

By: Burrows

H.B. No. 2237

A BILL TO BE ENTITLED

AN ACT

relating to mechanic's, contractor's, or materialman's liens.

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

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

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

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (3), (4), (8) and (9) to read as follows:

(2) "Improvement" includes:

(A) a house, building, structure, parking structure, appurtenance, pool, utility, railroad, well, storage facility, abutting sidewalks and streets and utilities in or on those sidewalks and streets, land reclaimed from overflow, and other fixture or modification to real property;

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

(C) that work described in section 53.021(d) [wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water,] and

(D) designs, drawings, plans, plats, surveys,

1 and specifications provided by licensed architects, engineers, or  
2 surveyors. [~~pumps, siphons, and windmills or other machinery or~~  
3 ~~apparatuses used for raising water for stock, domestic use, or~~  
4 ~~irrigation; and~~

5 ~~(E) planting orchard trees, grubbing out~~  
6 ~~orchards and replacing trees, and pruning of orchard trees.]~~

7 (3) "Labor" means:

8 (A) labor used in the direct performance  
9 [~~prosecution~~] of the work or[-]

10 (B) professional services used in the direct  
11 preparation for the work of a design, drawing, plan, plat, survey,  
12 or specification.

13 (4) "Material" means all or part of:

14 (A) the material, machinery, fixtures, or tools:

15 (i) incorporated into the work; [-]

16 (ii) used [~~consumed~~] in the direct  
17 performance [~~prosecution~~] of the work; [-or]

18 (iii) specially fabricated for an  
19 improvement; or

20 (iv) ordered and delivered for  
21 incorporation or use [~~consumption~~];

22 (B) rent at a reasonable rate and actual running  
23 repairs at a reasonable cost for construction equipment used or  
24 reasonably required and delivered for use in the direct  
25 [~~prosecution~~] performance of the work at the site of the  
26 construction or repair; or

27 (C) power, water, fuel, and lubricants consumed

1 or ordered and delivered for consumption in the direct  
2 [~~prosecution~~] performance of the work.

3 (5) "Mechanic's lien" means the lien provided by this  
4 chapter.

5 (6) "Original contract" means an agreement to which an  
6 owner is a party either directly or by implication of law.

7 (7) "Original contractor" means a person contracting  
8 with an owner either directly or through the owner's agent.

9 (8) "Purported original contractor" means an original  
10 contractor that either (1) can effectively control the owner or is  
11 effectively controlled by the owner through common ownership of  
12 voting stock or ownership interests, interlocking directorships,  
13 common management, or otherwise or (2) was engaged by the owner for  
14 the construction or repair of improvements without a good faith  
15 intention of the parties that the purported original contractor was  
16 to perform under the contract. In this definition, "owner" does not  
17 include a person who has or claims a security interest only.

18 ([~~8~~]9) "Residence" means the real property and  
19 improvements for a single-family house, duplex, triplex, or  
20 quadruplex or a unit in a multiunit structure used for residential  
21 purposes in which title to the individual units is transferred to  
22 the owners under a condominium or cooperative system that is:

23 (A) owned by one or more adult persons; and

24 (B) used or intended to be used as a dwelling by  
25 one of the owners.

26 ([~~9~~]10) "Residential construction contract" means a  
27 contract between an owner and a contractor in which the contractor

1 agrees to construct or repair the owner's residence, including  
2 improvements appurtenant to the residence.

3           (11[10]) "Residential construction project" means a  
4 project for the construction or repair of a new or existing  
5 residence, including improvements appurtenant to the residence, as  
6 provided by a residential construction contract.

7           (12[11]) "Retainage" means an amount representing  
8 part of a contract payment that is not required to be paid to the  
9 claimant within the month following the month in which labor is  
10 performed, material is furnished, or specially fabricated material  
11 is delivered. ~~[The term does not include retainage under~~  
12 ~~Subchapter E.]~~

13           (13[12]) "Specially fabricated material" means  
14 material fabricated for use as a component of the construction or  
15 repair so as to be reasonably unsuitable for use elsewhere.

16           (14[13]) "Subcontractor" means a person who has  
17 furnished labor or materials to fulfill an obligation to an  
18 original contractor or to a subcontractor to perform all or part of  
19 the work required by an original contract.

20           (15[14]) "Work" means any part of construction or  
21 repair of an improvement performed under an original contract.

22           (16[15]) "Completion" of an original contract means  
23 the actual completion of the work, including any extras or change  
24 orders reasonably required or contemplated under the original  
25 contract, other than warranty work or replacement or repair of the  
26 work performed under the contract.

27           SECTION 3. Section 53.003(a), (b) and (d), Property Code,

1 are amended to read as follows:

2 ~~[(a) This section applies to notices required by~~  
3 ~~Subchapters B through C and K.]~~

4 ~~[(b)a)~~ Any notice or other written communication required  
5 by this chapter may be delivered (i) in person to the party entitled  
6 to the notice or to that party's agent or (ii) via certified mail.~~[7~~  
7 ~~regardless of the manner prescribed by law].~~

8 ~~[(c)b)~~ If notice is sent by ~~registered or~~ certified mail,  
9 deposit or mailing of the notice in the United States mail in the  
10 form required constitutes compliance with the notice requirement.  
11 This subsection does not apply if the law requires receipt of the  
12 notice by the person to whom it is directed.

13 ~~[(d)c)~~ If a written notice is received by the person  
14 entitled to receive it, the method by which the notice was delivered  
15 is immaterial.

16 (d) In computing the period of days in which to provide a  
17 notice or to take any action required under this chapter, if the  
18 last day of the period is a Saturday, Sunday, or legal holiday, the  
19 period is extended to include the next day that is not a Saturday,  
20 Sunday, or legal holiday.

21 SECTION 4. Section 53.021, Property Code, is amended to  
22 read as follows:

23 Sec. 53.021. PERSONS ENTITLED TO LIEN. ~~[(a)]~~A person has a  
24 lien if ~~+~~

25 ~~[(1)]~~ the person, under or by virtue of a contract with  
26 the owner or the owner's agent, trustee, receiver, contractor, or  
27 subcontractor: ~~[labors, specially fabricates material, or]~~

1           (a) furnishes labor or materials for construction or repair  
2 of an improvement [~~;~~ ~~in this state of:~~

3                   ~~(A) a house, building, or improvement;~~

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

6                   ~~(C) a railroad; and~~

7                   ~~(2) the person labors, specially fabricates the~~  
8 ~~material, or furnishes the labor or materials under or by virtue of~~  
9 ~~a contract with the owner or the owner's agent, trustee, receiver,~~  
10 ~~contractor, or subcontractor;.~~

11           ~~(b) A person who]~~ specially fabricates material [~~;~~ ~~has a~~  
12 ~~lien]~~ even if the material is not delivered; [~~;~~]

13           (c) is a licensed [~~An~~] architect, engineer, or surveyor  
14 providing services to ~~who~~ prepares a design, drawing, plan, ~~or~~  
15 plat, survey, or specification; [~~under or by virtue of a written~~  
16 ~~contract with the owner or the owner's agent, trustee, or receiver~~  
17 ~~in connection with the actual or proposed design, construction, or~~  
18 ~~repair of improvements on real property or the location of the~~  
19 ~~boundaries of real property has a lien on the property.~~

20           ~~(d) A person who]~~ provides labor, plant material, or other  
21 supplies for the installation of landscaping for an an [~~house,~~  
22 ~~building,~~ ~~or]~~ improvement, including the construction of a  
23 retention pond, retaining wall, berm, irrigation system, fountain,  
24 or other similar installation; [~~;~~ ~~under or by virtue of a written~~  
25 ~~contract with the owner or the owner's agent, contractor,~~  
26 ~~subcontractor, trustee, or receiver has a lien on the property]~~ or

27           ~~(e) [A person who]~~ performs labor as part of, or who

1 furnishes labor or materials for, the demolition of an improvement  
2 ~~[structure]~~ on real property ~~[under or by virtue of a written~~  
3 ~~contract with the owner of the property or the owner's agent,~~  
4 ~~trustee, receiver, contractor, or subcontractor has a lien on the~~  
5 ~~property]~~.

6 SECTION 5. Section 53.022, Property Code, is amended to  
7 read as follows:

8 Sec. 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien  
9 extends to the ~~[house, building, fixtures, or improvements, the~~  
10 ~~land reclaimed from overflow, or the railroad and all of its~~  
11 ~~properties,]~~ and to each lot of land necessarily connected ~~[or~~  
12 ~~reclaimed]~~.

13 (b) The lien does not extend to abutting sidewalks, streets,  
14 and utilities that are public property.

15 (c) A lien against land in a city, town, or village extends  
16 to each lot on which the ~~[house, building, or]~~ improvement is  
17 situated or on which the labor was performed.

18 (d) A lien against land not in a city, town, or village  
19 extends to not more than 50 acres on which the ~~[house, building, or]~~  
20 improvement is situated or on which the labor was performed.

21 SECTION 6. Section 53.023, Property Code, is amended to  
22 read as follows:

23 Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures  
24 payment for:

25 (1) the labor done or material furnished for the  
26 construction, ~~or~~ repair, design, survey, or demolition; or

27 (2) the specially fabricated material, even if the

1 material has not been delivered or incorporated into the  
2 construction or repair, less its fair salvage value[~~, or.~~

3 ~~(3) the preparation of a plan or plat by an architect,~~  
4 ~~engineer, or surveyor in accordance with Section 53.021(c).]~~

5 SECTION 7. Section 53.026, Property Code, is amended to  
6 read as follows:

7 Sec. 53.026. SHAM CONTRACT. (a) A person who furnishes  
8 labors or materials, [~~specially fabricates materials, or furnishes~~  
9 ~~labor or materials~~] under a direct contractual relationship with a  
10 purported original contractor [~~another person~~] is considered to be  
11 [~~in direct contractual relationship with the owner and has a lien~~  
12 ~~as~~] an original contractor for purposes of perfecting a mechanic's  
13 lien. [~~, if:~~

14 ~~(1) the owner contracted with the other person for the~~  
15 ~~construction or repair of a house, building, or improvements and~~  
16 ~~the owner can effectively control that person through ownership of~~  
17 ~~voting stock, interlocking directorships, or otherwise,~~

18 ~~(2) the owner contracted with the other person for the~~  
19 ~~construction or repair of a house, building, or improvements and~~  
20 ~~that other person can effectively control the owner through~~  
21 ~~ownership of voting stock, interlocking directorships, or~~  
22 ~~otherwise, or~~

23 ~~(3) the owner contracted with the other person for the~~  
24 ~~construction or repair of a house, building, or improvements and~~  
25 ~~the contract was made without good faith intention of the parties~~  
26 ~~that the other person was to perform the contract.~~

27 ~~(b) In this section, "owner" does not include a person who~~



1 ~~has or claims a security interest only.]~~

2 SECTION 8. Section 53.052, Property Code, is amended to  
3 read as follows:

4 Sec. 53.052. FILING OF AFFIDAVIT. (a) ~~[Except as provided~~  
5 ~~by Subsection (b)]~~ An original contractor claiming the lien must  
6 file an affidavit with the county clerk:

7 (1) for projects other than residential construction  
8 projects, on or before the 15th day of the fourth month after the  
9 month in which the original contractor's work was completed,  
10 terminated, or abandoned; or

11 (2) for residential construction projects, on or  
12 before the 15th day of the third month after the month in which the  
13 original contractor's work was completed, terminated, or  
14 abandoned.

15 (b) Except as provided by Subsection (c) or (d), [the] a  
16 [person] subcontractor claiming the lien must file an affidavit  
17 with the county clerk on or before ~~[of the county in which the~~  
18 ~~property is located or into which the railroad extends not later~~  
19 ~~than the]~~ 15th day of the fourth ~~[calendar]~~ month after the later  
20 of: ~~[day on which the indebtedness accrue]~~

21 (1) the month the subcontractor last provided labor or  
22 materials; or

23 (2) the month the subcontractor would normally have  
24 been required to deliver the last of specially fabricated materials  
25 that have not been actually delivered

26 (c) a subcontractor claiming the lien arising from a  
27 residential construction project must file an affidavit with the

1 county clerk on or the 15th day of the third month after the later  
2 of:

3 (1) the month the subcontractor last provided labor or  
4 materials; or

5 (2) the month the subcontractor would normally have  
6 been required to deliver the last of specially fabricated materials  
7 that have not been actually delivered.

8 ~~[(b) A person claiming a lien arising from a residential~~  
9 ~~construction project must file an affidavit with the county clerk~~  
10 ~~of the county in which the property is located not later than the~~  
11 ~~15th day of the third calendar month after the day on which the~~  
12 ~~indebtedness accrues.]~~

13 [(e)d) A subcontractor claiming a lien for retainage must  
14 file an affidavit with the county clerk not later than the 15th day  
15 of the third month after the month in which the original contract  
16 under which the subcontractor performed was completed, terminated,  
17 or abandoned.

18 (e) An affidavit under this chapter must be filed in the  
19 county where the improvements are located. The county clerk shall  
20 record the affidavit in records kept for that purpose and shall  
21 index and cross-index the affidavit in the names of the claimant,  
22 the original contractor, and the owner. Failure of the county clerk  
23 to properly record or index a filed affidavit does not invalidate  
24 the lien.

25 SECTION 9. Section 53.055, Property Code, is amended to  
26 read as follows:

27 Sec. 53.055. NOTICE OF FILED AFFIDAVIT. (a) A person who

1 files an affidavit must send a copy of the affidavit [~~by registered~~  
2 ~~or certified mail~~] to the owner or reputed owner at the owner's last  
3 known business or residence address not later than the fifth day  
4 after the date the affidavit is filed with the county clerk.

5 (b) If the person is not an original contractor, the person  
6 must also send a copy of the affidavit to the original contractor at  
7 the original contractor's last known business or residence address  
8 within the same period.

9 SECTION 10. Section 53.056, Property Code, is amended to  
10 read as follows:

11 Sec. 53.056. [~~DERIVATIVE~~] SUBCONTRACTOR CLAIMANT: NOTICE  
12 TO OWNER AND[OR] ORIGINAL CONTRACTOR. (a) Except as provided in  
13 Section 53.057 [~~, by Subchapter K, a claimant other than an original~~  
14 ~~contractor~~] a subcontractor claimant must give the notice  
15 prescribed by this section for the lien to be valid.

16 (b) For all unpaid labor or materials provided, the  
17 subcontractor claimant must send a notice of claim for unpaid labor  
18 or materials to the owner or reputed owner and the original  
19 contractor. The notice must be sent: [~~(b) If the lien claim arises~~  
20 ~~from a debt incurred by a subcontractor, the claimant must give to~~  
21 ~~the original contractor written notice of the unpaid balance. The~~  
22 ~~claimant must give the notice not later than the 15th day of the~~  
23 ~~second month following each month in which all or part of the~~  
24 ~~claimant's labor was performed or material delivered. The claimant~~  
25 ~~must give the same notice to the owner or reputed owner and the~~  
26 ~~original contractor not later than the 15th day of the third month~~  
27 ~~following each month in which all or part of the claimant's labor~~

1 ~~was performed or material or specially fabricated material was~~  
2 ~~delivered.]~~

3 (1) For projects other than residential construction  
4 projects, not later than the 15th day of the third month following  
5 the month during which the labor or materials were provided or the  
6 undelivered specially fabricated materials would normally have  
7 been delivered; or

8 (2) for residential construction projects, not later  
9 than the 15th day of the second month following the month during  
10 which the labor or materials were provided or the undelivered  
11 specially fabricated materials would normally have been delivered;

12 ~~[(c) If the lien claim arises from a debt incurred by the~~  
13 ~~original contractor, the claimant must give notice to the owner or~~  
14 ~~reputed owner, with a copy to the original contractor, in~~  
15 ~~accordance with Subsection (b).~~

16 ~~(d) To authorize the owner to withhold funds under~~  
17 ~~Subchapter D, the notice to the owner must state that if the claim~~  
18 ~~remains unpaid, the owner may be personally liable and the owner's~~  
19 ~~property may be subjected to a lien unless:~~

20 ~~(1) the owner withholds payments from the contractor~~  
21 ~~for payment of the claim; or~~

22 ~~(2) the claim is otherwise paid or settled.~~

23 ~~(e) The notice must be sent by registered or certified mail~~  
24 ~~and must be addressed to the owner or reputed owner or the original~~  
25 ~~contractor, as applicable, at his last known business or residence~~  
26 ~~address.~~

27 ~~(f) A copy of the statement or billing in the usual and~~

1 ~~customary form is sufficient as notice under this section.]~~

2 (c) The notice must be in substantially the following form:

3 NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

4 WARNING: This notice is provided to preserve lien rights.

5 Owner's property may be subject to a lien if sufficient funds  
6 are not withheld from future payments to the original contractor to  
7 cover this debt.

8 "Date:

9 "Project description and/or address:

10 "Claimant's name:

11 "Type of labor or materials provided:

12 "Original contractor's name:

13 "Party with whom Claimant contracted if different from  
14 Original Contractor:

15 "Claim amount:

16 " (Claimant's contact person)

17 " (Claimant's address)"

18 Any statement or billing may be included with this notice

19 SECTION 11. Section [53.057](#), Property Code, is amended to  
20 read as follows:

21 Sec. 53.057. ~~[DERIVATIVE]~~ SUBCONTRACTOR CLAIMANT: NOTICE  
22 OF CLAIM FOR UNPAID [CONTRACTUAL] RETAINAGE [CLAIM]. (a) To the  
23 extent that a claim for unpaid retainage is not included in whole  
24 or in part in a notice provided under section [53.056](#), a[A]  
25 subcontractor claimant whose contract provides for retainage must  
26 ~~[claimant may]~~ give notice under this section for the lien for  
27 unpaid retainage to be valid.

1        (b) The subcontractor claimant must send the notice of claim  
2 for unpaid retainage to the owner or reputed owner and the original  
3 contractor not later than the earlier of

4            (1) the 30th day after the date the subcontractor  
5 claimant's contract is completed, terminated, or abandoned or

6            (2) the 30th day after the date the original contract  
7 is terminated or abandoned. [~~instead of or in addition to notice~~  
8 under Section 53.056 or 53.252 if the claimant is to labor, furnish  
9 labor or materials, or specially fabricate materials, or has  
10 labored, furnished labor or materials or specially fabricated  
11 materials, under an agreement with an original contractor or a  
12 subcontractor providing for retainage.]

13        (c) The notice must be in substantially the following form:

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

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

19            ~~(2) the 30th day after the date the original contract~~  
20 ~~is terminated or abandoned.~~

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

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

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

1           ~~(2) if the agreement is with a subcontractor, the name~~  
2 ~~and address of the subcontractor.~~

3           ~~(d) The notice must be sent to the last known business or~~  
4 ~~residence address of the owner or reputed owner or the original~~  
5 ~~contractor, as applicable.~~

6           ~~(e) If a claimant gives notice under this section and~~  
7 ~~Section 53.055 or, if the claim relates to a residential~~  
8 ~~construction project, under this section and Section 53.252, the~~  
9 ~~claimant is not required to give any other notice as to the~~  
10 ~~retainage.~~

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

14           ~~(1) gives notice in accordance with this section and:~~

15                   ~~(A) complies with Subchapter E; or~~

16                   ~~(B) files an affidavit claiming a lien not later~~  
17 ~~than the earliest of:~~

18                           ~~(i) the date required for filing an~~  
19 ~~affidavit under Section 53.052;~~

20                           ~~(ii) the 40th day after the date stated in~~  
21 ~~an affidavit of completion as the date of completion of the work~~  
22 ~~under the original contract, if the owner sent the claimant notice~~  
23 ~~of an affidavit of completion in the time and manner required;~~

24                           ~~(iii) the 40th day after the date of~~  
25 ~~termination or abandonment of the original contract, if the owner~~  
26 ~~sent the claimant a notice of such termination or abandonment in the~~  
27 ~~time and manner required; or~~

1                   ~~(iv) the 30th day after the date the owner~~  
2 ~~sent to the claimant to the claimant's address provided in the~~  
3 ~~notice for contractual retainage, as required under Subsection (c),~~  
4 ~~a written notice of demand for the claimant to file the affidavit~~  
5 ~~claiming a lien; and~~

6                   ~~(2) gives the notice of the filed affidavit as~~  
7 ~~required by Section 53.055.~~

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

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

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

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

17                   "NOTICE OF CLAIM FOR UNPAID RETAINAGE

18                   "WARNING: This notice is provided to preserve lien rights.

19                   Owner's property may be subject to a lien if sufficient funds  
20 are not withheld from future payments to the original contractor to  
21 cover this debt.

22                   "Date:

23                   "Project description and/or address:

24                   "Claimant's name:

25                   "Type of labor or materials provided:

26                   "Original contractor's name:

27                   "Party with whom Claimant contracted if different from



1 Original Contractor

2 "Total retainage unpaid:

3 " (Claimant's contact person )

4 " (Claimant's address)"

5 Any statement or billing may be included with this notice

6 SECTION 12. Section 53.081, Property Code, is amended to  
7 read as follows:

8 Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF  
9 CLAIMANTS. ~~[(a)]~~ If an owner receives notice under Section 53.056  
10 or 53.057~~[, 53.058, 53.252, or 53.253]~~, the owner may withhold from  
11 payments to the original contractor an amount necessary to pay the  
12 claim for which the owner receives notice. Such withholding can be  
13 in addition to any retainage.

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

17 ~~(c) If notice is sent under Section 53.057, the owner may~~  
18 ~~withhold funds immediately on receipt of a copy of the claimant's~~  
19 ~~affidavit prepared in accordance with Sections 53.052 through~~  
20 ~~53.055.~~

21 ~~(d) If notice is sent under Section 53.058, the owner may~~  
22 ~~withhold funds immediately on receipt of the notices sent under~~  
23 ~~Subsection (c) of that section. If notice is sent as provided by~~  
24 ~~Section 53.253(b), the owner may withhold funds immediately on~~  
25 ~~receipt of the notice sent as required by Section 53.252.]~~

26 SECTION 13. Section 53.082, Property Code, is amended to  
27 read as follows:

1           Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. Unless  
2 [~~payment is made under Section 53.083 or~~] the claim is otherwise  
3 settled, discharged, indemnified against under Subchapter H or I,  
4 or determined to be invalid by a final judgment of a court, the  
5 owner shall retain the funds withheld until:

6           (1) the time for filing the affidavit of mechanic's  
7 lien has passed; or

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

10          SECTION 14. Section 53.084, Property Code, is amended to  
11 read as follows:

12          Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount  
13 [~~required to be retained~~] the owner fails to reserve under  
14 Subchapter E, the owner is not liable for any amount paid to the  
15 original contractor before the owner is authorized to withhold  
16 funds under this subchapter.

17          (b) If the owner has received [~~the~~] a notice[s] required by  
18 Section 53.056 or 53.057 [~~subchapter C or K~~], if the lien has been  
19 secured, and if the claim has been reduced to final judgment, the  
20 owner is liable and the owner's property is subject to a claim for  
21 any money paid to the original contractor after the owner was  
22 authorized to withhold funds under this subchapter. The owner is  
23 liable for that amount in addition to any amount for which he is  
24 liable under Subchapter E.

25          SECTION 15. The heading to Subchapter E, Chapter 53,  
26 Property Code is amended to read as follows:

27          SUBCHAPTER E. [~~REQUIRED RETAINAGE~~] FUNDS RESERVED FOR THE BENEFIT

OF LIEN CLAIMANTS

SECTION 16. Section 53.101, Property Code, is amended to read as follows:

Sec. 53.101. FUNDS REQUIRED [~~RETAINAGE~~] TO BE RESERVED.

(a) During the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work under such contract is completed, the owner shall [~~retain~~] reserve:

(1) 10 percent of the contract price of the work to the owner; or

(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

(b) In this section, "owner" includes the owner's agent, trustee, or receiver.

SECTION 17. Section 53.102, Property Code, is amended to read as follows:

Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS [~~BY RETAINAGE~~]. The [~~retained~~] reserved funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of the work.

SECTION 18. Section 53.103, Property Code, is amended to read as follows:

Sec. 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien

1 on the [~~retained~~] reserved funds if the claimant:

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

4 (2) except as allowed by Section 53.0527(d~~),~~ files an  
5 affidavit claiming a lien not later than the 30th day after the  
6 earliest of the date:

7 (A) the work is completed;

8 (B) the original contract is terminated; or

9 (C) the original contractor abandons performance  
10 under the original contract.

11 SECTION 19. Section 53.104, Property Code, is amended to  
12 read as follows:

13 Sec. 53.104. PREFERENCES. (a) Individual artisans and  
14 mechanics are entitled to a preference to the [~~retained~~] reserved  
15 funds and shall share proportionately to the extent of their claims  
16 for wages and fringe benefits earned.

17 (b) After payment of artisans and mechanics who are entitled  
18 to a preference under Subsection (a), other participating claimants  
19 share proportionately in the balance of the [~~retained~~] reserved  
20 funds.

21 SECTION 20. Section 53.105, Property Code, is amended to  
22 read as follows:

23 Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO [~~RETAIN~~]  
24 RESERVE FUNDS. (a) If the owner fails or refuses to comply with  
25 this subchapter, the claimants complying with Subchapter C or this  
26 subchapter have a lien, at least to the extent of the amount that  
27 should have been [~~retained~~] reserved from the original contract

1 under which they are claiming, against the [~~house, building,~~  
2 ~~structure, fixture, or~~] improvementss and all of its properties and  
3 against the lot or lots of land necessarily connected.

4 (b) The claimants share the lien proportionately in  
5 accordance with the preference provided by Section 53.104.

6 SECTION 21. Section 53.106, Property Code, is amended to  
7 read as follows:

8 Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may  
9 file with the county clerk of the county in which the property is  
10 located an affidavit of completion. The affidavit must contain:

- 11 (1) the name and address of the owner;  
12 (2) the name and address of the original contractor;  
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 improvements furnished  
17 under the original contract;

18 (5) a statement that the improvements under the  
19 original contract have been completed and the date of completion;  
20 and

21 (6) a conspicuous statement that a claimant may not  
22 have a lien on retained funds unless the claimant files an affidavit  
23 claiming a lien [~~not later than the 40th day after the date the work~~  
24 ~~under the original contract is completed~~] in the time and manner  
25 required by this chapter.

26 (b) A copy of the affidavit must be sent [~~by certified or~~  
27 ~~registered mail~~] to the original contractor, [~~not later than the~~

1 ~~date the affidavit is filed]~~ and to each claimant who sends a notice  
2 ~~[of lien liability]~~ to the owner under Sections 53.056 or ~~[~~  
3 53.057 ~~, 53.058, 53.252, or 53.253 not later than]~~ within three  
4 days after the date the affidavit is filed or the 10th day after the  
5 date the owner receives the notice of lien liability, whichever is  
6 later.

7 (c) A copy of the affidavit must also be sent to each person  
8 who furnishes labor or materials for the property and who furnishes  
9 the owner with a written request for the copy. The owner must  
10 furnish the copy to the person not later than the date the affidavit  
11 is filed or the 10th day after the date the request is received,  
12 whichever is later.

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

23 SECTION 22. Section 53.107 (a) and (b), Property Code, are  
24 amended to read as follows:

25 (a) Not later than the 10th day after the date an original  
26 contract is terminated or the original contractor abandons  
27 performance under the original contract, the owner shall give

1 notice to each subcontractor who, before the date of termination or  
2 abandonment, has:

3 (1) given notice to the owner as provided by Section  
4 53.056 or [~~7~~] 53.057 [~~7~~, ~~or~~ ~~53.058~~]; or

5 (2) sent to the owner [~~by certified or registered~~  
6 ~~mail~~] a written request for notice of termination or abandonment.

7 (b) The notice must contain:

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

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

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

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

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

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

19 (7) a conspicuous statement that a claimant may not  
20 have a lien on the retained funds unless the claimant files an  
21 affidavit claiming a lien [~~not later than the 40th day after the~~  
22 ~~date of the termination or abandonment~~] in the time and manner  
23 required by this chapter.

24 SECTION 23. Section 53.155, Property Code, is amended to  
25 read as follows:

26 Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house,~~  
27 ~~building,~~] improvement [~~, or any piece of railroad property~~] is

1 sold separately from the land, the officer making the sale shall  
2 provide [~~place~~] the purchaser [~~in possession. The purchaser is~~  
3 ~~entitled to~~] a reasonable time after the date of purchase within  
4 which to remove and take possession of the purchased [~~property~~]  
5 improvement.

6 SECTION 24. Section 53.157, Property Code, is amended to  
7 read as follows:

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

11 (1) recording a lien release signed by the claimant  
12 under Section 53.152;

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

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

19 (4) filing the bond and notice in compliance with  
20 Subchapter H;

21 (5) filing the bond in compliance with Subchapter I;  
22 or

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



1 SECTION 25. Section 53.158, Property Code, is amended to  
2 read as follows:

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

4 (a) Except as provided by Subsection (b), suit must be brought to  
5 foreclose the lien within ~~[two]~~ one year~~s~~ after the last day a  
6 claimant may file the lien affidavit under Section 53.052 ~~[or~~  
7 ~~within one year after completion, termination, or abandonment of~~  
8 ~~the work under the original contract under which the lien is~~  
9 ~~claimed, whichever is later].~~

10 (b) The limitations period established under Subsection (a)  
11 may be extended to not later than the second anniversary of the date  
12 the claimant filed the lien affidavit under Section 53.052 if,  
13 before the expiration of the limitations period established under  
14 Subsection (a), the claimant enters into a written agreement with  
15 the then-current record owner of the property to extend the  
16 limitations period. The agreement shall be recorded with the clerk  
17 of the same county where the lien was recorded and shall be deemed  
18 to be notice of such extension to any subsequent purchaser. [For a  
19 ~~claim arising from a residential construction project, suit must be~~  
20 ~~brought to foreclose the lien within one year after the last day a~~  
21 ~~claimant may file a lien affidavit under Section 53.052 or within~~  
22 ~~one year after completion, termination, or abandonment of the work~~  
23 ~~under the original contract under which the lien is claimed,~~  
24 ~~whichever is later.]~~

25 (c) Notwithstanding Section 16.069, Civil Practice and  
26 Remedies Code, or any other law, if suit is pursued solely to  
27 discharge a lien because limitations have expired to bring a lien

1 foreclosure suit, the lien claimant's rights to pursue a suit to  
2 foreclose a lien are not revived.

3 SECTION 26. Section 53.160(b)(1) and (c), Property Code,  
4 are amended to read as follows:

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

8 (1) notice of claim was not timely furnished to the  
9 owner or original contractor as required by Section 53.056 or [~~7~~  
10 53.057 , 53.058 , 53.252 , or 53.253 ];

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

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

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

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

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

22 (5) all funds subject to the notice of a claim to the  
23 owner and a notice regarding the retainage have been deposited in  
24 the registry of the court and the owner has no additional liability  
25 to the claimant;

26 (6) when the lien affidavit was filed on homestead  
27 property:

1 (A) no contract was executed or filed as required  
2 by Section 53.254;

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

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

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

9 (c) The claimant is not required to file a response. The  
10 claimant and any other party that has appeared in the proceeding  
11 must be notified by at least ~~[21]~~30 days before the date of the  
12 hearing on the motion. A motion may not be heard before the ~~[21st]~~  
13 30th day after the date the claimant answers or appears in the  
14 proceeding. The claimant will be allowed expedited discovery  
15 regarding information relevant to the issues listed in subsection  
16 (b).

17 SECTION 27. Section 53.173(c), Property Code, is amended to  
18 read as follows:

19 (c) The notice must be served on each obligee by mailing a  
20 copy of the notice and the bond to the obligee by certified ~~[United~~  
21 ~~States mail, return receipt requested,~~] addressed to the claimant  
22 at the address stated in the lien affidavit for the obligee.

23 SECTION 28. Section 53.205(a), Property Code, is amended to  
24 read as follows:

25 (a) The bond protects all persons with a claim that is:

26 (1) perfected in the manner prescribed for fixing a  
27 lien under Subchapter C ~~[or, if the claim relates to a residential~~

1 ~~construction project, under Subchapter K,~~] or

2 (2) perfected in the manner prescribed by Section  
3 53.206.

4 SECTION 29. Section 53.206, Property Code, is amended to  
5 read as follows:

6 Sec. 53.206. PERFECTION OF CLAIM. (a) To perfect a claim  
7 against a bond in a manner other than that prescribed by Subchapter  
8 C [~~or K~~] for fixing a lien, a person must [~~+~~

9 ~~(1)] give notice under Sections 53.056 and 53.057 to~~  
10 ~~the original contractor and surety on the bond, except as otherwise~~  
11 ~~provided in subsection (b). [all applicable notices under the~~  
12 ~~appropriate subchapter, and~~

13 ~~(2) give to the surety on the bond, instead of the~~  
14 ~~owner, all notices under the appropriate subchapter required to be~~  
15 ~~given to the owner.]~~

16 (b) To perfect a claim for retainage under this section, a  
17 [~~person~~] claimant is not required to [~~+~~

18 ~~(1)] give notice to the surety under Section 53.057 if~~  
19 ~~[, unless] the claimant has a direct contractual relationship with~~  
20 ~~the original contractor [and the agreed retainage is in excess of~~  
21 ~~10 percent of the contract.]~~

22 ~~(2) give notice to the surety under Section 53.058(b)~~  
23 ~~or, if the claim relates to a residential construction project,~~  
24 ~~under Section 53.253(c), or~~

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

26 (c) A claimant that provides the notices described herein  
27 need not file an affidavit claiming a mechanic's lien in order to

1 perfect its claim under the bond. [~~For the claim to be valid, a~~  
2 ~~person must give notice in the time and manner required by this~~  
3 ~~section, but the content of the notices need only provide fair~~  
4 ~~notice of the amount and the nature of the claim asserted.~~]

5 (d) A person satisfies the requirements of this section  
6 relating to providing notice to the surety if the person mails the  
7 notice by certified ~~or registered~~ mail to the surety:

8 (1) at the address stated on the bond or on an  
9 attachment to the bond;

10 (2) at the address on file with the Texas Department of  
11 Insurance; or

12 (3) at any other address allowed by law.

13 SECTION 30. Section 53.207(a), Property Code, is amended to  
14 read as follows:

15 (a) If the owner receives any of the notices or a lien is  
16 fixed under this chapter [~~Subchapter C or K~~], the owner shall mail  
17 to the surety on the bond a copy of all notices received.

18 SECTION 31. Section 53.208(a), Property Code, is amended to  
19 read as follows:

20 (a) A claimant may sue the principal and surety on the bond  
21 either jointly or severally, if [~~his~~] the claim remains unpaid for  
22 60 days after the claimant perfects the claim.

23 SECTION 32. Section 53.232, Property Code, is amended to  
24 read as follows:

25 Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien  
26 claimant must send written notice of his claim by [~~registered or~~]  
27 certified mail to:

1 (1) the officials of the state, county, town, or  
2 municipality whose duty it is to pay the contractor; and

3 (2) the contractor at the contractor's last known  
4 business or residence address.

5 SECTION 33. Section 53.238, Property Code, is amended to  
6 read as follows:

7 Sec. 53.238. NOTICE OF BOND. The official with whom the  
8 bond is filed shall send an exact copy of the bond by [~~registered~~  
9 ~~mail~~ or] certified mail, return receipt requested, to all  
10 claimants.

11 SECTION 34. The heading to Section 53.254, Property Code,  
12 is amended to read as follows:

13 Sec. 53.254. CONTRACTUAL REQUIREMENTS TO LIEN A HOMESTEAD.

14 SECTION 35. Section 53.254(g), Property Code, is amended to  
15 read as follows:

16 (g) For the lien on a homestead to be valid, the notice  
17 required to be given to the owner under Subchapter C [~~Section~~  
18 ~~53.252~~] must include or have attached the following statement:

19 "If a subcontractor or supplier who furnishes materials or  
20 performs labor for construction of improvements on your property is  
21 not paid, your property may be subject to a lien for the unpaid  
22 amount if:

23 (1) after receiving notice of the unpaid claim from  
24 the claimant, you fail to withhold payment to your contractor that  
25 is sufficient to cover the unpaid claim until the dispute is  
26 resolved; or

27 (2) during construction and for 30 days after

1 completion of your contractor's work [~~construction~~], you fail to  
2 [~~retain~~] reserve 10 percent of the contract price or 10 percent of  
3 the value of the work performed by your contractor.

4 "If you have complied with the law regarding the reservation  
5 of 10 percent of the contract price or value [~~retainage~~] and you  
6 have withheld payment to the contractor sufficient to cover any  
7 written notice of claim and have paid that amount, if any, to the  
8 claimant, any lien claim filed on your property by a subcontractor  
9 or supplier, other than a person who contracted directly with you,  
10 will not be a valid lien on your property. In addition, except for  
11 the required 10 percent [~~retainage~~] reservation, you are not liable  
12 to a subcontractor or supplier for any amount paid to your  
13 contractor before you received written notice of the claim."

14 SECTION 36. Section 53.255(b), Property Code, is amended to  
15 read as follows:

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

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

23 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may  
24 not require you to convey your real property to your contractor as a  
25 condition to the agreement for the construction of improvements on  
26 your property.

27 "KNOW YOUR CONTRACTOR. Before you enter into your agreement

1 for the construction of improvements to your real property, make  
2 sure that you have investigated your contractor. Obtain and verify  
3 references from other people who have used the contractor for the  
4 type and size of construction project on your property.

5 "GET IT IN WRITING. Make sure that you have a written  
6 agreement with your contractor that includes: (1) a description of  
7 the work the contractor is to perform; (2) the required or estimated  
8 time for completion of the work; (3) the cost of the work or how the  
9 cost will be determined; and (4) the procedure and method of  
10 payment, including provisions for statutory [~~retainer~~]  
11 reservation of funds and conditions for final payment. If your  
12 contractor made a promise, warranty, or representation to you  
13 concerning the work the contractor is to perform, make sure that  
14 promise, warranty, or representation is specified in the written  
15 agreement. An oral promise that is not included in the written  
16 agreement may not be enforceable under Texas law.

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



1 meaning of a document, consult an attorney.

2 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before  
3 construction commences, your contractor is required to provide you  
4 with a list of the subcontractors and suppliers the contractor  
5 intends to use on your project. Your contractor is required to  
6 supply updated information on any subcontractors and suppliers  
7 added after the list is provided. Your contractor is not required  
8 to supply this information if you sign a written waiver of your  
9 rights to receive this information.

10 "MONITOR THE WORK. Lenders and governmental authorities may  
11 inspect the work in progress from time to time for their own  
12 purposes. These inspections are not intended as quality control  
13 inspections. Quality control is a matter for you and your  
14 contractor. To ensure that your home is being constructed in  
15 accordance with your wishes and specifications, you should inspect  
16 the work yourself or have your own independent inspector review the  
17 work in progress.

18 "MONITOR PAYMENTS. If you use a lender, your lender is  
19 required to provide you with a periodic statement showing the money  
20 disbursed by the lender from the proceeds of your loan. Each time  
21 your contractor requests payment from you or your lender for work  
22 performed, your contractor is also required to furnish you with a  
23 disbursement statement that lists the name and address of each  
24 subcontractor or supplier that the contractor intends to pay from  
25 the requested funds. Review these statements and make sure that the  
26 money is being properly disbursed.

27 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if

1 a subcontractor or supplier who furnishes labor or materials for  
2 the construction of improvements on your property is not paid, you  
3 may become liable and your property may be subject to a lien for the  
4 unpaid amount, even if you have not contracted directly with the  
5 subcontractor or supplier. To avoid liability, you should take the  
6 following actions:

7 (1) If you receive a written notice from a  
8 subcontractor or supplier, you should withhold payment from your  
9 contractor for the amount of the claim stated in the notice until  
10 the dispute between your contractor and the subcontractor or  
11 supplier is resolved. If your lender is disbursing money directly  
12 to your contractor, you should immediately provide a copy of the  
13 notice to your lender and instruct the lender to withhold payment in  
14 the amount of the claim stated in the notice. If you continue to pay  
15 the contractor after receiving the written notice without  
16 withholding the amount of the claim, you may be liable and your  
17 property may be subject to a lien for the amount you failed to  
18 withhold.

19 (2) During construction and for 30 days after final  
20 completion, termination, or abandonment of the contract by the  
21 contractor, you should [~~withhold~~] reserve or cause your lender to  
22 [~~withhold~~] reserve 10 percent of the amount of payments made for the  
23 work performed by your contractor. [~~This is sometimes referred to~~  
24 ~~as 'statutory retainage.'~~] If you choose not to [~~withhold~~] reserve  
25 the 10 percent for at least 30 days after final completion,  
26 termination, or abandonment of the contract by the contractor and  
27 if a valid claim is timely made by a claimant and your contractor

1 fails to pay the claim, you may be personally liable and your  
2 property may be subject to a lien up to the amount that you failed to  
3 ~~[withhold]~~ reserve.

4 "If a claim is not paid within a certain time period, the  
5 claimant is required to file a mechanic's lien affidavit in the real  
6 property records in the county where the property is located. A  
7 mechanic's lien affidavit is not a lien on your property, but the  
8 filing of the affidavit could result in a court imposing a lien on  
9 your property if the claimant is successful in litigation to  
10 enforce the lien claim.

11 "SOME CLAIMS MAY NOT BE VALID. When you receive a written  
12 notice of a claim or when a mechanic's lien affidavit is filed on  
13 your property, you should know your legal rights and  
14 responsibilities regarding the claim. Not all claims are valid. A  
15 notice of a claim by a subcontractor or supplier is required to be  
16 sent, and the mechanic's lien affidavit is required to be filed,  
17 within strict time periods. The notice and the affidavit must  
18 contain certain information. All claimants may not fully comply  
19 with the legal requirements to collect on a claim. If you have paid  
20 the contractor in full before receiving a notice of a claim and have  
21 ~~[fully complied with the law regarding statutory retainage]~~  
22 withheld the ten percent of the price or value of work, you may not  
23 be liable for that claim. Accordingly, you should consult your  
24 attorney when you receive a written notice of a claim to determine  
25 the true extent of your liability or potential liability for that  
26 claim.

27 "OBTAIN A LIEN RELEASE AND A BILLS PAID AFFIDAVIT. When you

1 receive a notice of claim, do not release withheld funds without  
2 obtaining a signed and notarized release of lien and claim from the  
3 claimant. You can also reduce the risk of having a claim filed by a  
4 subcontractor or supplier by requiring as a condition of each  
5 payment made by you or your lender that your contractor furnish you  
6 with an affidavit stating that all bills have been paid. Under  
7 Texas law, on final completion of the work and before final payment,  
8 the contractor is required to furnish you with an affidavit stating  
9 that all bills have been paid. If the contractor discloses any  
10 unpaid bill in the affidavit, you should withhold payment in the  
11 amount of the unpaid bill until you receive a waiver of lien or  
12 release from that subcontractor or supplier.

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

24 (c) The failure of a contractor to comply with this section  
25 does not invalidate a lien under this chapter, a contract lien, or a  
26 deed of trust.

27 SECTION 37. Section [53.281\(b\)](#), Property Code, is amended to

1 read as follows:

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

5 (1) the waiver and release substantially complies with  
6 one of the forms prescribed by Section 53.284;

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

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

11 SECTION 38. The following provisions of the Property Code  
12 are repealed:

13 (1) Section 53.053;

14 (2) Section 53.058;

15 (3) Section 53.083;

16 (4) Section 53.252; and

17 (5) Section 53.253.

18 SECTION 39. The changes in law made by this Act apply only  
19 to an original contract entered into on or after the effective date  
20 of this Act. An original contract entered into before the effective  
21 date of this Act is governed by the law as it existed immediately  
22 before the effective date of this Act, and that law is continued in  
23 effect for that purpose.

24 SECTION 40. This Act takes effect September 1, 2021.