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

Publication 82598 Release 20

October 2016

## HIGHLIGHTS

- Release 20 of The Complete Guide to Mechanic's and Materialman's Lien Laws of Texas includes revisions and updates, with new cases and commentary on such topics as:
- Chapter 1 Constitutional and Equitable Liens
- Chapter 2 Current Mechanic's Lien Law: Chapter 53 of the Texas Property Code
- Chapter 3 Perfecting the Lien Under Chapter 53
- Chapter 4 Priorities, Preferences and Foreclosing the Lien
- Chapter 5 Bonds
- Chapter 6 Trust Fund Statute
- Chapter 7 Liens Against Mineral Property
- Chapter 8 Bankruptcy

**Chapter 1—Constitutional and Equitable Liens.** An improperly filed lien affidavit, in and of itself, fails to provide either

actual or constructive notice of the lien to subsequent purchasers claiming an interest in the same property. *In re Santoyo*, 540 B.R. 284, 290–91 (Bankr. S.D. Tex. 2015).

**Chapter 2—Current Mechanic's Lien Law: Chapter 53 of the Texas Property Code.** A recent decision from the Houston First District Court of Appeals has prescribed a limitation on the enforcement of mechanic's liens against subdivided lots owned by individual owners. In *Moore v. Brenham Ready Mix, Inc.*, 463 S.W.3d 109 (Tex. App.—Hous. [1st Dist.] 2015, no pet.), when the supplier delivered the materials, the land had already been replatted into 37 individual lots and the supplier was on notice of this fact. Citing what it called the “absurd and unreasonable results” which would follow if the supplier was allowed to enforce the entire dollar amount of the lien against just 2 or 3 out of 37 lots, the *Moore* court concluded that once the owner no longer treats the lots encumbered by a materialman's lien as one piece of

[property] by retaining ownership of the whole, then, although the lien is fixed upon the entire [property] and its scope extends to future purchasers, the value of the debt secured by any individual lot, or individual portion of the property divided and sold to another owner, must be proportioned to the percentage of the individual [property] or lot purchased relative to the entire [property] subject to the lien.

**Chapter 3—Perfecting the Lien Under Chapter 53.** As with other lien requirements, substantial compliance with the statutory procedures will be sufficient to perfect the lien claim. *Moore v. Brenham Ready Mix, Inc.*, 463 S.W.3d 109 (Tex. App.—Hous. [1st Dist.] 2015, no pet.) (citing *First Nat’l Bank in Graham v. Sledge*, 653 S.W.2d 283, 285 (Tex. 1983)). However, the derivative claimant’s notice to the owner and original contractor must be sent in writing. Evidence that either the owner or contractor had actual notice of a possible claim, such as through oral conversations, will not excuse a failure to send timely written notice under section 53.056. *Id.* (citing *Wesco Distrib., Inc. v. Westport Grp., Inc.*, 150 S.W.3d 553, 558 (Tex. App.—Austin 2004, no pet.)). Moreover, notice sent only to the owner will obviously not be sufficient; notice must be sent to both the owner and the original contractor. *Id.*

**Chapter 4—Priorities, Preferences and Foreclosing the Lien.** The mechanic’s lien is discharged by the recording of a release of lien signed by the claimant. *Roberts v. Dixon*, 2016 Tex. App. LEXIS 2449 (Tex. App.—Tyler 2016, no pet.). A release of lien, valid on its face, is a complete bar to any action by the former lienholder based on matters covered and discharged by the release. *Id.* (citing *MBank El Paso Nat’l Ass’n v. Featherlite Corp.*, 792 S.W.2d 472, 476 (Tex.

App.—El Paso 1990, writ denied)). Once waived or released, a statutory lien cannot be revived. *Id.* (citing *Apex Fin. Corp. v. Brown*, 7 S.W.3d 820, 830 (Tex. App.—Texarkana 1999, no pet.)). Moreover, if a contract refiles a mechanic’s lien after having previously executed a binding release, he will be subject to liability for filing a fraudulent lien under Chapter 12 of the Civil Practice and Remedies Code. *Id.*

**Chapter 5—Bonds.** Under Texas Government Code § 2253.001(9), a subcontractor is defined as a person, firm, or corporation that provides public work labor or material to fulfill an obligation to a prime contractor or to a subcontractor for the performance and installation of any of the work required by a public work contract. A recent opinion recently clarified the meaning of “public work material,” and held that there is no requirement that the materials have been actually used or consumed on the job in order to satisfy the definition. *Bond Restoration, Inc. v. Ready Cable, Inc.*, 462 S.W.3d 597, 600–01 (Tex. App.—Amarillo 2015, pet. denied). This is based on the statute’s definition of “public work material” as both “material used” as well as material “ordered and delivered for use.” *Id.* at 601 (citing Gov’t Code § 2253.001(6)). Further, the court held that there was no requirement of proof that the materials were delivered to the project site. The statute says nothing about delivery “at the project site,” but rather only requires that the material be “delivered” to either a prime contractor or subcontractor. The court noted: “requiring delivery at the project site would mean that the prime contractor could not personally collect the material from the supplier, and that seems to be a rather ridiculous restriction.” Therefore, the court rejected the proposition that “‘delivered for use’ means that the items must actually be delivered to the project site by

the entity seeking payment under § 2253.001” *Id.* at 601–02.

**Chapter 6—Trust Fund Statute.** The Texas Supreme Court has previously refused to extend personal jurisdiction over officers of a general contractor when there were insufficient contacts with Texas. In *Julian v. Cadence McShane Construction Company, LLC*, 2015 Tex. App. LEXIS 11490 (Tex. App.—Hous. [1st Dist.] 2015, no pet.), the court held that there was no personal jurisdiction in Texas against subcontractors under the Trust Fund Act where there was no evidence that the alleged Trust Fund Act violations occurred in Texas. General unrelated business activity in Texas is not necessarily enough to assert personal jurisdiction.

**Chapter 8—Bankruptcy.** Known as the trustee’s “strong-arm clause,” section 544 of the Bankruptcy Code clothes the trustee with “hypothetical lien creditor” status. Section 544 allows the avoidance of a transfer of real property that is not per-

fect and accordingly not enforceable against a bona fide purchaser at the time the bankruptcy petition is filed. *In re Santoyo*, 540 B.R. 284, 289 (Bankr. S.D. Tex. 2015). An unrecorded mechanic’s lien will not be enforced against a purchaser who acquires the property in good faith, for valuable consideration, and without notice, and therefore under § 544 the bankruptcy trustee is given the power of such a purchaser. *Id.*

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