

“LIEN” ON ME

By: Brandon K. Bains



Texas has long had one of the more confusing set of systems for perfection of a bond/lien claim. As most of you know, there are a number of different notice requirements under Chapter 2253 of the Texas Government Code when it comes to public works projects. The same is true of a subcontractor or supplier that is asserting a lien under Chapter 53 of the Texas Property Code for private projects (which could be bonded as well). Although complexities still remain, the Texas Legislature did make some fairly significant changes to the Property Code recently that impact perfection of a claim and other procedural aspects. This newsletter will address the greatest hits:

- 1. *Statute of limitations.*** Under the old system, a claimant generally had two years to file suit in order to foreclose a valid lien. The new law shortens this down to one year after the last date that a lien could be filed (which itself is several months after the work is last performed). Like most of the Property Code, there are caveats. First, this can be extended through agreement with the owner so long as that agreement is recorded in the real property records. Additionally, the time to sue a surety on a bond remains one year after the date of notice. Thus, one could argue that the change tries to bring the statute of limitations into some sort of conformity; there was always confusion as to when a claimant must sue, and there was no great reason why this was different when pursuing a bond claim versus simply seeking to foreclose a perfected lien.



Texas • Florida
Oklahoma • Arkansas

Texas

8813 N. Tarrant Parkway
Suite 224
North Richland Hills, TX 76182
(214) 722-7160

Florida

P.O. Box 654303
Miami, Florida 33265

info@l-llp.com

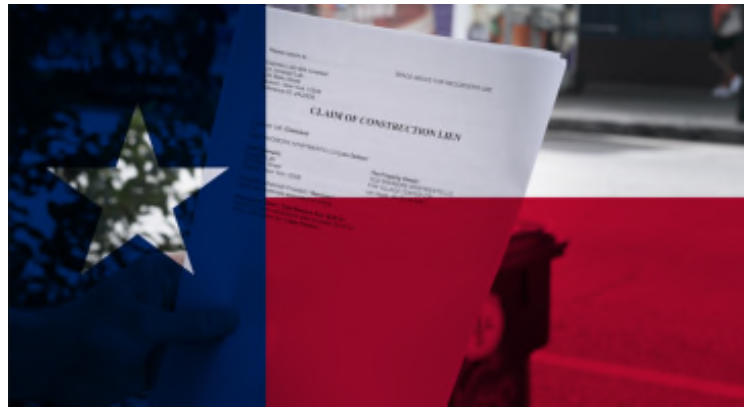
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To "Go Green", our firm uses recy-
clable paper or ceramic cups and
no longer uses Styrofoam cups. In
addition, we have adopted a
less-paper office environment.

We hope that these changes make
big differences in the future.

Well done is better than well said.

- Benjamin Franklin



2. **Less notice.** Like its Government Code counterpart, the Property Code previously required downstream subs and suppliers to send a second month notice to just the GC. This was somewhat of an interim condition precedent to the more traditional third month notice that would involve the GC and the owner (or in the case of a bonded project, the surety). The Legislature has removed that interim step and a second month notice is no longer required. From a practitioner standpoint, I welcome this change. There usually was a fight over the sufficiency of the second month notice, as claimants would argue that something as simple as an email with an invoice was sufficient for meeting the statutory requirement. The latest change will largely remove that dispute.

3. **Procedural nuances for notice.** Although these items are somewhat minor at first glance, they have a major impact when it comes to the timing and sufficiency of notice, which is critical when determining liability. Texas courts have eroded many of the procedural notice requirements via the doctrine of substantial compliance, but one thing that is still held sacred is timing. The Legislature has now clarified that if a deadline falls on a Saturday, Sunday, or legal holiday, it will be extended to the next business day. In addition, there are now new ways to send a notice. Instead of just being able to use certified mail, return receipt requested, parties can now elect to use FedEx or UPS, although the claimant would want to make sure that they are responsible for tracking. Honestly, I am not sure why a claimant would elect these methods, but the Legislature seems to think this is a good idea.

While perhaps not a greatest hit, I am pleased to report that the Legislature has also decided that a lien waiver no longer needs to be notarized. As someone on a mission to remove all notaries from every legal document, I take this as a minor personal victory.

Happy Summer to all!

Brandon K. Bains is a Partner at Langley LLP and may be contacted at bbains@l-llp.com.

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