

PUBLICATION UPDATE

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The Complete Guide to Mechanic's and Materialman's Lien Laws of Texas

Publication 82598

Release 12

October 2008

HIGHLIGHTS

- Release 12 of The Complete Guide to Mechanic's and Materialman's Lien Laws of Texas includes revisions and updates, with new cases and commentary, to chapters 1, 2, 3, 4, 5, 6, and 8 in the treatise, on such topics as:
- Chapter 2 Current Mechanic's Lien Law: Chapter 53 of the Texas Property Code
- Chapter 3 Perfecting the Lien Under Chapter 53
- Chapter 5 Bonds

Chapter 2 — Current Mechanic's Lien Law: Chapter 53 of the Texas Property Code If a contractor only performs improvements for a tenant/lessee, but then files a mechanic's lien purporting to cover the full title owned by the landlord, the tenant/lessee nevertheless has standing to challenge the validity of the lien. *Ibarra v. Nicholes*, 2007 Tex. App. LEXIS 6197 (Tex. App.—Houston [1st Dist.] 2007, pet.

denied) (not designated for publication).

Chapter 3 — Perfecting the Lien Under Chapter 53 It is well-settled that a remaining dispute over attorney's fees remains a live, justiciable controversy. *Esau v. Robinson*, 2008 Tex. App. LEXIS 4260 (Tex. App.—Corpus Christi 2008, no pet.) (not designated for publication) (citing *McElroy v. City of Temple*, 208 S.W.3d 471, 474 (Tex. App.—Austin 2006, pet. denied); *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 642 (Tex. 2005)).

Preston Gate, LP v. Bukaty, 248 S.W.3d 892 (Tex. App.—Dallas 2008, no pet.) (applying Chapter 12 to abstract of judgment and holding no violation of Chapter 12 because there was no evidence of intent to cause injury in filing the judgment lien, notwithstanding that the default judgment supporting the abstract was obtained by service of process at an outdated address).

Chapter 5 — Bonds The “substantial compliance” standard does not go so far as

to excuse any sworn statement whatsoever, and thus a mere unsworn letter will not suffice. *Laboratory Design & Equipment, Inc. v. Brooks Development Authority*, 2008 Tex. App. LEXIS 3 (Tex. App.—San Antonio, no pet.) (not designated for publication).

A supplier or subcontractor may not sue under the Trust Fund Act of Chapter 162 of the Property Code, where the full contract amount is covered by a payment bond. *Scoggins Construction Company, Inc. v. Dealers Electrical Supply Co.*, 2007 Tex. App. LEXIS 9874 (Tex. App.—Corpus Christi 2007, pet. denied) (not designated for publication) (citing *Truckers, Inc. v. South Texas Construction Co.*, 561 S.W.2d 855, 859 (Tex. App.—Corpus Christi 1977,

no writ); *Econ. Forms Corp. v. Williams Bros. Construction Co.*, 754 S.W.2d 451, 457 (Tex. App.—Houston [14th Dist.] 1988, no writ)).

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