

By: Deshotel

H.B. No. 589

A BILL TO BE ENTITLED

AN ACT

1
2 relating to mechanic's, contractor's, or materialman's liens;
3 authorizing a fee; changing the eligibility for community
4 supervision.

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

6 SECTION 1. Section 3503.051(3), Insurance Code, is amended
7 to read as follows:

8 (3) "Notice of claim" means a written notification by
9 a claimant who makes a claim for payment from the surety
10 company. The term does not include a routine statutory notice
11 required by [~~Section 53.056(b), 53.057, 53.058, 53.252(b), or~~
12 ~~53.253, Property Code, or~~] Section 2253.047, Government Code.

13 SECTION 2. Section 53.001, Property Code, is amended by
14 amending Subdivisions (2), (12), (13), and (14) and adding
15 Subdivisions (1-a), (2-a), (3-a), (5-a), (5-b), (5-c), (5-d),
16 (5-e), (5-f), (7-a), (7-b), (7-c), and (12-a) to read as follows:

17 (1-a) "Contractual retainage" means an agreed amount or
18 percentage of money in a construction contract or subcontract that
19 is withheld from a payment and not due to be paid until completion
20 of the contract or on an agreed date.

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

23 (2-a) "Improvement" means a house, building, or other
24 improvement to the real property of an owner. The term includes:

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

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

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

9 (D) pumps, siphons, and windmills or other
10 machinery or apparatuses used for raising water for stock, domestic
11 use, or irrigation; ~~[and]~~

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

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

16 (G) railroads.

17 (3-a) "Lien website" means the Internet website
18 established under Subchapter A-1.

19 (5-a) "Notice of commencement" means a notice
20 described by Section 53.125.

21 (5-b) "Notice of completion or termination" means a
22 notice described by Section 53.059.

23 (5-c) "Notice of demand" means a notice described by
24 Section 53.0521.

25 (5-d) "Notice of furnishing" means a notice described
26 by Section 53.0561.

27 (5-e) "Notice of nonpayment" means a notice described

1 by Section 53.0562.

2 (5-f) "Notice of unpaid balance" means a notice
3 described by Section 53.0563.

4 (7-a) "Owner" means a person who owns any interest in
5 real property or an authorized agent, trustee, or receiver of the
6 person.

7 (7-b) "Payment request" includes any bill, billing
8 statement, invoice, or application for payment given by an original
9 contractor or a subcontractor for work.

10 (7-c) "Reputed owner" means a person who is:

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

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

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

19 (12-a) "Subcontract" means a contract between:

20 (A) an original contractor and a subcontractor;
21 or

22 (B) a subcontractor and another subcontractor.

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

27 (14) "Work" means any part of labor done, material

1 furnished, or materials specially fabricated for the construction
2 or repair of an improvement performed under an original contract.

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

6 (a) This section applies to notices required by this chapter
7 [~~Subchapters B through G and K~~]. In this section, "notice" includes
8 any written communication required under this chapter.

9 (c) A notice may be sent by registered or certified mail. If
10 a notice is sent by registered or certified mail, the effective date
11 of the notice is the date of deposit or mailing of the notice in the
12 United States mail in the form required [~~constitutes compliance~~
13 ~~with the notice requirement~~]. This subsection does not apply if the
14 law requires receipt of the notice by the person to whom it is
15 directed.

16 (e) This subsection applies only if a notice of commencement
17 has been posted under Section 53.125 and does not apply to a notice
18 of demand or a notice of bond. A notice may be posted on the lien
19 website under the protocols established for the website. If an
20 e-mail address is provided to the owner or reputed owner in a notice
21 of furnishing by a person under Section 53.0561, a notice may be
22 provided to that person by e-mail with an electronic record of
23 delivery. The effective date of a notice is the date the notice is
24 posted on the lien website under the website's protocols or the date
25 the e-mail is sent. An e-mail sent to a recipient in accordance
26 with this subsection is prima facie evidence of delivery of a
27 message to an e-mail address to which it is sent.

1 SECTION 4. Subchapter A, Chapter 53, Property Code, is
2 amended by adding Section 53.004 to read as follows:

3 Sec. 53.004. COMPUTATION OF TIME. In computing the period
4 of days in which to provide a notice or to take an action required
5 under this chapter, if the last day of the period is a Saturday,
6 Sunday, or legal holiday, the period is extended to include the next
7 day that is not a Saturday, Sunday, or legal holiday.

8 SECTION 5. Chapter 53, Property Code, is amended by adding
9 Subchapter A-1 to read as follows:

10 SUBCHAPTER A-1. LIEN WEBSITE

11 Sec. 53.011. LIEN WEBSITE. (a) The secretary of state
12 shall:

13 (1) establish and maintain a lien website through the
14 state electronic Internet portal, as defined by Section 2054.003,
15 Government Code; and

16 (2) establish protocols for posting and receiving
17 notices under this chapter through the lien website.

18 (b) The secretary of state may adopt rules and forms
19 necessary to implement this subchapter.

20 Sec. 53.012. POSTING ON LIEN WEBSITE. (a) The lien website
21 must provide an online form for each notice or written
22 communication required by this chapter that complies with the
23 content requirements of this chapter for the notice or
24 communication.

25 (b) The lien website must allow a person to electronically:

26 (1) obtain a form;

27 (2) complete and post the notice or written

1 communication on the lien website efficiently; and
2 (3) for an owner, original contractor, or
3 subcontractor, opt to automatically receive notice of new postings
4 by e-mail.

5 Sec. 53.013. SEARCHING LIEN WEBSITE. The lien website must
6 allow a person to search the notices and written communications
7 posted on the lien website with a full or partial:

- 8 (1) owner name;
- 9 (2) project name;
- 10 (3) project address;
- 11 (4) project real property legal description;
- 12 (5) original contractor name; or
- 13 (6) name of the person on whose behalf a notice or
14 written communication is posted.

15 Sec. 53.014. FEES. (a) Notwithstanding Section [2054.2591](#),
16 Government Code, and except as provided by Subsection (b), the
17 secretary of state may not charge a fee for a person to:

- 18 (1) electronically obtain a form or post a notice or
19 written communication on the lien website; or
- 20 (2) use the search functions of the lien website.

21 (b) The secretary of state may charge a fee for a person to
22 post a notice of commencement on the lien website.

23 SECTION 6. Section [53.021\(a\)](#), Property Code, is amended to
24 read as follows:

- 25 (a) A person has a lien if:
 - 26 (1) the person labors, specially fabricates material,
 - 27 or furnishes labor or materials for construction or repair in this

1 state of an[-

2 [~~(A) a house, building, or~~] improvement;

3 [~~(B) a levee or embankment to be erected for the~~
4 ~~reclamation of overflow land along a river or creek; or~~

5 [~~(C) a railroad,~~] and

6 (2) the person labors, specially fabricates the
7 material, or furnishes the labor or materials under or arising out
8 [~~by virtue~~] of an express [~~a~~] contract or contract implied by law
9 between the person and:

10 (A) with the owner or the owner's agent,
11 trustee, or receiver;

12 (B) a [~~r~~] contractor; [~~r~~] or

13 (C) a subcontractor.

14 SECTION 7. Section 53.022, Property Code, is amended by
15 amending Subsection (a) and adding Subsections (b-1) and (e) to
16 read as follows:

17 (a) The lien extends to the interest of the owner or the
18 owner's successor in interest in the real property, house,
19 building, fixtures, or improvements, the land reclaimed from
20 overflow, or the railroad and all of its properties, and to each lot
21 of land necessarily connected or reclaimed.

22 (b-1) If an improvement is constructed on real property that
23 is adjacent to the real property of the owner who entered into the
24 original contract for the improvements and the adjacent property is
25 not owned by the owner, the lien extends only to the interest
26 described by Subsection (a) and not to the adjacent property.

27 (e) A lien arising from work performed on common elements of

1 a condominium governed by Chapter 81 or 82 extends to each unit
2 owning an interest in the common elements being improved, and is
3 apportioned based on the relative ownership interests of each unit
4 in the common elements being improved, if:

5 (1) the inception of the lien is after the date the
6 declaration establishing the condominium was recorded; and

7 (2) the work was performed under a contract with the
8 council of owners, the unit owners' association of the condominium,
9 or all of the owners of the units owning an interest in the common
10 elements being improved.

11 SECTION 8. Section 53.024, Property Code, is amended to
12 read as follows:

13 Sec. 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN. The
14 amount of a lien claimed by a subcontractor may not exceed:

15 (1) an amount equal to the proportion of the total
16 subcontract price, including all additional amounts to which the
17 subcontractor is entitled as an adjustment to the subcontract, that
18 the sum of the labor performed, materials furnished, materials
19 specially fabricated, reasonable overhead costs incurred, and
20 proportionate profit margin bears to the total subcontract price;
21 minus

22 (2) the sum of previous payments received by the
23 claimant on the subcontract.

24 SECTION 9. Section 53.026(a), Property Code, is amended to
25 read as follows:

26 (a) Except as provided by Section 53.0561, a [A] person who
27 labors, specially fabricates materials, or furnishes labor or

1 materials under a direct contractual relationship with another
2 person is considered to be in direct contractual relationship with
3 the owner and has a lien as an original contractor, if:

4 (1) the owner [~~contracted with the other person for~~
5 ~~the construction or repair of a house, building, or improvements~~
6 ~~and the owner~~] can effectively control that other person or that
7 other person can effectively control the owner through ownership of
8 voting stock, interlocking directorships, or otherwise; or

9 (2) the owner contracted with the other person for the
10 construction or repair of a house, building, or improvements [~~and~~
11 ~~that other person can effectively control the owner through~~
12 ~~ownership of voting stock, interlocking directorships, or~~
13 ~~otherwise, or~~

14 [~~(3) the owner contracted with the other person for~~
15 ~~the construction or repair of a house, building, or improvements]~~
16 and the contract was made without good faith intention of the
17 parties that the other person was to perform the contract.

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

20 Sec. 53.052. FILING OF LIEN CLAIM AFFIDAVIT. (a) Except as
21 provided by Subsection (b) or Section 53.0521, an original
22 contractor or a subcontractor, including an employee described by
23 Section 53.0563(a)(1), [the person] claiming a [the] lien under
24 this chapter must file a lien claim [an] affidavit as provided by
25 Subsection (c) [with the county clerk of the county in which the
26 property is located or into which the railroad extends] not later
27 than the 15th day of the fourth calendar month after the date the

1 work under the original contract is completed or the original
2 contract is terminated [~~day on which the indebtedness accrues~~].

3 (b) Except as provided by Section 53.0521, an original
4 contractor or a subcontractor, including an employee described by
5 Section 53.0563(a)(1), [~~A person~~] claiming a lien on [~~arising from~~]
6 a residential construction project must file a lien claim [~~an~~]
7 affidavit as provided by Subsection (c) [~~with the county clerk of~~
8 ~~the county in which the property is located~~] not later than the 15th
9 day of the third calendar month after the date the work under the
10 original contract is completed or the original contract is
11 terminated [~~day on which the indebtedness accrues~~].

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

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

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

27 Sec. 53.0521. NOTICE OF DEMAND. (a) If work under an

1 original contract has been completed or the original contract has
2 been terminated, an owner may send a notice of demand to the
3 original contractor or a subcontractor requesting the contractor or
4 subcontractor to file a lien claim affidavit. If the notice of
5 demand is based on the termination of the original contract, the
6 notice must state that the original contract was terminated and the
7 date of the termination. An owner may not send the notice of demand
8 before the original contract has been terminated. A notice of
9 demand sent to a subcontractor before work under the original
10 contract has been completed is effective only as to a claimant who
11 has completed the claimant's work on or before the date the notice
12 is sent and is void as to any other claimant.

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

18 (c) A notice of demand:

19 (1) must be sent by registered or certified mail to:

20 (A) an original contractor at the contractor's
21 last known address; or

22 (B) a subcontractor at the subcontractor's
23 address provided by the notice of furnishing; and

24 (2) may not be given by posting on the lien website or
25 by e-mail.

26 (d) If an owner sends a notice of demand, a claimant who has
27 completed the claimant's work must, not later than the 30th day

1 after the date the notice is sent, file a lien claim affidavit for a
2 claim the claimant has not included in a previously filed lien claim
3 affidavit.

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

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

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

13 "NOTICE OF DEMAND

14 "WARNING: THIS NOTICE BRIEFLY SUMMARIZES LEGAL REQUIREMENTS
15 STATED BY SECTION 53.0521, PROPERTY CODE. YOU SHOULD CONSULT AN
16 ATTORNEY TO FULLY UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

17 "THE OWNER IS DEMANDING THAT YOU FILE A LIEN CLAIM AFFIDAVIT
18 NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO
19 YOU. IF THE ORIGINAL CONTRACT HAS BEEN TERMINATED OR IF YOU
20 COMPLETED YOUR WORK ON OR BEFORE THE DATE THIS NOTICE WAS SENT TO
21 YOU, YOU ARE REQUIRED, NOT LATER THAN THE 30TH DAY AFTER THE DATE
22 THIS NOTICE WAS SENT TO YOU, TO FILE YOUR LIEN CLAIM AFFIDAVIT FOR
23 ANY CLAIMS YOU HAVE NOT INCLUDED IN A LIEN CLAIM AFFIDAVIT YOU HAVE
24 PREVIOUSLY FILED OR YOU MAY LOSE ANY STATUTORY LIEN RIGHTS THAT YOU
25 HAVE NOT PREVIOUSLY PERFECTED.

26 "IF THE ORIGINAL CONTRACT IS NOT TERMINATED OR YOU HAVE NOT
27 COMPLETED YOUR WORK, THE DEADLINE TO FILE YOUR LIEN CLAIM AFFIDAVIT

1 IS PROVIDED BY SECTION 53.052(a) OR (b), PROPERTY CODE."

2 SECTION 12. The heading to Section 53.054, Property Code,
3 is amended to read as follows:

4 Sec. 53.054. CONTENTS OF LIEN CLAIM AFFIDAVIT.

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

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

10 (1) a sworn statement of the amount of the claim;

11 (2) the name and last known address of the owner or
12 reputed owner;

13 (3) a general statement of the kind of work done and
14 materials furnished by the claimant [~~and, for a claimant other than~~
15 ~~an original contractor, a statement of each month in which the work~~
16 ~~was done and materials furnished for which payment is requested];~~

17 (4) the name and last known address of the person by
18 whom the claimant was employed or to whom the claimant furnished the
19 materials or labor;

20 (5) the name and last known address of the original
21 contractor;

22 (6) a description, legally sufficient for
23 identification, of the property sought to be charged with the lien;

24 (7) the claimant's name, mailing address, and, if
25 different, physical address; and

26 (8) for a claimant other than an original contractor,
27 a statement identifying the date each notice of furnishing or

1 notice of unpaid balance, as applicable, [the claim] was given
2 [sent] to the owner or reputed owner [and the method by which the
3 notice was sent].

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

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

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

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

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

27 Sec. 53.0561. NOTICE OF FURNISHING. (a) Except as provided

1 by Section 53.0563:

2 (1) a person who contracts with a person other than the
3 owner and who has a lien as an original contractor under Section
4 53.026(a) must give a notice of furnishing to the owner or reputed
5 owner for the lien to be valid; and

6 (2) a person other than an original contractor must
7 give a notice of furnishing to the owner or reputed owner and the
8 original contractor for the lien to be valid.

9 (b) The notice of furnishing must include:

10 (1) a general description of the labor or material
11 furnished or to be furnished by the person giving the notice of
12 furnishing and, for specially fabricated material, a separate
13 description of the specially fabricated material, that may include
14 a list of individual items of work or material or use terms,
15 abbreviations, or symbols customary in the trade;

16 (2) the name, address, and telephone number of the
17 person giving the notice of furnishing;

18 (3) the e-mail address of the person giving the notice
19 of furnishing, if the person wants to receive notices of postings on
20 the lien website;

21 (4) the name, address, and telephone number of the
22 person with whom the person giving the notice of furnishing
23 contracted to furnish the labor or material; and

24 (5) a conspicuous statement in bold type as follows:

25 "THIS IS NOT A LIEN OR A CLAIM FOR A LIEN. THIS IS ONLY A
26 NOTICE TO THE OWNER THAT A SUBCONTRACTOR IS FURNISHING OR INTENDS TO
27 FURNISH LABOR OR MATERIAL TO THE PROJECT. THIS NOTICE IS REQUIRED TO

1 PRESERVE THE SUBCONTRACTOR'S LIEN RIGHTS UNDER CHAPTER 53, PROPERTY
2 CODE."

3 (c) Except as provided by Subsection (d), the notice of
4 furnishing does not preserve a lien right for labor performed or
5 material furnished or specially fabricated earlier than 60 days
6 before the date the notice is provided as required by this section.

7 (d) If the owner has filed and posted a notice of
8 commencement under Section 53.125 before the subcontractor begins
9 performing labor or furnishing or specially fabricating material,
10 the notice of furnishing does not preserve a lien right for labor
11 performed or material furnished or specially fabricated by the
12 subcontractor earlier than 30 days before the date the notice of
13 furnishing is provided.

14 (e) Only one notice of furnishing to an owner or reputed
15 owner is required for all labor or material furnished or to be
16 furnished by each subcontractor. If a subcontractor contracts to
17 perform work for the improvement of the owner's property under more
18 than one original contract, the subcontractor must identify each
19 original contract in the notice of furnishing or must furnish
20 separate notices of furnishing for each original contract.

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

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

27 Sec. 53.0562. NOTICE OF NONPAYMENT. (a) Except as provided

1 by Subsection (b), a subcontractor may give an owner or reputed
2 owner a notice of nonpayment for any amount of a payment request
3 that remains unpaid for at least 60 days after the date the
4 subcontractor gives the payment request.

5 (b) A notice of nonpayment is not effective for the unpaid
6 amount of a payment request that is contractual retainage, provided
7 that the contractual retainage does not exceed 10 percent of the
8 amount of the payment request.

9 (c) Except as provided by Subsection (d), an owner is liable
10 and the owner's property is subject to a lien by the subcontractor
11 under Section 53.0841(b)(3) after the owner is given the notice of
12 nonpayment.

13 (d) An owner is not liable and the owner's property is not
14 subject to a lien as provided by Subsection (c) if the subcontractor
15 gives the notice of nonpayment earlier than the 60th day after the
16 date the subcontractor gave a payment request, a part of which
17 remains unpaid, to the person to whom the subcontractor furnished
18 the subcontractor's work.

19 (e) A subcontractor who gives a notice of nonpayment must
20 give a copy of the notice to:

21 (1) the original contractor; and

22 (2) if the subcontractor did not contract for the
23 subcontractor's work with the original contractor, the person to
24 whom the subcontractor furnished the subcontractor's work.

25 (f) Failure by a subcontractor to give a notice of
26 nonpayment does not limit an owner's liability under Sections
27 53.0841(b)(1) and (2).

1 (g) A copy of a statement or bill in the usual and customary
2 form is sufficient as notice under this section.

3 Sec. 53.0563. NOTICE OF UNPAID BALANCE. (a) Sections
4 53.0561 and 53.125 do not apply, and a claimant must give the notice
5 described by Subsection (b) in writing, if:

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

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

14 (b) Except as provided by this subsection, the claimant must
15 give the owner or reputed owner, with a copy to the original
16 contractor, a notice of the unpaid balance not later than the 15th
17 day of the third month following each month in which all or part of
18 the labor was performed, material was furnished, or material was
19 specially fabricated by the claimant. For residential construction
20 projects governed by Subchapter K, the claimant must give the
21 notice of unpaid balance not later than the 15th day of the second
22 month following each month in which all or part of the labor was
23 performed, material was furnished, or material was specially
24 fabricated by the claimant.

25 (c) A notice under this section is not required for the
26 unpaid amount of a payment request that is contractual retainage.

27 (d) A copy of a statement or bill in the usual and customary

1 form is sufficient as notice under this section.

2 Sec. 53.059. NOTICE OF COMPLETION OR TERMINATION. (a) If
3 an owner has filed and posted on the lien website a notice of
4 commencement under Section 53.125 and the work under an original
5 contract has been completed or the original contract has been
6 terminated, the owner may file with the county clerk of the county
7 in which the owner's property is located a notice of completion or
8 termination, as applicable, and post the notice on the lien
9 website. The notice must contain:

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

11 (2) the name and address of each original contractor
12 covered by the notice;

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

16 (4) a description of the work furnished under an
17 original contract covered by the notice;

18 (5) a statement that the work under an original
19 contract covered by the notice has been completed or that the
20 original contract was terminated; and

21 (6) the date of the completion or termination.

22 (b) Not later than the 10th day after the notice of
23 completion or termination is filed with the county clerk and posted
24 on the lien website as provided by Subsection (a), the owner must
25 send a copy of the notice:

26 (1) to each original contractor identified in the
27 notice; and

1 (2) by e-mail to each person who has provided a notice
2 of furnishing to the owner and has provided an e-mail address to the
3 owner.

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

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

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

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

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

23 SECTION 16. Section 53.081, Property Code, is amended to
24 read as follows:

25 Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF
26 CLAIMANTS. [~~a~~] If a lien claim affidavit is filed by a
27 subcontractor or if an owner receives notice under Section 53.055

1 or 53.0563 [~~53.056, 53.057, 53.058, 53.252, or 53.253~~], the owner
2 may withhold from payments due or to become due to the original
3 contractor an amount necessary to pay the claim for which the owner
4 [~~he~~] receives notice or that is stated in the lien claim affidavit.

5 [~~(b) If notice is sent in a form that substantially complies~~
6 ~~with Section 53.056 or 53.252, the owner may withhold the funds~~
7 ~~immediately on receipt of the notice.~~

8 [~~(c) If notice is sent under Section 53.057, the owner may~~
9 ~~withhold funds immediately on receipt of a copy of the claimant's~~
10 ~~affidavit prepared in accordance with Sections 53.052 through~~
11 ~~53.055.~~

12 [~~(d) If notice is sent under Section 53.058, the owner may~~
13 ~~withhold funds immediately on receipt of the notices sent under~~
14 ~~Subsection (c) of that section. If notice is sent as provided by~~
15 ~~Section 53.253(b), the owner may withhold funds immediately on~~
16 ~~receipt of the notice sent as required by Section 53.252.]~~

17 SECTION 17. Section 53.082, Property Code, is amended to
18 read as follows:

19 Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. An owner
20 may retain funds under Section 53.081 until:

21 (1) the time for filing a lien claim affidavit has
22 passed;

23 (2) [Unless] payment is made under Section 53.0831;

24 (3) [53.083 or] the claim is otherwise settled or [7]
25 discharged [7, indemnified against] under Section 53.157; or

26 (4) the claim is [Subchapter H or I, or] determined to
27 be invalid by a final judgment of a court [7, the owner shall retain

1 ~~the funds withheld until:~~

2 ~~[(1) the time for filing the affidavit of mechanic's~~
3 ~~lien has passed; or~~

4 ~~[(2) if a lien affidavit has been filed, until the lien~~
5 ~~claim has been satisfied or released].~~

6 SECTION 18. Subchapter D, Chapter 53, Property Code, is
7 amended by adding Sections 53.0831 and 53.0841 to read as follows:

8 Sec. 53.0831. DEMAND FOR NOTICE OF DISPUTE; PAYMENT OF
9 CLAIM. (a) An owner against whom a lien claim affidavit is filed by
10 a claimant other than an original contractor may send to the
11 original contractor and to any person identified by the claimant as
12 required by Section 53.054(a)(4) a written demand to receive notice
13 of whether the original contractor or the person intends to dispute
14 the claim.

15 (b) An owner must send a copy of the lien claim affidavit
16 with a written demand sent under Subsection (a).

17 (c) The owner may pay a claim when the claim becomes due if
18 the owner:

19 (1) sends the written demand and copy of the lien claim
20 affidavit as provided by this section; and

21 (2) does not, before the 30th day after the date the
22 demand is received, receive written notice from the original
23 contractor or the person of the intent to dispute the claim.

24 Sec. 53.0841. LIABILITY FOR LIENS. (a) Except as provided
25 by Subsections (b) and (c), if a claim has been reduced to final
26 judgment, the owner is liable and the owner's property is subject to
27 a claim for the contract price minus any amounts paid to the

1 original contractor.

2 (b) In addition to the liability under Subsection (a), the
3 owner's liability and the owner's property subject to the amount of
4 the lien by a subcontractor is the sum of:

5 (1) the greater of:

6 (A) 10 percent of the value of the contract price
7 of the work to the owner; or

8 (B) 10 percent of the value of the work, measured
9 by the proportion that the work done bears to the work to be done,
10 using the contract price or, if there is no contract price, using
11 the reasonable value of the completed work;

12 (2) any money paid to the original contractor after
13 the owner was authorized to withhold funds under this subchapter;
14 and

15 (3) for a subcontractor who gives notice under Section
16 53.0562, any money paid to the original contractor after the notice
17 is given.

18 (c) In addition to the liability under Subsections (a) and
19 (b), an owner is personally liable for an award of costs and
20 attorney's fees under Section 53.156.

21 (d) An owner's personal liability is not affected by a
22 subsequent foreclosure or other transfer of the owner's interest in
23 all or part of the property.

24 (e) Subject to Section 53.122(b), the aggregate amount of
25 liens of the original contractor and the subcontractors, including
26 liens of employees as described by Section 53.0563(a)(1), may not
27 exceed the contract price of the original contract, as may be

1 modified, for the work. Duplicated claims asserted by claimants
2 within the same chain of contract may not be added more than once in
3 determining the aggregate amount of liens.

4 (f) A purchaser of property subject to a lien claim under
5 this chapter is not personally liable for the lien claim in a
6 foreclosure action brought by a claimant, except the purchaser may
7 be held liable for costs and attorney's fees awarded under Section
8 53.156.

9 SECTION 19. The heading to Section 53.085, Property Code,
10 is amended to read as follows:

11 Sec. 53.085. BILLS-PAID AFFIDAVIT REQUIRED.

12 SECTION 20. Sections 53.085(a), (b), (c), and (d), Property
13 Code, are amended to read as follows:

14 (a) Any person who performs work [~~furnishes labor or~~
15 ~~materials for the construction of improvements on real property~~]
16 shall, if requested and as a condition of payment for such work
17 [~~labor or materials~~], provide to the requesting party, or the
18 party's agent, a bills-paid [~~an~~] affidavit acknowledging the amount
19 claimed for payment and stating that the person has paid each of the
20 person's subcontractors, laborers, or materialmen in full for all
21 labor and materials provided to the person for the construction or
22 repair. In the event, however, that the person has not paid each of
23 the person's subcontractors, laborers, or materialmen in full, the
24 person shall state in the affidavit the amount owed and the name
25 and, if known, the address and telephone number of each
26 subcontractor, laborer, or materialman to whom the payment is owed.

27 (b) The seller of any real property shall, upon request by

1 the purchaser or the purchaser's agent prior to closing of the
2 purchase of the real property, provide to the purchaser or the
3 purchaser's agent, a written affidavit stating that the seller has
4 paid each of the seller's contractors, laborers, or materialmen in
5 full for all labor done and materials provided to the seller through
6 the date specified in the affidavit for any construction or repair
7 of improvements on the real property and that the seller is not
8 indebted to any person, firm, or corporation by reason of any such
9 construction or repair through the date specified in the affidavit.
10 In the event that the seller has not paid each of the seller's
11 contractors, laborers, or materialmen in full for labor done and
12 material provided through the date specified in the affidavit, the
13 seller shall state in the affidavit the amount owed and the name
14 and, if known, the address and telephone number of each contractor,
15 laborer, or materialman to whom the payment is owed.

16 (c) The affidavit may include:

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

21 (2) a warranty or representation that certain bills or
22 classes of bills will be paid by the affiant from funds paid in
23 reliance on the affidavit and an identification of the specific
24 bills that the affiant will not pay from the fund; and

25 (3) an indemnification by the affiant for any loss or
26 expense resulting from false or incorrect information in the
27 affidavit.

1 (d) A person, including a seller, commits an offense if the
2 person intentionally, knowingly, or recklessly makes a false or
3 misleading statement in an affidavit under this section. An
4 offense under this section is a misdemeanor. A person adjudged
5 guilty of an offense under this section shall be punished by a fine
6 not to exceed \$4,000 or confinement in jail for a term not to exceed
7 one year or both a fine and confinement. [~~A person may not receive~~
8 ~~community supervision for the offense.~~]

9 SECTION 21. Section 53.122(a), Property Code, is amended to
10 read as follows:

11 (a) Perfected [~~Except as provided by Subchapter E and~~
12 ~~Section 53.124(e), perfected~~] mechanic's liens that have the same
13 inception date are on equal footing without reference to the date of
14 filing the lien claim affidavit [~~claiming the lien~~].

15 SECTION 22. Section 53.124, Property Code, is amended by
16 amending Subsections (a), (b), (c), (d), and (e) and adding
17 Subsection (f) to read as follows:

18 (a) Except as provided by Subsection (c) or (e), for
19 purposes of Section 53.123, the time of inception of a mechanic's
20 lien is the commencement of construction or repair of improvements
21 or delivery of materials to the land on which the improvements are
22 to be located and on which the materials are to be used.

23 (b) The construction, repair, or materials under Subsection
24 (a) must be visible from inspection of the land on which the
25 improvements are being made.

26 (c) The later of the date the notice of commencement is
27 filed or is posted on the lien website is the time of inception of a

1 mechanic's lien for the work or material described by the notice
2 that is performed or furnished on or after the later of the date the
3 notice is filed or posted. For work performed or material furnished
4 before the date a notice of commencement is filed and posted and for
5 work excluded by the notice of commencement, the time of inception
6 of a mechanic's lien is provided by Subsection (a). For work under
7 an original contract entered into after a notice of completion is
8 filed and posted under Section 53.059, the time of inception of a
9 mechanic's lien is the date provided by Subsection (a) or the date a
10 new notice of commencement is filed and posted. [~~An owner and~~
11 ~~original contractor may jointly file an affidavit of commencement~~
12 ~~with the county clerk of the county in which the land is located not~~
13 ~~later than the 30th day after the date of actual commencement of~~
14 ~~construction of the improvements or delivery of materials to the~~
15 ~~land. The affidavit must contain:~~

16 ~~[(1) the name and address of the owner,~~

17 ~~[(2) the name and address of each original contractor,~~
18 ~~known at the time to the owner, that is furnishing labor, service,~~
19 ~~or materials for the construction of the improvements,~~

20 ~~[(3) a description, legally sufficient for~~
21 ~~identification, of the property being improved,~~

22 ~~[(4) the date the work actually commenced, and~~

23 ~~[(5) a general description of the improvement.]~~

24 (d) A lien, encumbrance, or mortgage securing an interest in
25 the land that is filed with the county clerk on or before the date
26 the notice of commencement is filed has priority over a mechanic's
27 lien with a time of inception that is the date of the notice of

1 commencement, regardless of the order in which the notice of
2 commencement and lien, encumbrance, or mortgage are filed with the
3 county clerk. [~~An affidavit filed in compliance with this section~~
4 ~~is prima facie evidence of the date of the commencement of the~~
5 ~~improvement described in the affidavit. The time of inception of a~~
6 ~~mechanic's lien arising from work described in an affidavit of~~
7 ~~commencement is the date of commencement of the work stated in the~~
8 ~~affidavit.~~]

9 (e) The time of inception of a lien that is created under
10 Section 53.021(c) [~~, (d), or (e)~~] is the date of recording of a lien
11 claim [~~an~~] affidavit [~~of lien~~] under Section 53.052. The priority
12 of a lien claimed by a person entitled to a lien under Section
13 53.021(c) [~~, (d), or (e)~~] with respect to other mechanic's liens is
14 determined by the date of recording. A lien created under Section
15 53.021(c) [~~, (d), or (e)~~] is not valid or enforceable against a
16 grantee or purchaser who acquires an interest in the real property
17 before the time of inception of the lien.

18 (f) Unless the landscaping work for which a person may have
19 a lien under Section 53.021(d) or the demolition services for which
20 a person may have a lien under Section 53.021(e) are included in a
21 notice of commencement, the time of inception of a lien under
22 Section 53.021(d) or (e) is the date of recording of a lien claim
23 affidavit under Section 53.052, and priority is determined by the
24 date of recording. Except as provided by this subsection, a lien
25 created under Section 53.021(d) or (e) is not valid against a
26 grantee or purchaser who acquires an interest in the real property
27 before the time of inception of the lien.

1 SECTION 23. Subchapter F, Chapter 53, Property Code, is
2 amended by adding Section 53.125 to read as follows:

3 Sec. 53.125. NOTICE OF COMMENCEMENT. (a) An owner may file
4 a notice of commencement with the county clerk of the county in
5 which the real property being improved under an original contract
6 is located. An owner who elects to file a notice of commencement
7 must post the notice on the lien website. A notice under this
8 section must be acknowledged and be in a form that substantially
9 complies with the following:

10 "NOTICE OF COMMENCEMENT

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

14 "(1) Legal description and, if applicable, street
15 address of property: _____.

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

18 "(3) Work or materials not included in this notice of
19 commencement: _____.

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

22 (A) Name and address: _____.

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

25 Fee simple title

26 Lease

27 Other (explain): _____.

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

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

5 (A) Name and address: _____.

6 (B) Contractor's phone number: _____.

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

9 (A) Name and address: _____.

10 (B) Phone number: _____.

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

14 (A) Name and address: _____.

15 (B) Lender's phone number: _____.

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

18 "Date: _____

19 "_____ (Owner name)

20 "By: _____ (Signature)

21 "(Insert acknowledgment)."

22 (b) Incorrect information contained in the notice of
23 commencement furnished by an owner does not adversely affect the
24 rights of a lien claimant reasonably relying on the information
25 against the owner or the property of the owner. If a subcontractor
26 performs labor or furnishes materials or specially fabricated
27 materials described by the notice of commencement and the notice of

1 commencement does not identify the original contractor under which
2 the labor was performed or materials were furnished or specially
3 fabricated at the time the subcontractor first performs the labor
4 or furnishes or specially fabricates the materials, the notice of
5 furnishing by the subcontractor preserves the lien claimant's
6 rights for the period provided by Section 53.0561(c).

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

12 (d) Unless a notice of commencement has been filed and
13 posted under this section, a subcontractor who has not received a
14 physical copy of the notice may request in writing a copy from the
15 original contractor or a subcontractor with whom the requesting
16 subcontractor has privity of contract. If the original contractor
17 or subcontractor has a copy of the notice, the original contractor
18 or subcontractor shall send a copy of the notice to the requesting
19 subcontractor not later than the fifth day after the date of receipt
20 of the written request. If the requesting subcontractor does not
21 receive a copy of the notice as required by this section, the person
22 failing to send the copy under this subsection is liable to the
23 requesting subcontractor for all actual expenses reasonably
24 incurred by the requesting subcontractor in obtaining the
25 information that would have been contained in the notice.

26 (e) A notice of commencement posted on the lien website may
27 be amended by the owner by posting the amended notice on the lien

1 website. The effective date of the amended notice is the date the
2 amended notice is posted on the lien website. The owner shall send
3 notice of the amended notice to a person who has provided a notice
4 of furnishing to the owner before the effective date of the amended
5 notice of commencement.

6 SECTION 24. Section 53.151(b), Property Code, is amended to
7 read as follows:

8 (b) A surety issuing a payment bond or performance bond in
9 connection with the work [~~improvements~~] has a priority claim over
10 other creditors of its principal to contract funds to the extent of
11 any loss it suffers or incurs. That priority does not excuse the
12 surety from paying any obligations that it may have under its
13 payment bonds.

14 SECTION 25. Section 53.153(a), Property Code, is amended to
15 read as follows:

16 (a) If a lien claim [~~an~~] affidavit [~~claiming a mechanic's~~
17 ~~lien~~] is filed by a person other than the original contractor, the
18 original contractor shall defend at the original contractor's [~~his~~]
19 own expense a suit brought on the claim unless the owner is in
20 breach of the owner's contractual obligations to the original
21 contractor under the original contract.

22 SECTION 26. Section 53.154, Property Code, is amended to
23 read as follows:

24 Sec. 53.154. FORECLOSURE. (a) A mechanic's lien may be
25 foreclosed only on judgment of a court of competent jurisdiction
26 foreclosing the lien and ordering the sale of the property subject
27 to the lien.

1 (b) A suit to foreclose the lien must be brought in a court
2 of competent jurisdiction in the county in which the real property
3 that is subject to the lien is located.

4 SECTION 27. Section 53.157, Property Code, is amended to
5 read as follows:

6 Sec. 53.157. DISCHARGE OF LIEN. A lien claim [~~mechanic's~~
7 ~~lien or~~] affidavit [~~claiming a mechanic's lien~~] filed under Section
8 53.052 may be discharged of record by:

9 (1) recording a lien release signed by the claimant
10 under Section 53.152;

11 (2) failing to institute suit to foreclose the lien
12 [~~in the county in which the property is located~~] within the period
13 prescribed by Section 53.158, 53.175, or 53.208;

14 (3) recording the original or certified copy of a
15 final judgment or decree of a court of competent jurisdiction
16 providing for the discharge;

17 (4) filing the bond and notice in compliance with
18 Subchapter H;

19 (5) filing the bond in compliance with Subchapter I;
20 or

21 (6) recording a certified copy of the order removing
22 the lien under Section 53.160 and a certificate from the clerk of
23 the court that states that no bond or deposit as described by
24 Section 53.161 was filed by the claimant within 30 days after the
25 date the order was entered.

26 SECTION 28. Section 53.158, Property Code, is amended to
27 read as follows:

1 Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN.

2 (a) Except as provided by Subsection (b), suit must be brought to
3 foreclose the lien not later than the first anniversary of [~~within~~
4 ~~two years after~~] the last date [~~day~~] a claimant may file the lien
5 claim affidavit under Section 53.052 [~~or within one year after~~
6 ~~completion, termination, or abandonment of the work under the~~
7 ~~original contract under which the lien is claimed, whichever is~~
8 ~~later~~].

9 (b) The period of limitations under Subsection (a) may be
10 extended to not later than the second anniversary of the last date
11 the claimant may file the affidavit if the claimant enters into a
12 written agreement with the then-current record owner of the
13 property to extend the period and files the written agreement with
14 the clerk of the county in which all or part of the property is
15 located before the expiration of the period provided by Subsection
16 (a). [~~For a claim arising from a residential construction project,~~
17 ~~suit must be brought to foreclose the lien within one year after the~~
18 ~~last day a claimant may file a lien affidavit under Section 53.052~~
19 ~~or within one year after completion, termination, or abandonment of~~
20 ~~the work under the original contract under which the lien is~~
21 ~~claimed, whichever is later.~~]

22 SECTION 29. Sections 53.159(a), (b), (c), (d), and (f),
23 Property Code, are amended to read as follows:

24 (a) If a notice of commencement has not been filed and
25 posted under Section 53.125, an [~~An~~] owner, on written request,
26 shall furnish the following information within a reasonable time,
27 but not later than the 10th day after the date the request is

1 received, to any person furnishing labor or materials for the
2 project:

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

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

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

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

13 (b) If a notice of commencement has not been filed and
14 posted under Section 53.125, an [An] original contractor, on
15 written request by a person who furnished work under the original
16 contract, shall furnish to the person the following information
17 within a reasonable time, but not later than the 10th day after the
18 date the request is received:

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

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

26 (3) the date on which the original contract for the
27 project was executed.

1 (c) A subcontractor, on written request by an owner of the
2 property being improved, the original contractor, a surety on a
3 bond covering the original contract, or any person furnishing work
4 under the subcontract, shall furnish to the person the following
5 information within a reasonable time, but not later than the 10th
6 day after the date the request is received:

7 (1) the name and last known address of each person from
8 whom the subcontractor purchased labor or materials for the
9 construction project, other than those materials that were
10 furnished to the project from the subcontractor's inventory;

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

14 (3) whether the subcontractor has furnished or has
15 been furnished a payment bond for any of the work on the
16 construction project and if so, the name and last known address of
17 the surety and a copy of the bond; and

18 (4) the date the subcontractor first performed labor,
19 furnished materials, or furnished specially fabricated materials
20 for the construction project for which any claim for payment is
21 being sought.

22 (d) Not later than the 30th day after the date a written
23 request is received from the owner, the contractor under whom a
24 claim of lien or under whom a bond is made, or a surety on a bond on
25 which a claim is made, a claimant for a lien or under a bond shall
26 furnish to the requesting person a copy of any applicable written
27 agreement, purchase order, or contract and any billing, statement,

1 or payment request of the claimant reflecting the amount claimed
2 and the work performed by the claimant for which the claim is made.
3 ~~[If requested, the claimant shall provide the estimated amount due~~
4 ~~for each calendar month in which the claimant has performed labor or~~
5 ~~furnished materials.]~~

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

11 SECTION 30. Sections [53.160](#)(b), (c), and (d), Property
12 Code, are amended to read as follows:

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

16 (1) notice of furnishing or notice of unpaid balance
17 ~~[claim]~~ was not furnished to the owner or original contractor as
18 required by Section 53.0561 or 53.0563 [~~53.056, 53.057, 53.058,~~
19 ~~53.252, or 53.253~~];

20 (2) a lien claim ~~[an]~~ affidavit ~~[claiming a lien]~~
21 failed to comply with Section [53.054](#) or was not filed as required by
22 Section [53.052](#);

23 (3) notice of the filed lien claim affidavit was not
24 furnished to the owner or original contractor as required by
25 Section [53.055](#) and the owner or original contractor was materially
26 prejudiced by the violation;

27 (4) ~~[the deadlines for perfecting a lien claim for~~

1 ~~retainage under this chapter have expired and the owner complied~~
2 ~~with the requirements of Section 53.101 and paid the retainage and~~
3 ~~all other funds owed to the original contractor before.~~

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

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

7 ~~[(5) all funds subject to the notice of a claim to the~~
8 ~~owner and a notice regarding the retainage have been deposited in~~
9 ~~the registry of the court and the owner has no additional liability~~
10 ~~to the claimant;~~

11 ~~[(6)]~~ when the lien claim affidavit was filed on
12 homestead property:

13 (A) no contract was executed or filed as required
14 by Section 53.254; or

15 (B) the lien claim affidavit [~~claiming a lien~~]
16 failed to contain the notice as required by Section 53.254; [~~or~~

17 ~~[(C) the notice of the claim failed to include~~
18 ~~the statement required by Section 53.254,]~~ and

19 (5) [~~(7)~~] the claimant executed a valid and
20 enforceable waiver or release of the claim or lien claimed in the
21 affidavit.

22 (c) The claimant is not required to file a response. The
23 claimant and any other party that has appeared in the proceeding
24 must be notified not later than the 21st day [~~by at least 21 days~~]
25 before the date of the hearing on the motion. A motion may not be
26 heard before the 21st day after the date the claimant answers or
27 appears in the proceeding.

1 (d) At the hearing on the motion, the burden is on:

2 (1) the claimant to prove that the notice of a filed
3 lien claim [~~and~~] affidavit was [~~of lien were~~] furnished to the
4 owner, reputed owner, and original contractor as required by
5 Section 53.055 [~~this chapter~~]; and

6 (2) the movant to establish that the lien should be
7 removed for any other ground authorized by this section.

8 SECTION 31. Section 53.161(f), Property Code, is amended to
9 read as follows:

10 (f) If the claimant fails to file the bond or the deposit in
11 lieu of the bond in compliance with this section, the owner may
12 file:

13 (1) a certified copy of the order; and

14 (2) a certificate from the clerk of the court stating
15 that:

16 (A) no bond or deposit in lieu of the bond was
17 filed before the later of:

18 (i) the 30th day [~~within 30 days~~] after the
19 date the order was entered by the court; or

20 (ii) the date ordered by the court under
21 Subsection (b); and

22 (B) no order staying the order to remove the lien
23 was entered by the court.

24 SECTION 32. Section 53.172, Property Code, is amended to
25 read as follows:

26 Sec. 53.172. BOND REQUIREMENTS. The bond must:

27 (1) describe the property on which the liens are

1 claimed;

2 (2) refer to each lien claimed in a manner sufficient
3 to identify it;

4 (3) be in an amount that is double the amount of the
5 liens referred to in the bond unless the total amount claimed in the
6 liens exceeds \$60,000 [~~\$40,000~~], in which case the bond must be in
7 an amount that is the greater of 1-1/2 times the amount of the liens
8 or the sum of \$60,000 [~~\$40,000~~] and the amount of the liens;

9 (4) be payable to the parties claiming the liens;

10 (5) be executed by:

11 (A) the party filing the bond as principal; and

12 (B) a corporate surety authorized and admitted to
13 do business under the law in this state and licensed by this state
14 to execute the bond as surety, subject to Section 3503.005,
15 Insurance Code [~~1, Chapter 87, Acts of the 56th Legislature,~~
16 ~~Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance~~
17 ~~Code)~~]; and

18 (6) be conditioned substantially that the principal
19 and sureties will pay to the named obligees or to their assignees
20 the amount that the named obligees would have been entitled to
21 recover if their claims had been proved to be valid and enforceable
22 liens on the property.

23 SECTION 33. Sections 53.173(c) and (d), Property Code, are
24 amended to read as follows:

25 (c) The notice:

26 (1) must be served on each obligee by mailing a copy of
27 the notice and the bond to the obligee by certified United States

1 mail, return receipt requested, addressed to the claimant at the
2 address stated in the lien claim affidavit for the obligee; and

3 (2) may not be given by posting on the lien website or
4 by e-mail.

5 (d) If the claimant's lien claim affidavit does not state
6 the claimant's address, the notice is not required to be mailed to
7 the claimant.

8 SECTION 34. Section 53.201(b), Property Code, is amended to
9 read as follows:

10 (b) If a valid bond is filed, a claimant may not file suit
11 against the owner or the owner's property and the owner is not
12 authorized to withhold funds or pay a claimant on demand [~~relieved~~
13 ~~of obligations~~] under Subchapter D [~~or E~~].

14 SECTION 35. Section 53.202, Property Code, is amended to
15 read as follows:

16 Sec. 53.202. BOND REQUIREMENTS. The bond must:

17 (1) be in a penal sum at least equal to the total of the
18 original contract amount;

19 (2) be in favor of the owner;

20 (3) have the written approval of the owner endorsed on
21 it;

22 (4) be executed by:

23 (A) the original contractor as principal; and

24 (B) a corporate surety authorized and admitted to
25 do business in this state and licensed by this state to execute
26 bonds as surety, subject to Section 3503.005, Insurance Code [~~17~~

27 ~~Chapter 87, Acts of the 56th Legislature, Regular Session, 1959~~

1 ~~(Article 7.19-1, Vernon's Texas Insurance Code)]~~;

2 (5) be conditioned on prompt payment for all labor,
3 subcontracts, materials, specially fabricated materials, and
4 normal and usual extras not exceeding 15 percent of the contract
5 price; and

6 (6) clearly and prominently display on the bond or on
7 an attachment to the bond:

8 (A) the name, mailing address, physical address,
9 and telephone number, including the area code, of the surety
10 company to which any notice of claim should be sent; or

11 (B) the toll-free telephone number maintained by
12 the Texas Department of Insurance under Subchapter B, Chapter 521,
13 Insurance Code, and a statement that the address of the surety
14 company to which any notice of claim should be sent may be obtained
15 from the Texas Department of Insurance by calling the toll-free
16 telephone number.

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

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

22 (1) give to the original contractor a notice of
23 furnishing or a notice of unpaid balance, unless the person has
24 contracted directly with the original contractor [~~all applicable~~
25 ~~notices under the appropriate subchapter~~]; and

26 (2) give to the surety on the bond a written notice of
27 the amount and nature of the claim and a copy of the notice to the

1 original contractor within the period required for filing a lien
2 claim affidavit under Section 53.052 [~~, instead of the owner, all~~
3 ~~notices under the appropriate subchapter required to be given to~~
4 ~~the owner~~].

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

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

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

14 [~~(3)~~] file a lien claim [~~any~~] affidavit with the
15 county clerk.

16 SECTION 37. Section 53.254(f), Property Code, is amended to
17 read as follows:

18 (f) A lien claim [~~An~~] affidavit [~~for lien~~] filed under this
19 subchapter that relates to a homestead must contain the following
20 notice conspicuously printed, stamped, or typed in a size equal to
21 at least 10-point boldface or the computer equivalent, at the top of
22 the page:

23 "NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT
24 CLAIMING A LIEN.

25 "If a subcontractor or supplier who furnishes materials or
26 performs labor for construction of improvements on your property is
27 not paid, your property may be subject to a lien for:

1 (1) the unpaid amount if you fail to withhold payment
2 to your contractor that is sufficient to cover the unpaid claim
3 after you receive notice of a filed lien claim affidavit; and
4 (2) an amount up to 10 percent of the contract price or
5 10 percent of the value of the work performed by your contractor."

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

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

10 "KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You
11 are about to enter into a transaction to build a new home or remodel
12 existing residential property. Texas law requires your contractor
13 to provide you with this brief overview of some of your rights,
14 responsibilities, and risks in this transaction.

15 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may
16 not require you to convey your real property to your contractor as a
17 condition to the agreement for the construction of improvements on
18 your property.

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

24 "GET IT IN WRITING. Make sure that you have a written
25 agreement with your contractor that includes: (1) a description of
26 the work the contractor is to perform; (2) the required or
27 estimated time for completion of the work; (3) the cost of the work

1 or how the cost will be determined; and (4) the procedure and
2 method of payment, including [~~provisions for statutory retainage~~
3 ~~and~~] conditions for final payment. If your contractor made a
4 promise, warranty, or representation to you concerning the work the
5 contractor is to perform, make sure that promise, warranty, or
6 representation is specified in the written agreement. An oral
7 promise that is not included in the written agreement may not be
8 enforceable under Texas law.

9 "READ BEFORE YOU SIGN. Do not sign any document before you
10 have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN
11 UNTRUE STATEMENT. Take your time in reviewing documents. If you
12 borrow money from a lender to pay for the improvements, you are
13 entitled to have the loan closing documents furnished to you for
14 review at least one business day before the closing. Do not waive
15 this requirement unless a bona fide emergency or another good cause
16 exists, and make sure you understand the documents before you sign
17 them. If you fail to comply with the terms of the documents, you
18 could lose your property. You are entitled to have your own
19 attorney review any documents. If you have any question about the
20 meaning of a document, consult an attorney.

21 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before
22 construction commences, your contractor is required to provide you
23 with a list of the subcontractors and suppliers the contractor
24 intends to use on your project. Your contractor is required to
25 supply updated information on any subcontractors and suppliers
26 added after the list is provided. Your contractor is not required
27 to supply this information if you sign a written waiver of your

1 rights to receive this information.

2 "MONITOR THE WORK. Lenders and governmental authorities may
3 inspect the work in progress from time to time for their own
4 purposes. These inspections are not intended as quality control
5 inspections. Quality control is a matter for you and your
6 contractor. To ensure that your home is being constructed in
7 accordance with your wishes and specifications, you should inspect
8 the work yourself or have your own independent inspector review the
9 work in progress.

10 "MONITOR PAYMENTS. If you use a lender, your lender is
11 required to provide you with a periodic statement showing the money
12 disbursed by the lender from the proceeds of your loan. Each time
13 your contractor requests payment from you or your lender for work
14 performed, your contractor is also required to furnish you with a
15 disbursement statement that lists the name and address of each
16 subcontractor or supplier that the contractor intends to pay from
17 the requested funds. Review these statements and make sure that the
18 money is being properly disbursed.

19 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if
20 a subcontractor or supplier who furnishes labor or materials for
21 the construction of improvements on your property is not paid, you
22 may be [~~become~~] liable and your property may be subject to a lien
23 for the unpaid amount, even if you have not contracted directly with
24 the subcontractor or supplier. To minimize your [~~avoid~~] liability,
25 you should take the following actions:

26 (1) If you receive a written notice from a
27 subcontractor or supplier, you should withhold payment from your

1 contractor for the amount of the claim stated in the notice until
2 the dispute between your contractor and the subcontractor or
3 supplier is resolved.

4 (2) If your lender is disbursing money directly to
5 your contractor, you should immediately provide a copy of the
6 notice to your lender and instruct the lender to withhold payment in
7 the amount of the claim stated in the notice. If you continue to pay
8 the contractor after receiving the written notice without
9 withholding the amount of the claim, you may be liable and your
10 property may be subject to a lien for the amount you failed to
11 withhold.

12 ~~[(2) During construction and for 30 days after final
13 completion, termination, or abandonment of the contract by the
14 contractor, you should withhold or cause your lender to withhold 10
15 percent of the amount of payments made for the work performed by
16 your contractor. This is sometimes referred to as "statutory
17 retainage." If you choose not to withhold the 10 percent for at
18 least 30 days after final completion, termination, or abandonment
19 of the contract by the contractor and if a valid claim is timely
20 made by a claimant and your contractor fails to pay the claim, you
21 may be personally liable and your property may be subject to a lien
22 up to the amount that you failed to withhold.]~~

23 "If a claim is not paid within a certain time period, the
24 claimant is required to file a [~~mechanic's~~] lien claim affidavit in
25 the real property records in the county where the property is
26 located. A [~~mechanic's~~] lien claim affidavit is not a lien on your
27 property, but the filing of the affidavit could result in a court

1 imposing a lien on your property if the claimant is successful in
2 litigation to enforce the lien claim.

3 "SOME CLAIMS MAY NOT BE VALID. When you receive a written
4 notice of unpaid balance [~~a claim~~] or when a [~~mechanic's~~] lien claim
5 affidavit is filed on your property, you should know your legal
6 rights and responsibilities regarding the claim. Not all claims are
7 valid. [~~A notice of a claim by a subcontractor or supplier is~~
8 ~~required to be sent, and the mechanic's lien affidavit is required~~
9 ~~to be filed, within strict time periods. The notice and the~~
10 ~~affidavit must contain certain information.] All claimants may not
11 fully comply with the legal requirements to collect on a claim. If
12 your property is a homestead and you did not enter into a written
13 contract with your contractor that complies with the statutory
14 requirements for a lien on a homestead, your contractor, the
15 subcontractor, or the supplier may not claim a valid lien on your
16 property. [~~If you have paid the contractor in full before receiving~~
17 ~~a notice of a claim and have fully complied with the law regarding~~
18 ~~statutory retainage, you may not be liable for that claim.]
19 Accordingly, you should consult your attorney when you receive a
20 written notice of a claim to determine the true extent of your
21 liability or potential liability for that claim.~~~~

22 "OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you
23 receive a notice of unpaid balance or a notice of a filed lien claim
24 affidavit [~~claim~~], do not release withheld funds without obtaining
25 a signed and notarized release of lien and claim from the claimant.
26 You can [~~also~~] reduce the risk of having a claim filed by a
27 subcontractor or supplier by requiring as a condition of each

1 payment made by you or your lender that your contractor furnish you
2 with an affidavit stating that all bills have been paid. Under
3 Texas law, on final completion of the work and before final payment,
4 the contractor is required to furnish you with an affidavit stating
5 that all bills have been paid. If the contractor discloses any
6 unpaid bill in the affidavit, you should withhold payment in the
7 amount of the unpaid bill until you receive a waiver of lien or
8 release from that subcontractor or supplier.

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

20 SECTION 39. Sections 53.259(a) and (c), Property Code, are
21 amended to read as follows:

22 (a) As a condition of final payment under a residential
23 construction contract, the original contractor shall, at the time
24 the final payment is tendered, execute and deliver to the owner, or
25 the owner's agent, an affidavit acknowledging the amount claimed
26 for payment and stating that the original contractor has paid each
27 person in full for all labor and materials used in the construction

1 of improvements on the real property. If the original contractor
2 has not paid each person in full, the original contractor shall
3 state in the affidavit the amount owed and the name and, if known,
4 the address and telephone number of each person to whom a payment is
5 owed.

6 (c) A person commits an offense if the person intentionally,
7 knowingly, or recklessly makes a false or misleading statement in
8 an affidavit under this section. An offense under this section is a
9 misdemeanor. A person adjudged guilty of an offense under this
10 section shall be punished by a fine not to exceed \$4,000 or
11 confinement in jail for a term not to exceed one year or both a fine
12 and confinement. [~~A person may not receive community supervision
13 for the offense.~~]

14 SECTION 40. Section [53.281](#), Property Code, is amended to
15 read as follows:

16 Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND
17 CLAIM. (a) Except as provided by Section [53.287](#), any [~~Any~~] waiver
18 and release of a lien or payment bond claim under this chapter is
19 unenforceable unless a waiver and release is executed and delivered
20 in accordance with this subchapter.

21 (b) A waiver and release is effective to release the owner,
22 the owner's property, the contractor, and the surety on a payment
23 bond from claims and liens only if:

24 (1) the waiver and release substantially complies with
25 one of the forms prescribed by Section [53.284](#);

26 (2) the waiver and release is signed by the claimant or
27 the claimant's authorized agent and acknowledged [~~notarized~~]; and

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

3 (c) A waiver and release that substantially complies with a
4 form required by Section 53.284 may be combined with a bills-paid
5 affidavit that substantially conforms to the requirements of
6 Section 53.085 or 53.259.

7 SECTION 41. Section 53.282(b), Property Code, is amended to
8 read as follows:

9 (b) The filing of a lien rendered unenforceable by a lien
10 waiver under Subsection (a)(3) does not violate Section 12.002,
11 Civil Practice and Remedies Code, unless:

12 (1) an owner or original contractor sends a written
13 explanation of the basis for nonpayment, evidence of the
14 contractual waiver of lien rights, and a notice of request for
15 release of the lien to the claimant at the claimant's address stated
16 in the lien claim affidavit; and

17 (2) the lien claimant does not release the filed lien
18 claim affidavit on or before the 14th day after the date the owner
19 or the original contractor sends the items required by Subdivision
20 (1).

21 SECTION 42. Section 53.283, Property Code, is amended to
22 read as follows:

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

1 sufficient funds.

2 (b) Notwithstanding Subsection (a), a contractual
3 requirement for a claimant to waive or release the claimant's lien
4 rights under this chapter before performance of the work for which
5 the claim for payment is asserted is void.

6 (c) A claimant may tender an unconditional waiver and
7 release for payment before the actual receipt of a payment to be
8 delivered in trust to an attorney, title insurance company, title
9 insurance agent, or federally insured financial institution acting
10 as an escrow agent. The escrow agent may deliver the waiver and
11 release only after the claimant has confirmed receipt of payment in
12 good and sufficient funds.

13 SECTION 43. Section 53.284, Property Code, is amended by
14 amending Subsections (b), (c), (d), and (e) and adding Subsection
15 (f) to read as follows:

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

22 "CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

23 "Project _____

24 "Job No. _____

25 "On receipt by the signer of this document of a check from
26 _____ (maker of check) in the sum of \$_____ payable
27 to _____ (payee or payees of check) and when the

1 check has been properly endorsed and has been paid by the bank on
2 which it is drawn, this document becomes effective to release any
3 mechanic's lien right, any right arising from a payment bond that
4 complies with a state or federal statute, any common law payment
5 bond right, any claim for payment, and any rights under any similar
6 ordinance, rule, or statute related to claim or payment rights for
7 persons in the signer's position that the signer has on the property
8 of _____ (owner) located at _____
9 (location) for [~~to~~] the following project [~~extent~~]:
10 _____ (~~job~~) description of the type of work,
11 materials, equipment, or services provided).

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

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

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

27 "Date _____

1 " _____ (Company name)

2 "By _____ (Signature)

3 " _____ (Title)

4 "(Insert acknowledgment)"

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

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

14 "NOTICE:

15 "This document waives rights unconditionally and states that
16 you have been paid for giving up those rights. It is prohibited for
17 a person to require you to sign this document if you have not been
18 paid the payment amount set forth below. If you have not been paid,
19 use a conditional release form."; and

20 (2) below the notice, read:

21 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

22 "Project _____

23 "Job No. _____

24 "The signer of this document has been paid and has received a
25 progress payment in the sum of \$_____ for all labor,
26 services, equipment, or materials furnished to the property or to
27 _____ (person with whom signer contracted) on the

1 property of _____ (owner) located at
 2 _____ (location) for ~~[to]~~ the following project
 3 ~~[extent]~~: _____ (~~[job]~~ description of the type of
 4 work, materials, equipment, or services provided). The signer
 5 therefore waives and releases any mechanic's lien right, any right
 6 arising from a payment bond that complies with a state or federal
 7 statute, any common law payment bond right, any claim for payment,
 8 and any rights under any similar ordinance, rule, or statute
 9 related to claim or payment rights for persons in the signer's
 10 position that the signer has on the above referenced project to the
 11 following extent:

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

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

24 "Date _____

25 " _____ (Company name)

26 "By _____ (Signature)

27 " _____ (Title)

1 "(Insert acknowledgment)"

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

8 "CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

9 "Project _____

10 "Job No. _____

11 "On receipt by the signer of this document of a check from
12 _____ (maker of check) in the sum of \$_____
13 payable to _____ (payee or payees of check) and
14 when the check has been properly endorsed and has been paid by the
15 bank on which it is drawn, this document becomes effective to
16 release any mechanic's lien right, any right arising from a payment
17 bond that complies with a state or federal statute, any common law
18 payment bond right, any claim for payment, and any rights under any
19 similar ordinance, rule, or statute related to claim or payment
20 rights for persons in the signer's position that the signer has on
21 the property of _____ (owner) located at
22 _____ (location) for ~~to~~ the following project
23 ~~[extent]~~: _____ (~~job~~) description of the type of
24 work, materials, equipment, or services provided).

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

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

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

10 "Date _____

11 "_____ (Company name)

12 "By _____ (Signature)

13 "_____ (Title)

14 "(Insert acknowledgment)"

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

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

24 "NOTICE:

25 "This document waives rights unconditionally and states that
26 you have been paid for giving up those rights. It is prohibited for
27 a person to require you to sign this document if you have not been

1 paid in full as stated [~~the payment amount set forth~~] below. If you
2 have not been paid, use a conditional release form."; and

3 (2) below the notice, read:

4 "UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

5 "Project _____

6 "Job No. _____

7 "The signer of this document has been paid in full for all
8 labor, services, equipment, or materials furnished to the property
9 or to _____ (person with whom signer contracted) on
10 the property of _____ (owner) located at
11 _____ (location) for [~~to~~] the following project
12 [~~extent~~]: _____ (~~job~~ description of the type of
13 work, materials, equipment, or services provided). The signer
14 therefore waives and releases any mechanic's lien right, any right
15 arising from a payment bond that complies with a state or federal
16 statute, any common law payment bond right, any claim for payment,
17 and any rights under any similar ordinance, rule, or statute
18 related to claim or payment rights for persons in the signer's
19 position.

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

26 "Date _____

27 "_____ (Company name)

1 "By _____ (Signature)

2 " _____ (Title)

3 "(Insert acknowledgment)"

4 (f) If the owner has filed and posted a notice of
5 commencement under Section 53.125, the owner may require, as a
6 condition for final payment, a claimant who has provided a notice of
7 furnishing to post on the lien website a conditional waiver and
8 release on final payment described by Subsection (d).

9 SECTION 44. The following provisions of the Property Code
10 are repealed:

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

25 SECTION 45. The changes in law made by this Act apply only
26 to an original contract entered into on or after the effective date
27 of this Act. An original contract entered into before the effective

1 date of this Act is governed by the law as it existed immediately
2 before the effective date of this Act, and that law is continued in
3 effect for that purpose.

4 SECTION 46. This Act takes effect May 1, 2020.