website or by email with an electronic record of delivery to the email address provided to the owner in a notice of furnishing, and establishes that the effective date of such a communication is the date the communication is sent to the lien website under the website's protocols or the date the email is sent. The bill makes an email sent to a recipient prima facie evidence of delivery of a message to an email address to which it is sent. The bill establishes for purposes of computing the period of days in which to provide a notice or to take an action required under statutory provisions governing such liens that if the last day of the period is a weekend day or holiday, the period is extended to include the next day that is not a weekend day or holiday.

C.S.H.B. 3065 revises the conditions establishing that a person has a lien under a contract such that a person has a lien if the person labors, specially fabricates material, or furnishes labor or materials under or arising out of an express contract or contract implied by law between the person and the owner or the owner's agent, trustee, receiver, contractor, or subcontractor. The bill makes certain revisions to statutory provisions relating to the legal interests to which a lien extends for certain types of property, the amount of a lien that may be claimed by a subcontractor, the conditions that establish the existence of a sham contract, and the required filing of a lien claim affidavit by an original contractor or subcontractor if the bill's provisions relating to a notice of demand do not apply.

C.S.H.B. 3065 revises the authority of an owner to withhold funds from payments to an original contractor for the benefit of lien claimants to authorize an owner to withhold from payments due or to become due to the original contractor an amount necessary to pay a claim stated in a lien claim affidavit filed by a subcontractor or a claim for which the lien claim affidavit has been posted on the lien website, except to the extent that the owner is already withholding payment for the amount of the claim from the original contractor as retainage or otherwise. The bill makes certain revisions to statutory provisions governing the time for which such funds are withheld.

C.S.H.B. 3065 authorizes an owner if a lien claim affidavit is filed by a claimant to demand in writing that the original contractor notify the owner of whether the original contractor intends to

dispute the claim. The bill requires the owner to send a copy of the demand to the claimant and to furnish the original contractor with a copy of the lien claim affidavit. The bill establishes that the original contractor is considered to agree to the demand and authorizes the owner to pay the claim when the claim becomes due if the original contractor does not give the owner and the claimant written notice of the original contractor's intent to dispute the claim before the 30th day after the date of receipt of the demand.

C.S.H.B. 3065 makes an owner personally liable for the aggregate amount of the liens perfected on the owner's property under statutory provisions governing mechanic's, contractor's, and materialman's liens, establishes that an owner is not personally liable for more than 10 percent of the value of the work, and establishes that such limitation of liability does not apply to an award of costs and attorney's fees in certain proceedings. The bill establishes that an owner's personal liability does not affect any lien filed on the owner's property under such statutory provisions and is not affected by a subsequent foreclosure or other transfer of the owner's interest in all or part of the property. The bill caps the aggregate amount of liens of the original contractor and the subcontractors at the contract price of the original contract, as may be modified, for the work and prohibits duplicated claims asserted by claimants within the same chain of contract from being added more than once in determining the aggregate amount of liens. The bill establishes for purposes of these provisions that a payment by the owner to the original contractor does not reduce the aggregate liability of the owner for liens. The bill establishes that a purchaser of property subject to a lien claim is not personally liable for the claim in a foreclosure action brought by a claimant, except the purchaser may be held liable for costs and attorney's fees awarded under statutory provisions relating to proceedings to foreclose a lien, enforce a claim against certain bonds, or a proceeding to declare a lien or claim invalid or unenforceable in whole or in part.

C.S.H.B. 3065 revises certain requirements for and the content of a required affidavit stating that a person has paid each of the person's subcontractors, laborers, and materialmen in full for a particular construction project or providing certain information regarding debts outstanding and removes the prohibition against a person who intentionally, knowingly, or recklessly makes a false or misleading statement in such a bills-paid affidavit receiving community supervision for the offense constituted by such conduct.

C.S.H.B. 3065 specifies that the types of perfected mechanic's liens that are on equal footing for purposes of determining the repayment priority of such liens without reference to the date of filing the lien claim affidavit are such liens that have the same inception date. The bill makes certain revisions to statutory provisions governing the time of inception of a mechanic's lien.

C.S.H.B. 3065 exempts an original contractor from the requirement to defend at the original contractor's own expense a suit brought on an affidavit claiming a mechanic's lien filed by a person other than the original contractor if the owner is in breach of the owner's contractual obligations to the original contractor under the original contract. The bill requires a suit to foreclose a mechanic's lien to be brought in a court of competent jurisdiction in the county in which the real property that is subject to the lien is located. The bill makes certain revisions to the statute of limitations for bringing suit to foreclose a mechanic's, contractor's, or materialman's lien.

C.S.H.B. 3065 requires a subcontractor on written request by an owner of real property being improved, by the original contractor, by a surety on a bond covering the original contract, or by any person furnishing work under the subcontract to furnish to the person within a reasonable time, but not later than the 10th day after the date the request is received, the date the subcontractor first performed labor, furnished materials, or specially fabricated materials for the construction project for which any claim for payment is being sought. The bill removes certain grounds for objecting to the validity or enforceability of a claim or lien for purposes of a summary motion to remove an invalid or unenforceable claim or lien.

C.S.H.B. 3065 increases from \$40,000 to \$60,000 the threshold amount of total liens claimed for purposes of calculating the required amount of a bond to indemnify against a lien that is fixed or is attempted to be fixed by a recorded instrument under statutory provisions governing mechanic's, contractor's, and materialman's liens, other than a lien granted by the owner in a written contract, based on such threshold amount. The bill removes language relieving an owner of obligations under statutory provisions relating to an owner withholding funds after notice by a lien claimant if a valid bond for the benefit of claimants is filed and instead specifies that, if such a bond is filed, an owner is not authorized to withhold funds or pay a claimant on demand.

C.S.H.B. 3065 revises the requirements for a person to perfect a claim against a bond for the benefit of claimants in a manner other than that prescribed by statute for fixing a lien to require a person to give to the original contractor a notice of furnishing or a notice of unpaid balance, unless the person has contracted directly with the original contractor, and to give to the surety on the bond a written notice of the amount and nature of the claim and a copy of the notice to the original contractor within the time period required for filing a lien claim affidavit. The bill makes certain revisions to the statutory form for a disclosure statement an original contractor is required to deliver to an owner before the owner executes a residential construction contract.

C.S.H.B. 3065 requires the final bills-paid affidavit an original contractor is required to execute and deliver as a condition of final payment under a residential construction contract to an owner, or the owner's agent, at the time final payment is tendered to acknowledge the amount claimed for payment. The bill removes the prohibition against a person who intentionally, knowingly, or recklessly makes a false or misleading statement in such an affidavit receiving community supervision for the offense constituted by such conduct.

C.S.H.B. 3065 authorizes a waiver and release of a lien or payment bond claim that substantially complies with the statutory form for such waiver and release to be combined with a bills-paid affidavit that substantially conforms to the requirements of applicable state law.

C.S.H.B. 3065 voids a contractual requirement for a claimant to waive or release the claimant's lien rights before performance of the work for which the claim for payment is asserted. The bill authorizes a claimant to tender an unconditional waiver and release for payment before the actual receipt of a payment to be delivered in trust to an attorney, title insurance company, title insurance agent, or federally insured financial institution acting as an escrow agent and authorizes the escrow agent to deliver the waiver and release only after the claimant has confirmed receipt of payment in good and sufficient funds.

C.S.H.B. 3065 authorizes an owner who has filed and posted a notice of commencement to require as a condition for final payment a claimant who has provided a notice of furnishing to post on the lien website a specified conditional waiver and release in the statutory form.

C.S.H.B. 3065 repeals provisions relating to retainage of a portion of a contract payment in the context of mechanic's, contractor's, and materialman's liens, retainage liens, the accrual of indebtedness, certain notice requirements by derivative claimants, and a required statement on a notice contained in an affidavit for a lien that relates to a homestead.

C.S.H.B. 3065 amends the Insurance Code to make conforming changes.

C.S.H.B. 3065 repeals the following provisions of the Property Code:

- Section 53.001(11)
- Section 53.022(b)
- Section 53.025
- Section 53.053

- Section 53.056
- Section 53.057
- Section 53.058
- Section 53.083
- Section 53.084
- Subchapter E, Chapter 53
- Section 53.206(c)
- Section 53.252
- Section 53.253
- Section 53.254(g)

EFFECTIVE DATE

May 1, 2018.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3065 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 3503.051(3), Insurance Code, is amended.

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (12), (13), and (14) and adding Subdivisions (2-a), (3-a), (5-a), (5-b), (5-c), (7-a), and (7-b) to read as follows:

(2) "Improved" means, in reference to real property, having an improvement, as defined by this section.

(2-a) "Improvement" means a house, building, or other improvement to the real property of an owner. The term includes:

(A) improvements constructed adjacent to the real property under an original contract with the owner, including [~~abutting~~] sidewalks and streets and utilities in or on those sidewalks and streets;

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

(C) wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;

(D) pumps, siphons, and windmills or other machinery or apparatuses used for raising

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (12), (13), and (14) and adding Subdivisions (2-a), (3-a), (5-a), (5-b), (5-c), (5-d), (7-a), and (7-b) to read as follows:

(2) "Improved" means, in reference to real property, having an improvement, as defined by this section.

(2-a) "Improvement" means a house, building, or other improvement to the real property of an owner. The term includes:

(A) improvements constructed adjacent to the real property under an original contract with the owner, including [~~abutting~~] sidewalks and streets and utilities in or on those sidewalks and streets;

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

(C) wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;

(D) pumps, siphons, and windmills or other machinery or apparatuses used for raising

water for stock, domestic use, or irrigation;
[and]

(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees;

(F) levees or embankments erected for the reclamation of overflow land along a river or creek; and

(G) railroads.

(3-a) "Lien website" means the Internet website established under Subchapter A-1.

(5-a) "Notice of commencement" means a notice described by Section 53.125.

(5-b) "Notice of demand" means a notice described by Section 53.0521.

(5-c) "Notice of furnishing" is a notice required under Section 53.0561.

(7-a) "Owner" means a person who owns any interest in real property or an authorized agent, trustee, or receiver of the person.

(7-b) "Reputed owner" means a person who is:

(A) identified as an owner in a notice of commencement required under this chapter or in an original contract for an improvement; or

(B) generally considered or reputed to be the owner of the real property being improved.

(12) "Specially fabricated material" means material fabricated for use as a component of the construction or repair of an improvement so as to be reasonably unsuitable for use elsewhere.

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

(14) "Work" means any part of labor done, material furnished, or materials specially fabricated for the construction or repair of an improvement performed under an original contract.

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

(a) This section applies to notices required by this chapter [~~Subchapters B through G and K~~]. In this section, "notice" includes

water for stock, domestic use, or irrigation;
[and]

(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees;

(F) levees or embankments erected for the reclamation of overflow land along a river or creek; and

(G) railroads.

(3-a) "Lien website" means the Internet website established under Subchapter A-1.

(5-a) "Notice of commencement" means a notice described by Section 53.125.

(5-b) "Notice of demand" means a notice described by Section 53.0521.

(5-c) "Notice of furnishing" means a notice described by Section 53.0561.

(5-d) "Notice of unpaid balance" means a notice described by Section 53.0562.

(7-a) "Owner" means a person who owns any interest in real property or an authorized agent, trustee, or receiver of the person.

(7-b) "Reputed owner" means a person who is:

(A) identified as an owner in a notice of commencement required under this chapter or in an original contract for an improvement; or

(B) generally considered or reputed to be the owner of the real property being improved.

(12) "Specially fabricated material" means material fabricated for use as a component of the construction or repair of an improvement so as to be reasonably unsuitable for use elsewhere.

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

(14) "Work" means any part of labor done, material furnished, or materials specially fabricated for the construction or repair of an improvement performed under an original contract.

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

(a) This section applies to notices required by this chapter [~~Subchapters B through G and K~~]. In this section, "notice" includes

any written communication required under this chapter.

(c) If a notice is sent by registered or certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. The effective date of the notice is the date the notice is deposited in the United States mail. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(e) A notice to an owner may be filed on the lien website under the protocols established for the website for receipt of the notice. A notice may be sent by an owner by filing the notice on the lien website or by e-mail with an electronic record of delivery to the e-mail address provided to the owner in a notice of furnishing by a person required to be provided with the notice. The effective date of the notice is the date the notice is sent to the lien website under the website's protocols or the date the e-mail is sent. An e-mail sent to a recipient is prima facie evidence of delivery of a message to an e-mail address to which it is sent.

SECTION 4. Subchapter A, Chapter 53, Property Code, is amended.

SECTION 5. Chapter 53, Property Code, is amended.

SECTION 6. Section 53.021(a), Property Code, is amended.

SECTION 7. Section 53.022, Property Code, is amended.

SECTION 8. Section 53.024, Property Code, is amended.

SECTION 9. Section 53.026(a), Property Code, is amended.

SECTION 10. Section 53.052, Property Code, is amended to read as follows:

Sec. 53.052. FILING OF LIEN CLAIM AFFIDAVIT. (a) Except as provided by Subsection (b) or Section 53.0521, an original contractor or subcontractor

any written communication required under this chapter.

(c) If a notice is sent by registered or certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. The effective date of the notice is the date the notice is deposited in the United States mail. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(e) A notice to an owner may be posted on the lien website under the protocols established for the website for receipt of the notice. A notice may be sent by an owner by posting the notice on the lien website or by e-mail with an electronic record of delivery to the e-mail address provided to the owner in a notice of furnishing by a person required to be provided with the notice. The effective date of the notice is the date the notice is sent to the lien website under the website's protocols or the date the e-mail is sent. An e-mail sent to a recipient is prima facie evidence of delivery of a message to an e-mail address to which it is sent.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Section 53.052, Property Code, is amended to read as follows:

Sec. 53.052. FILING OF LIEN CLAIM AFFIDAVIT. (a) Except as provided by Subsection (b) or Section 53.0521, an original contractor or subcontractor, including an employee described by Section 53.0562(a)(1),

~~[the person]~~ claiming a ~~[the]~~ lien under this chapter must file a lien claim ~~[an]~~ affidavit as provided by Subsection (c) ~~[with the county clerk of the county in which the property is located or into which the railroad extends]~~ not later than the 15th day of the fourth calendar month after the date the work under the original contract is completed or the original contract is terminated ~~[day on which the indebtedness accrues]~~.

(b) Except as provided by Section 53.0521, an original contractor or subcontractor

~~[A person]~~ claiming a lien on ~~[arising from]~~ a residential construction project must file a lien claim ~~[an]~~ affidavit as provided by Subsection (c) ~~[with the county clerk of the county in which the property is located]~~ not later than the 15th day of the third calendar month after the date the work under the original contract is completed or the original contract is terminated ~~[day on which the indebtedness accrues]~~.

(c) A lien claim affidavit must be filed with the county clerk of the county in which the property is located or into which the railroad extends. The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

(d) For purposes of this section, an original contract is terminated on the date an owner posts a notice of termination on the lien website. If a notice of commencement has not been filed and posted as required by Section 53.125, the owner must send a notice of termination to each person who has filed a notice of furnishing.

SECTION 11. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.0521 to read as follows:

Sec. 53.0521. NOTICE OF DEMAND. (a) If work under an original contract has been completed or the original contract has been terminated, an owner may send a notice of demand to the original contractor or subcontractor requesting the contractor or subcontractor to file a lien claim affidavit. If the notice is based on the termination of

~~[the person]~~ claiming a ~~[the]~~ lien under this chapter must file a lien claim ~~[an]~~ affidavit as provided by Subsection (c) ~~[with the county clerk of the county in which the property is located or into which the railroad extends]~~ not later than the 15th day of the fourth calendar month after the date the work under the original contract is completed or the original contract is terminated ~~[day on which the indebtedness accrues]~~.

(b) Except as provided by Section 53.0521, an original contractor or subcontractor, including an employee described by Section 53.0562(a)(1),

~~[A person]~~ claiming a lien on ~~[arising from]~~ a residential construction project must file a lien claim ~~[an]~~ affidavit as provided by Subsection (c) ~~[with the county clerk of the county in which the property is located]~~ not later than the 15th day of the third calendar month after the date the work under the original contract is completed or the original contract is terminated ~~[day on which the indebtedness accrues]~~.

(c) A lien claim affidavit must be filed with the county clerk of the county in which the property is located or into which the railroad extends. The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

(d) For purposes of this section, an original contract is terminated on the date an owner posts a notice of termination on the lien website. If a notice of commencement has not been filed and posted under Section 53.125, the owner must send a notice of termination to each person who has given the owner a notice of furnishing.

SECTION 11. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.0521 to read as follows:

Sec. 53.0521. NOTICE OF DEMAND. (a) If work under an original contract has been completed or the original contract has been terminated, an owner may send a notice of demand to the original contractor or subcontractor requesting the contractor or subcontractor to file a lien claim affidavit. If the notice is based on the termination of

the original contract, the notice must state that the original contract was terminated and the date of the termination. An owner may not send the notice before the original contract has been terminated. A notice sent before work under the original contract has been completed is effective only as to a claimant that has completed the claimant's work and is void as to any other claimant.

(b) For purposes of this section, an original contract is terminated on the date an owner posts a notice of termination on the lien website. If a notice of commencement has not been filed and posted as required by Section 53.125, the owner must send a notice of termination to each person who has filed a notice of furnishing.

(c) Notwithstanding Section 53.003, a notice of demand must be sent by registered or certified mail to a subcontractor at the subcontractor's address provided by the notice of furnishing or to an original contractor at the original contractor's last known address.

(d) If an owner sends a notice of demand, a claimant that has completed the claimant's work must, not later than the 30th day after the date the notice of demand is sent, file a lien claim affidavit for a claim the claimant has not included in a previously filed lien claim affidavit.

(e) A claimant that has not completed the claimant's work on the date the owner sends a notice of demand must file a lien claim affidavit as provided by Section 53.052(a) or (b), as applicable.

(f) An original contractor or subcontractor waives any statutory lien rights that have not been perfected if the contractor or subcontractor does not comply with this section.

(g) A notice of demand must be conspicuously printed in bold type and in all capital letters not smaller than 10-point type and must state the following:

"NOTICE OF DEMAND
"WARNING: THIS NOTICE BRIEFLY
SUMMARIZES _____ LEGAL
REQUIREMENTS STATED BY SECTION
53.0521, PROPERTY CODE. YOU
SHOULD CONSULT AN ATTORNEY TO
FULLY UNDERSTAND YOUR RIGHTS
AND OBLIGATIONS.
"THE OWNER IS DEMANDING THAT
YOU FILE A LIEN CLAIM AFFIDAVIT

the original contract, the notice must state that the original contract was terminated and the date of the termination. An owner may not send the notice before the original contract has been terminated. A notice sent before work under the original contract has been completed is effective only as to a claimant that has completed the claimant's work and is void as to any other claimant.

(b) For purposes of this section, an original contract is terminated on the date an owner posts a notice of termination on the lien website. If a notice of commencement has not been filed and posted under Section 53.125, the owner must send a notice of termination to each person who has provided a notice of furnishing.

(c) Notwithstanding Section 53.003, a notice of demand must be sent by registered or certified mail to a subcontractor at the subcontractor's address provided by the notice of furnishing or to an original contractor at the original contractor's last known address.

(d) If an owner sends a notice of demand, a claimant that has completed the claimant's work must, not later than the 30th day after the date the notice of demand is sent, file a lien claim affidavit for a claim the claimant has not included in a previously filed lien claim affidavit.

(e) A claimant that has not completed the claimant's work on the date the owner sends a notice of demand must file a lien claim affidavit as provided by Section 53.052(a) or (b), as applicable.

(f) An original contractor or subcontractor waives any statutory lien rights that have not been perfected if the contractor or subcontractor does not comply with this section.

(g) A notice of demand must be conspicuously printed in bold type and in all capital letters not smaller than 10-point type and must state the following:

"NOTICE OF DEMAND
"WARNING: THIS NOTICE BRIEFLY
SUMMARIZES _____ LEGAL
REQUIREMENTS STATED BY SECTION
53.0521, PROPERTY CODE. YOU
SHOULD CONSULT AN ATTORNEY TO
FULLY UNDERSTAND YOUR RIGHTS
AND OBLIGATIONS.
"THE OWNER IS DEMANDING THAT
YOU FILE A LIEN CLAIM AFFIDAVIT

NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO YOU. IF THE ORIGINAL CONTRACT HAS BEEN TERMINATED OR IF YOU HAVE COMPLETED YOUR WORK, YOU ARE REQUIRED, NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO YOU, TO FILE YOUR LIEN CLAIM AFFIDAVIT FOR ANY CLAIMS YOU HAVE NOT INCLUDED IN A LIEN CLAIM AFFIDAVIT YOU HAVE PREVIOUSLY FILED OR YOU MAY LOSE ANY STATUTORY LIEN RIGHTS THAT YOU HAVE NOT PREVIOUSLY PERFECTED.

"IF THE ORIGINAL CONTRACT IS NOT TERMINATED OR YOU HAVE NOT COMPLETED YOUR WORK, THE DEADLINE TO FILE YOUR LIEN CLAIM AFFIDAVIT IS PROVIDED BY SECTION 53.052(a) OR (b), PROPERTY CODE."

SECTION 12. The heading to Section 53.054, Property Code, is amended.

SECTION 13. Section 53.054, Property Code, is amended by amending Subsections (a) and (c) to read as follows:

(a) The lien claim affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

- (1) a sworn statement of the amount of the claim;
- (2) the name and last known address of the owner or reputed owner;
- (3) 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~~];
- (4) 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;
- (5) the name and last known address of the original contractor;
- (6) a description, legally sufficient for identification, of the property sought to be charged with the lien;
- (7) the claimant's name, mailing address,

NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO YOU. IF THE ORIGINAL CONTRACT HAS BEEN TERMINATED OR IF YOU HAVE COMPLETED YOUR WORK, YOU ARE REQUIRED, NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO YOU, TO FILE YOUR LIEN CLAIM AFFIDAVIT FOR ANY CLAIMS YOU HAVE NOT INCLUDED IN A LIEN CLAIM AFFIDAVIT YOU HAVE PREVIOUSLY FILED OR YOU MAY LOSE ANY STATUTORY LIEN RIGHTS THAT YOU HAVE NOT PREVIOUSLY PERFECTED.

"IF THE ORIGINAL CONTRACT IS NOT TERMINATED OR YOU HAVE NOT COMPLETED YOUR WORK, THE DEADLINE TO FILE YOUR LIEN CLAIM AFFIDAVIT IS PROVIDED BY SECTION 53.052(a) OR (b), PROPERTY CODE."

SECTION 12. Same as introduced version.

SECTION 13. Sections 53.054(a) and (c), Property Code, are amended to read as follows:

(a) The lien claim affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

- (1) a sworn statement of the amount of the claim;
- (2) the name and last known address of the owner or reputed owner;
- (3) 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~~];
- (4) 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;
- (5) the name and last known address of the original contractor;
- (6) a description, legally sufficient for identification, of the property sought to be charged with the lien;
- (7) the claimant's name, mailing address,

and, if different, physical address; and
(8) for a claimant other than an original contractor, a statement identifying the date each notice of furnishing ~~[the claim]~~ was sent to the owner ~~[and the method by which the notice was sent]~~.

(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any broad descriptive terms, abbreviations, or symbols customary in the trade to describe the work done or material furnished.

SECTION 14. Section 53.055, Property Code, is amended to read as follows:

Sec. 53.055. NOTICE OF FILED LIEN CLAIM AFFIDAVIT. (a) A person who files a lien claim ~~[an]~~ affidavit must send a copy of the affidavit by registered or certified mail to the owner or reputed owner at the owner's last known business or residence address or file a copy with the lien website not later than the 10th ~~[fifth]~~ day after the date the affidavit is filed with the county clerk.

(b) If the person is not an original contractor, and the person has not filed a copy of the affidavit with the lien website under Subsection (a), the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address in ~~[within]~~ the same manner and time that the affidavit must be sent to the owner under Subsection (a) ~~[period]~~.

SECTION 15. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.0561 to read as follows:

Sec. 53.0561. NOTICE OF FURNISHING.

(a) A person who contracts with a person other than the owner and who has a lien as an original contractor under Section 53.026(a) must give a notice of furnishing to the owner or reputed owner for the lien to be valid.

A claimant other than an original contractor must give a notice of furnishing to the owner or reputed owner and the original contractor for the claimant's lien to be valid.

and, if different, physical address; and
(8) for a claimant other than an original contractor, a statement identifying the date each notice of furnishing or notice of unpaid balance, as applicable, ~~[the claim]~~ was given ~~[sent]~~ to the owner ~~[and the method by which the notice was sent]~~.

(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any broad descriptive terms, abbreviations, or symbols customary in the trade to describe the work done or material furnished.

SECTION 14. Section 53.055, Property Code, is amended to read as follows:

Sec. 53.055. NOTICE OF FILED LIEN CLAIM AFFIDAVIT. (a) A person who files a lien claim ~~[an]~~ affidavit must send a copy of the affidavit by registered or certified mail to the owner or reputed owner at the owner's last known business or residence address or post a copy on the lien website not later than the 10th ~~[fifth]~~ day after the date the affidavit is filed with the county clerk.

(b) If the person is not an original contractor, and the person has not posted a copy of the affidavit on the lien website under Subsection (a), the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address in ~~[within]~~ the same manner and time that the affidavit must be sent to the owner under Subsection (a) ~~[period]~~.

SECTION 15. Subchapter C, Chapter 53, Property Code, is amended by adding Sections 53.0561, 53.0562, 53.0563, and 53.059 to read as follows:

Sec. 53.0561. NOTICE OF FURNISHING.

(a) Except as provided by Section 53.0562:

(1) a person who contracts with a person other than the owner and who has a lien as an original contractor under Section 53.026(a) must give a notice of furnishing to the owner or reputed owner for the lien to be valid; and

(2) a claimant other than an original contractor must give a notice of furnishing to the owner or reputed owner and the original contractor for the claimant's lien to be valid.

(b) The notice of furnishing must include:
(1) a general description of the labor or material furnished or to be furnished by the claimant and, for specially fabricated material, a separate description of the specially fabricated material, that may include a list of individual items of work or material or use terms, abbreviations, or symbols customary in the trade;
(2) the name, address, and telephone number of the claimant;
(3) the e-mail address of the claimant, if the claimant wants to receive notices of filings on the lien website;
(4) the name, address, and telephone number of the person with whom the claimant contracted to furnish the labor or material;
(5) a legal description, street address, or other description that identifies the real property to which the labor or material was furnished or will be furnished; and
(6) a conspicuous statement in bold type as follows:
"THIS IS NOT A LIEN OR A CLAIM FOR A LIEN. THIS IS ONLY A NOTICE TO THE OWNER THAT A CONTRACTOR IS FURNISHING OR INTENDS TO FURNISH LABOR OR MATERIAL TO THE PROJECT. THIS NOTICE IS REQUIRED TO PRESERVE THE CONTRACTOR'S LIEN RIGHTS UNDER CHAPTER 53, PROPERTY CODE."
(c) Except as provided by Subsection (d), the notice of furnishing does not preserve a lien right for labor performed or material furnished or specially fabricated earlier than 45 days before the date the notice is provided as required by this section.
(d) If the owner has filed and posted a notice of commencement as required by Section 53.125 before the subcontractor begins performing labor or furnishing or specially fabricating material, the notice of furnishing does not preserve a lien right for labor performed or material furnished or specially fabricated by the subcontractor earlier than 15 days before the date the notice of furnishing is provided.
(e) Only one notice of furnishing to an owner is required for all labor or material furnished or to be furnished by each subcontractor. If a subcontractor contracts to perform work for the improvement of the owner's property under more than one

(b) The notice of furnishing must include:
(1) a general description of the labor or material furnished or to be furnished by the claimant and, for specially fabricated material, a separate description of the specially fabricated material, that may include a list of individual items of work or material or use terms, abbreviations, or symbols customary in the trade;
(2) the name, address, and telephone number of the claimant;
(3) the e-mail address of the claimant, if the claimant wants to receive notices of postings on the lien website;
(4) the name, address, and telephone number of the person with whom the claimant contracted to furnish the labor or material;
(5) a legal description, street address, or other description that identifies the real property to which the labor or material was furnished or will be furnished; and
(6) a conspicuous statement in bold type as follows:
"THIS IS NOT A LIEN OR A CLAIM FOR A LIEN. THIS IS ONLY A NOTICE TO THE OWNER THAT A CONTRACTOR IS FURNISHING OR INTENDS TO FURNISH LABOR OR MATERIAL TO THE PROJECT. THIS NOTICE IS REQUIRED TO PRESERVE THE CONTRACTOR'S LIEN RIGHTS UNDER CHAPTER 53, PROPERTY CODE."
(c) Except as provided by Subsection (d), the notice of furnishing does not preserve a lien right for labor performed or material furnished or specially fabricated earlier than 60 days before the date the notice is provided as required by this section.
(d) If the owner has filed and posted a notice of commencement under Section 53.125 before the subcontractor begins performing labor or furnishing or specially fabricating material, the notice of furnishing does not preserve a lien right for labor performed or material furnished or specially fabricated by the subcontractor earlier than 30 days before the date the notice of furnishing is provided.
(e) Only one notice of furnishing to an owner is required for all labor or material furnished or to be furnished by each subcontractor. If a subcontractor contracts to perform work for the improvement of the owner's property under more than one

original contract, the subcontractor must identify each original contract in the notice of furnishing or must furnish separate notices of furnishing for each original contract.

(f) The notice of furnishing is not invalid if, after the date of the notice, the subcontractor furnishes labor or material that is not within the scope of the notice's general description of the labor and material furnished or to be furnished.

(g) A notice of furnishing that does not include the subcontractor's e-mail address is not invalid.

No equivalent provision.

original contract, the subcontractor must identify each original contract in the notice of furnishing or must furnish separate notices of furnishing for each original contract.

(f) The notice of furnishing is not invalid if, after the date of the notice, the subcontractor furnishes labor or material that is not within the scope of the notice's general description of the labor and material furnished or to be furnished.

(g) A notice of furnishing that does not include the subcontractor's e-mail address is not invalid.

Sec. 53.0562. NOTICE OF UNPAID BALANCE. (a) Section 53.0561 does not apply, and a claimant must send the notice described by Subsection (b), if:

(1) the claimant is an employee of a contractor or subcontractor and personally labored in the construction or repair of the improvement, and the claimant's claim is for wages for the personal labor furnished; or

(2) the improvement is a house of not more than four self-contained units intended for residential purposes on a single lot or tract of land, or related land development activity on the lot or tract necessary for the development of the house.

(b) Except as provided by this subsection, the claimant must give the owner or reputed owner, with a copy to the original contractor, written notice of the unpaid balance not later than the 15th day of the third month following each month in which all or part of the labor was performed, material was furnished, or material was specially fabricated by the claimant. For residential construction projects governed by Subchapter K, the claimant must send the notice of unpaid balance not later than the 15th day of the second month following each month in which all or part of the labor was performed, material was furnished, or material was specially fabricated by the claimant. The notice of unpaid balance must be sent by registered or certified mail, return receipt requested, to the owner, reputed owner, or original contractor, as applicable, at the owner's, reputed owner's, or original contractor's last known business address or residence address.

(c) A copy of a statement or bill in the usual and customary form is a sufficient notice of

No equivalent provision.

unpaid balance under this section.

Sec. 53.0563. WITHHOLDING OF FUNDS AFTER NOTICE OF UNPAID BALANCE; OWNER LIABILITY. (a) An owner who receives a written notice of unpaid balance under Section 53.0562 may immediately withhold from payments to the original contractor an amount necessary to pay the amount of the unpaid balance stated in the notice.

(b) Unless payment is made or the claim is otherwise settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court, the owner shall retain the funds withheld until:

(1) the time for filing the lien claim affidavit has passed; or

(2) if a lien claim affidavit has been filed, until the lien claim has been satisfied or released.

(c) An owner is liable and an owner's property is subject to a claim for an unpaid balance if:

(1) the owner has received the written notice of unpaid balance required by Section 53.0562;

(2) the lien has been secured; and

(3) the claim has been reduced to final judgment.

(d) An owner that is liable under Subsection (c) is liable for:

(1) 10 percent of the amount of the original contract;

(2) any amount the owner is authorized to withhold from the original contractor under this section; and

(3) costs and attorney's fees awarded under Section 53.156.

SECTION 16. Subchapter C, Chapter 53, Property Code, is amended by adding Section 53.059 to read as follows:

Sec. 53.059. NOTICE OF COMPLETION.

(a) If an owner has filed or has posted on the lien website a notice of commencement as required by Section 53.125 and the work under an original contract has been completed or the original contract has been terminated, the owner may file a notice of completion with the county clerk of the county in which the owner's property is located and post the notice on the lien website. The notice must contain:

Sec. 53.059. NOTICE OF COMPLETION.

(a) If an owner has filed and posted on the lien website a notice of commencement under Section 53.125 and the work under an original contract has been completed or the original contract has been terminated, the owner may file a notice of completion with the county clerk of the county in which the owner's property is located and post the notice on the lien website. The notice must contain:

- (1) the name and address of the owner;
- (2) the name and address of each original contractor covered by the notice;
- (3) a description, legally sufficient for identification, of the real property on which the improvements are located;
- (4) a description of the work furnished under an original contract covered by the notice;
- (5) a statement that the work under an original contract covered by the notice has been completed or that the original contract was terminated; and
- (6) the date of the completion or termination.

(b) Not later than the 10th day after the notice of completion is posted on the lien website, the owner must send a copy of the notice:

- (1) to each original contractor identified in the notice; and
- (2) by e-mail to each claimant that has sent a notice of furnishing to the owner and has provided an e-mail address to the owner.

(c) For purposes of Section 53.052, the later of the date the notice of completion is filed or the date the notice is posted on the lien website is considered the date the work under an original contract identified in the notice is completed or the original contract is terminated. This subsection does not apply to a person to whom the notice of completion was not sent as required by this section.

(d) Except as provided by Subsection (e), the notice of completion must contain the following statement in bold type in all capital letters:

"A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH DAY OF THE FOURTH MONTH AFTER THE DATE OF COMPLETION OF THE WORK."

(e) The notice of completion for a residential construction project must contain the following statement in bold type in all capital letters:

"A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH

- (1) the name and address of the owner;
- (2) the name and address of each original contractor covered by the notice;
- (3) a description, legally sufficient for identification, of the real property on which the improvements are located;
- (4) a description of the work furnished under an original contract covered by the notice;
- (5) a statement that the work under an original contract covered by the notice has been completed or that the original contract was terminated; and
- (6) the date of the completion or termination.

(b) Not later than the 10th day after the notice of completion is posted on the lien website, the owner must send a copy of the notice:

- (1) to each original contractor identified in the notice; and
- (2) by e-mail to each claimant that has provided a notice of furnishing to the owner and has provided an e-mail address to the owner.

(c) For purposes of Section 53.052, the later of the date the notice of completion is filed or the date the notice is posted on the lien website is considered the date the work under an original contract identified in the notice is completed or the original contract is terminated. This subsection does not apply to a person to whom the notice of completion was not sent as required by this section.

(d) Except as provided by Subsection (e), the notice of completion must contain the following statement in bold type in all capital letters:

"A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH DAY OF THE FOURTH MONTH AFTER THE DATE OF COMPLETION OF THE WORK."

(e) The notice of completion for a residential construction project must contain the following statement in bold type in all capital letters:

"A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH

AFTER THE DATE OF COMPLETION OF THE WORK."

SECTION 17. Section 53.081, Property Code, is amended.

SECTION 18. Section 53.082, Property Code, is amended.

SECTION 19. Subchapter D, Chapter 53, Property Code, is amended.

SECTION 20. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.0841 to read as follows:

Sec. 53.0841. PERSONAL LIABILITY FOR LIENS.

(a) Except as provided by Subsection (b), an owner is personally liable for the aggregate amount of the liens perfected on the owner's property under this chapter.

An owner's personal liability

is not affected by a subsequent foreclosure or other transfer of the owner's interest in all or part of the property.

(b) Subject to Section 53.122(b), the aggregate amount of liens of the original contractor and the subcontractors may not exceed the contract price of the original contract, as may be modified, for the work. Duplicated claims asserted by claimants within the same chain of contract may not be added more than once in determining the aggregate amount of liens. For purposes of this section, a payment by the owner to the original contractor does not reduce the aggregate liability of the owner for liens.

(c) A purchaser of property subject to a lien claim under this chapter is not personally liable for the lien claim in a foreclosure action brought by a claimant, except the purchaser may be held liable for costs and attorney's fees awarded under Section 53.156.

SECTION 21. The heading to Section 53.085, Property Code, is amended.

AFTER THE DATE OF COMPLETION OF THE WORK."

SECTION 16. Same as introduced version.

SECTION 17. Substantially the same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Subchapter D, Chapter 53, Property Code, is amended by adding Section 53.0841 to read as follows:

Sec. 53.0841. PERSONAL LIABILITY FOR LIENS.

(a) Subject to this section, an owner is personally liable for the aggregate amount of the liens perfected on the owner's property under this chapter.

(b) Subject to Subsection (e), the owner is not personally liable for more than 10 percent of the value of the work.

An owner's personal liability:

(1) does not affect any lien filed on the owner's property under this chapter; and

(2) is not affected by a subsequent foreclosure or other transfer of the owner's interest in all or part of the property.

(c) Subject to Section 53.122(b), the aggregate amount of liens of the original contractor and the subcontractors may not exceed the contract price of the original contract, as may be modified, for the work. Duplicated claims asserted by claimants within the same chain of contract may not be added more than once in determining the aggregate amount of liens. For purposes of this section, a payment by the owner to the original contractor does not reduce the aggregate liability of the owner for liens.

(d) A purchaser of property subject to a lien claim under this chapter is not personally liable for the lien claim in a foreclosure action brought by a claimant, except the purchaser may be held liable for costs and attorney's fees awarded under Section 53.156.

(e) An award of costs and attorney's fees under Section 53.156 is not limited by Subsection (b).

SECTION 20. Same as introduced version.

SECTION 22. Section 53.085, Property Code, is amended.

SECTION 23. Section 53.122(a), Property Code, is amended.

SECTION 24. Section 53.124, Property Code, is amended.

SECTION 25. Subchapter F, Chapter 53, Property Code, is amended by adding Section 53.125 to read as follows:

Sec. 53.125. NOTICE OF COMMENCEMENT. (a) An owner must file a notice of commencement with the county clerk of the county in which the real property being improved under an original contract is located and post the notice on the lien website.

The notice must be acknowledged and be in a form that substantially complies with the following:

"NOTICE OF COMMENCEMENT

"Improvements will be made to certain real property, and in accordance with Chapter 53, Property Code, the following information is provided by this notice of commencement:

"(1) Legal description and, if applicable, street address of property:

_____.

"(2) Brief description of work to be performed or materials to be furnished:

_____.

"(3) Work or materials not included in this notice of commencement:

_____.

"(4) Owner information or lessee information if the lessee contracted for the work:

(A) Name and address: _____.

(B) Interest in property (check appropriate box):

Fee simple title

Lease

Other (explain): _____.

(C) Name and address of fee simple titleholder to property (if different from owner listed above): _____.

"(5) Original contractor(s) for work or designated portions of the work (repeat as necessary):

(A) Name and address: _____.

(B) Contractor's phone number:

SECTION 21. Same as introduced version except for recitation.

SECTION 22. Same as introduced version.

SECTION 23. Same as introduced version.

SECTION 24. Subchapter F, Chapter 53, Property Code, is amended by adding Section 53.125 to read as follows:

Sec. 53.125. NOTICE OF COMMENCEMENT. (a) An owner may file a notice of commencement with the county clerk of the county in which the real property being improved under an original contract is located. An owner who elects to file a notice of commencement shall post the notice on the lien website.

A notice under this section must be acknowledged and be in a form that substantially complies with the following:

"NOTICE OF COMMENCEMENT

"Improvements will be made to certain real property, and in accordance with Chapter 53, Property Code, the following information is provided by this notice of commencement:

"(1) Legal description and, if applicable, street address of property:

_____.

"(2) Project name and brief description of work to be performed or materials to be furnished:

_____.

"(3) Work or materials not included in this notice of commencement:

_____.

"(4) Owner information or lessee information if the lessee contracted for the work:

(A) Name and address: _____.

(B) Interest in property (check appropriate box):

Fee simple title

Lease

Other (explain): _____.

(C) Name and address of fee simple titleholder to property (if different from owner listed above): _____.

"(5) Original contractor(s) for work or designated portions of the work (repeat as necessary):

(A) Name and address: _____.

(B) Contractor's phone number:

"(6) Surety or sureties for original contractor (if applicable, a copy of the payment bond is attached):

(A) Name and address: _____.

(B) Phone number: _____.

"(7) Lender(s) providing financing for the work that is securing a mortgage on or a security interest in the property (repeat as necessary):

(A) Name and address: _____.

(B) Lender's phone number: _____.

"(8) Secretary of state's lien website address: _____.

"Date: _____.

"_____ (Owner name)

"By: _____ (Signature)

"(Insert acknowledgment)."

(b) Incorrect information contained in the notice of commencement furnished by an owner does not adversely affect the rights of a lien claimant reasonably relying on the information against the owner or the property of the owner. If a subcontractor performs labor or furnishes materials or specially fabricated materials described by the notice of commencement and the notice of commencement does not identify the original contractor under which the labor was performed or materials were furnished or specially fabricated at the time the subcontractor first performs the labor or furnishes or specially fabricates the materials, the notice of furnishing by the subcontractor preserves the lien claimant's rights for the period provided by Section 53.0561(c).

(c) The owner shall send a copy of the notice of commencement to each subcontractor not later than the fifth day after the date the owner receives a written request for a copy from the subcontractor, unless the subcontractor has received a physical copy of the notice.

(d) Unless a notice of commencement has been filed and posted as required by this section, a subcontractor who has not received a physical copy of the notice may request in writing a copy from the original contractor or a subcontractor with whom the requesting subcontractor has privity of contract. If the original contractor or subcontractor has a copy of the notice, the original contractor or subcontractor shall

"(6) Surety or sureties for original contractor (if applicable, a copy of the payment bond is attached):

(A) Name and address: _____.

(B) Phone number: _____.

"(7) Lender(s) providing financing for the work that is securing a mortgage on or a security interest in the property (repeat as necessary):

(A) Name and address: _____.

(B) Lender's phone number: _____.

"(8) Secretary of state's lien website address: _____.

"Date: _____.

"_____ (Owner name)

"By: _____ (Signature)

"(Insert acknowledgment)."

(b) Incorrect information contained in the notice of commencement furnished by an owner does not adversely affect the rights of a lien claimant reasonably relying on the information against the owner or the property of the owner. If a subcontractor performs labor or furnishes materials or specially fabricated materials described by the notice of commencement and the notice of commencement does not identify the original contractor under which the labor was performed or materials were furnished or specially fabricated at the time the subcontractor first performs the labor or furnishes or specially fabricates the materials, the notice of furnishing by the subcontractor preserves the lien claimant's rights for the period provided by Section 53.0561(c).

(c) The owner shall send a copy of the notice of commencement to each subcontractor not later than the fifth day after the date the owner receives a written request for a copy from the subcontractor, unless the subcontractor has received a physical copy of the notice.

(d) Unless a notice of commencement has been filed and posted under this section, a subcontractor who has not received a physical copy of the notice may request in writing a copy from the original contractor or a subcontractor with whom the requesting subcontractor has privity of contract. If the original contractor or subcontractor has a copy of the notice, the original contractor or subcontractor shall send a copy of the notice

send a copy of the notice to the requesting subcontractor not later than the fifth day after the date of receipt of the written request. If the requesting subcontractor does not receive a copy of the notice as required by this section, the person failing to send the copy under this subsection is liable to the requesting subcontractor for all actual expenses reasonably incurred by the requesting subcontractor in obtaining the information that would have been contained in the notice.

(e) A notice of commencement posted on the lien website may be amended by the owner by sending the amended notice to the lien website. The effective date of the amended notice is the date the amended notice is posted on the lien website. The owner shall send notice of the amended notice to contractors who have sent a notice of furnishing to the owner before the effective date of the amended notice of commencement.

SECTION 26. Section 53.151(b), Property Code, is amended.

SECTION 27. Section 53.153(a), Property Code, is amended.

SECTION 28. Section 53.154, Property Code, is amended.

SECTION 29. Section 53.157, Property Code, is amended.

SECTION 30. Section 53.158, Property Code, is amended.

SECTION 31. Section 53.159, Property Code, is amended by amending Subsections (a), (b), (c), (d), and (f) to read as follows:

(a) If a notice of commencement has not been filed and posted as required by Section 53.125, an [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;

to the requesting subcontractor not later than the fifth day after the date of receipt of the written request. If the requesting subcontractor does not receive a copy of the notice as required by this section, the person failing to send the copy under this subsection is liable to the requesting subcontractor for all actual expenses reasonably incurred by the requesting subcontractor in obtaining the information that would have been contained in the notice.

(e) A notice of commencement posted on the lien website may be amended by the owner by sending the amended notice to the lien website. The effective date of the amended notice is the date the amended notice is posted on the lien website. The owner shall send notice of the amended notice to contractors who have provided a notice of furnishing to the owner before the effective date of the amended notice of commencement.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.

SECTION 29. Same as introduced version.

SECTION 30. Sections 53.159(a), (b), (c), (d), and (f), Property Code, are amended to read as follows:

(a) If a notice of commencement has not been filed and posted under Section 53.125, an [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;

(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) If a notice of commencement has not been filed and posted as required by Section 53.125, an [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;

(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.

(c) A subcontractor, on written request by an owner of the property being improved, the original contractor, a surety on a bond covering the original contract, or any person furnishing work under the subcontract, 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 each person from whom the subcontractor purchased labor or materials for the construction project, other than those materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials for the construction project; ~~and~~

(3) whether the subcontractor 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

(4) the date the subcontractor first performed labor, furnished materials, or specially fabricated materials for the

(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) If a notice of commencement has not been filed and posted under Section 53.125, an [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;

(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.

(c) A subcontractor, on written request by an owner of the property being improved, the original contractor, a surety on a bond covering the original contract, or any person furnishing work under the subcontract, 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 each person from whom the subcontractor purchased labor or materials for the construction project, other than those materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials for the construction project; ~~and~~

(3) whether the subcontractor 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

(4) the date the subcontractor first performed labor, furnished materials, or specially fabricated materials for the

construction project for which any claim for payment is being sought.

(d) Not later than the 30th day after the date a written request is received from the owner, the contractor under whom a claim of lien or under whom a bond is made, or a surety on a bond on which a claim is made, a claimant for a lien or under a bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. ~~[If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.]~~

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section not posted on the lien website is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

SECTION 32. Section 53.160, Property Code, is amended by amending Subsections (b) and (c) 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 furnishing [claim] was not furnished to the owner or original contractor as required by Section 53.0561 ~~[53.056, 53.057, 53.058, 53.252, or 53.253];~~

(2) a lien claim [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 lien claim affidavit was not furnished to the owner or original contractor as required by Section 53.055 and the owner or original contractor was materially prejudiced by the violation;

(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;~~

construction project for which any claim for payment is being sought.

(d) Not later than the 30th day after the date a written request is received from the owner, the contractor under whom a claim of lien or under whom a bond is made, or a surety on a bond on which a claim is made, a claimant for a lien or under a bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. ~~[If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.]~~

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section not posted on the lien website is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

SECTION 31. Sections 53.160(b) and (c), Property Code, are amended to read as follows:

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

(1) notice of furnishing or notice of unpaid balance [claim] was not furnished to the owner or original contractor as required by Section 53.0561 or 53.0562 ~~[53.056, 53.057, 53.058, 53.252, or 53.253];~~

(2) a lien claim [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 lien claim affidavit was not furnished to the owner or original contractor as required by Section 53.055 and the owner or original contractor was materially prejudiced by the violation;

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

~~[(A) the claimant perfected the lien claim;~~

and
[~~(B) the owner received a notice of the claim as required by this chapter;~~
[~~(5) all funds subject to the notice of a claim to the owner and a notice regarding the retainage have been deposited in the registry of the court and the owner has no additional liability to the claimant;~~
[~~(6)~~] when the lien claim affidavit was filed on homestead property:
(A) no contract was executed or filed as required by Section 53.254; or
(B) the lien claim 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
(5) [~~(7)~~] the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit.
(c) The claimant is not required to file a response. The claimant and any other party that has appeared in the proceeding must be notified not later than the 21st day [~~by at least 21 days~~] before the date of the hearing on the motion. A motion may not be heard before the 21st day after the date the claimant answers or appears in the proceeding.

SECTION 33. Section 53.161(f), Property Code, is amended.

SECTION 34. Section 53.172, Property Code, is amended.

SECTION 35. Section 53.201(b), Property Code, is amended.

SECTION 36. Section 53.202, Property Code, is amended.

SECTION 37. Section 53.206, Property Code, is amended by amending Subsections (a) and (b) to read as follows:

(a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C or K for fixing a lien, a person must:

(1) give to the original contractor a notice of furnishing, unless the person has contracted directly with the original contractor [~~all applicable~~

and
[~~(B) the owner received a notice of the claim as required by this chapter;~~
[~~(5) all funds subject to the notice of a claim to the owner and a notice regarding the retainage have been deposited in the registry of the court and the owner has no additional liability to the claimant;~~
[~~(6)~~] when the lien claim affidavit was filed on homestead property:
(A) no contract was executed or filed as required by Section 53.254; or
(B) the lien claim 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
(5) [~~(7)~~] the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit.
(c) The claimant is not required to file a response. The claimant and any other party that has appeared in the proceeding must be notified not later than the 21st day [~~by at least 21 days~~] before the date of the hearing on the motion. A motion may not be heard before the 21st day after the date the claimant answers or appears in the proceeding.

SECTION 32. Same as introduced version.

SECTION 33. Same as introduced version.

SECTION 34. Same as introduced version.

SECTION 35. Same as introduced version.

SECTION 36. Sections 53.206(a) and (b), Property Code, are amended to read as follows:

(a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C or K for fixing a lien, a person must:

(1) give to the original contractor a notice of furnishing or a notice of unpaid balance, unless the person has contracted directly with the original contractor [~~all applicable~~

~~notices under the appropriate subchapter]; and~~

~~(2) give to the surety on the bond a written notice of the amount and nature of the claim and a copy of the notice to the original contractor within the time period required for filing a lien claim affidavit under Section 53.052 [~~instead of the owner, all notices under the appropriate subchapter required to be given to the owner~~].~~

~~(b) To perfect a claim under this section, a person is not required to [:~~

~~[(1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;~~

~~[(2) give notice to the surety under Section 53.058(b) or, if the claim relates to a residential construction project, under Section 53.253(e); or~~

~~[(3)] file any affidavit with the county clerk.~~

SECTION 38. Section 53.255(b), Property Code, is amended to read as follows:

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

"KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction. "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

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

"GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2)

~~notices under the appropriate subchapter]; and~~

~~(2) give to the surety on the bond a written notice of the amount and nature of the claim and a copy of the notice to the original contractor within the time period required for filing a lien claim affidavit under Section 53.052 [~~instead of the owner, all notices under the appropriate subchapter required to be given to the owner~~].~~

~~(b) To perfect a claim under this section, a person is not required to [:~~

~~[(1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;~~

~~[(2) give notice to the surety under Section 53.058(b) or, if the claim relates to a residential construction project, under Section 53.253(e); or~~

~~[(3)] file any affidavit with the county clerk.~~

SECTION 37. Section 53.255(b), Property Code, is amended to read as follows:

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

"KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction. "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

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

"GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2)

the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including [~~provisions for statutory 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

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 be [~~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 minimize your [~~avoid~~] liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier that describes the labor or materials to be furnished for your improvements (referred to as a "notice of furnishing"), you should keep that notice in a safe place for at least four months after the completion of your improvements [~~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 of furnishing 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~~]. Confirm that your contractor has received a copy of each notice of furnishing.

(2) As a condition to each payment to be

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 be [~~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 minimize your [~~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.

(2) 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.

made to the contractor, including the final payment, you may require the contractor to furnish a lien waiver from each subcontractor or supplier who sent a notice of furnishing, conditioned only on receipt of payment to the subcontractor in the amount specified by the lien waiver. The lien waiver should be in the form required by statute (Chapter 53, Property Code).

~~[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. In order to perfect a valid lien, [A notice of a claim by] a subcontractor or supplier is required to send you a notice of furnishing and a copy of the subcontractor's or supplier's recorded [be sent, and the] mechanic's lien affidavit [is required to be filed,] within strict time periods.

The notice of furnishing and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If your property is a homestead and you did

~~[(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 unpaid balance [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. In order to perfect a valid lien, a notice of unpaid balance [A notice of a claim] by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods.

The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If your property is a homestead and you did not enter into a

not enter into a written contract with your contractor that complies with the statutory requirements for a lien on a homestead, your contractor, the subcontractor, or the supplier may not claim a valid lien on your property. [~~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 covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement."

SECTION 39. Section 53.259, Property

written contract with your contractor that complies with the statutory requirements for a lien on a homestead, your contractor, the subcontractor, or the supplier may not claim a valid lien on your property. [~~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 unpaid balance [~~claim~~], do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant.

You can [~~also~~] reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

"OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement."

SECTION 38. Same as introduced version

Code, is amended.

SECTION 40. Section 53.281, Property Code, is amended.

SECTION 41. Section 53.283, Property Code, is amended.

SECTION 42. Section 53.284, Property Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (f) to read as follows:

(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) for ~~[tø]~~ the following project ~~[extent]~~: _____ (project ~~[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 or ~~[;]~~ pending modifications and changes ~~[;—o# other items furnished]~~.

"Before any recipient of this document

except for recitation.

SECTION 39. Same as introduced version.

SECTION 40. Same as introduced version.

SECTION 41. Section 53.284, Property Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (f) to read as follows:

(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) for ~~[tø]~~ the following project ~~[extent]~~: _____ (project ~~[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 or ~~[;]~~ pending modifications and changes ~~[;—o# 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)

"(Insert acknowledgment)"

(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. It is prohibited 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)

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)

"(Insert acknowledgment)"

(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. It is prohibited 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) for [tø] the following project
[extent]:

(project [jøb] 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 or [-]
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)

"(Insert acknowledgment)"

(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

located at _____
(location) for [tø] the following project
[extent]:

(project [jøb] 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 or [-]
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)

"(Insert acknowledgment)"

(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) for [tø] the following project [~~extent~~]: _____ (project [jøb] 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)

"(Insert acknowledgment)"

(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

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) for [tø] the following project [~~extent~~]: _____ (project [jøb] 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)

"(Insert acknowledgment)"

(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. It is prohibited 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) for [tø] the following project [extent]: _____ (project [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)

"(Insert acknowledgment)"

(f) If the owner has filed and posted a notice of commencement as required by Section 53.125, the owner may require, as a condition for final payment, a claimant who

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. It is prohibited 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) for [tø] the following project [extent]: _____ (project [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)

"(Insert acknowledgment)"

(f) If the owner has filed and posted a notice of commencement under Section 53.125, the owner may require, as a condition for final payment, a claimant who

has filed a notice of furnishing to file with the lien website a conditional waiver and release on final payment described by Subsection (d).

SECTION 43. The following provisions of the Property Code are repealed:

- (1) Section 53.001(11);
- (2) Section 53.022(b);
- (3) Section 53.025;
- (4) Section 53.053;
- (5) Section 53.056;
- (6) Section 53.057;
- (7) Section 53.058;
- (8) Section 53.083;
- (9) Section 53.084;
- (10) Subchapter E, Chapter 53;
- (11) Section 53.206(c);
- (12) Section 53.252;
- (13) Section 53.253; and
- (14) Section 53.254(g).

SECTION 44. The changes in law made by this Act apply only to an original contract entered into on or after the effective date of this Act. An original contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 45. This Act takes effect May 1, 2018.

has provided a notice of furnishing to post on the lien website a conditional waiver and release on final payment described by Subsection (d).

SECTION 42. Same as introduced version.

SECTION 43. Same as introduced version.

SECTION 44. Same as introduced version.