

AMENDMENTS FROM 2011 LEGISLATIVE SESSION

Texas Property Code Chapter 53 - 2011 Legislative Amendments

Sec. 53.053. ACCRUAL OF INDEBTEDNESS. (a) For purposes of Section 53.052, indebtedness accrues on a contract under which a plan or plat is prepared, labor was performed, materials furnished, or specially fabricated materials are to be furnished in accordance with this section.

(b) Indebtedness to an original contractor accrues:

(1) on the last day of the month in which a written declaration by the original contractor or the owner is received by the other party to the original contract stating that the original contract has been terminated; or

(2) on the last day of the month in which the original contract has been completed, finally settled, or abandoned.

(c) Indebtedness to a subcontractor, or to any person not covered by Subsection (b) or (d), who has furnished labor or material to an original contractor or to another subcontractor accrues on the last day of the last month in which the labor was performed or the material furnished.

(d) Indebtedness for specially fabricated material accrues:

(1) on the last day of the last month in which materials were delivered;

(2) on the last day of the last month in which delivery of the last of the material would normally have been required at the job site; or

(3) on the last day of the month of any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

(e) A claim for retainage accrues on the earliest of the last day of the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, terminated, or abandoned.

Acts 1983, 68th Leg., p. 3539, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 5, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 851, Sec. 3, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 1, eff. September 1, 2011.

**

Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE FOR CONTRACTUAL RETAINAGE CLAIM.

(a) A claimant may give notice under this section instead of or in addition to notice under Section 53.056 or 53.252 if the claimant is to labor, furnish labor or materials, or specially fabricate materials, or has labored, furnished labor or materials, or specially fabricated materials, under an agreement with an original contractor or a subcontractor providing for retainage.

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

- (1) the 30th day after the date the claimant's agreement providing for retainage is completed, terminated, or abandoned; or
- (2) the 30th day after the date the original contract is terminated or abandoned.
- (b-1) If an agreement for contractual retainage is with a subcontractor, the claimant must also give the notice of contractual retainage to the original contractor within the period prescribed by Subsection (b).
- (c) The notice must generally state the existence of a requirement for retainage and contain:
 - (1) the name and address of the claimant; and
 - (2) if the agreement is with a subcontractor, the name and address of the subcontractor.
- (d) The notice must be sent to the last known business or residence address of the owner or reputed owner or the original contractor, as applicable.
- (e) If a claimant gives notice under this section and Section 53.055 or, if the claim relates to a residential construction project, under this section and Section 53.252, the claimant is not required to give any other notice as to the retainage.
- (f) A claimant has a lien on, and the owner is personally liable to the claimant for, the retained funds under Subchapter E if the claimant:
 - (1) gives notice in accordance with this section and:
 - (A) complies with Subchapter E; or
 - (B) files an affidavit claiming a lien not later than the earliest of:
 - (i) the date required for filing an affidavit under Section 53.052;
 - (ii) the 40th day after the date stated in an affidavit of completion as the date of completion of the work under the original contract, if the owner sent the claimant notice of an affidavit of completion in the time and manner required;
 - (iii) the 40th day after the date of termination or abandonment of the original contract, if the owner sent the claimant a notice of such termination or abandonment in the time and manner required; or
 - (iv) the 30th day after the date the owner sent to the claimant to the claimant's address provided in the notice for contractual retainage, as required under Subsection (c), a written notice of demand for the claimant to file the affidavit claiming a lien; and
 - (2) gives the notice of the filed affidavit as required by Section 53.055.
- (g) The written demand under Subsection (f)(1)(B)(iv):
 - (1) must contain the owner's name and address and a description, legally sufficient for identification, of the real property on which the improvement is located;
 - (2) must state that the claimant must file the lien affidavit not later than the 30th day after the date the demand is sent; and
 - (3) is effective only for the amount of contractual retainage earned by the claimant as of the day the demand was sent.

Acts 1983, 68th Leg., p. 3541, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 9, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 2, eff. September 1, 2011.

**

Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who furnishes labor or materials for the construction of improvements on real property shall, if requested and as a condition of payment for such labor or materials, provide to the requesting party, or the party's agent, an affidavit stating that the person has paid each of the person's subcontractors, laborers, or materialmen in full for all labor and materials provided to the person for the construction. In the event, however, that the person has not paid each of the person's subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each subcontractor, laborer, or materialman to whom the payment is owed.

(b) The seller of any real property shall, upon request by the purchaser or the purchaser's agent prior to closing of the purchase of the real property, provide to the purchaser or the purchaser's agent, a written affidavit stating that the seller has paid each of the seller's contractors, laborers, or materialmen in full for all labor and materials provided to the seller through the date specified in the affidavit for any construction of improvements on the real property and that the seller is not indebted to any person, firm, or corporation by reason of any such construction through the date specified in the affidavit. In the event that the seller has not paid each of the seller's contractors, laborers, or materialmen in full for labor and material provided through the date specified in the affidavit, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each contractor, laborer, or materialman to whom the payment is owed.

(c) The affidavit may include:

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

(2) a warranty or representation that certain bills or classes of bills will be paid by the affiant from funds paid in reliance on the affidavit; and

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

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

(e) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit.

Added by Acts 1987, 70th Leg., ch. 578, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 14, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 2, eff. January 1, 2012.

**

Sec. 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien on the retained funds if the claimant:

- (1) sends the notices required by this chapter in the time and manner required; and
- (2) except as allowed by Section 53.057(f), files an affidavit claiming a lien not later than the 30th day after the earliest of the date:
 - (A) the work is completed;
 - (B) the original contract is terminated; or
 - (C) the original contractor abandons performance under the original contract.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2005, 79th Leg., Ch. 1003, Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 3, eff. September 1, 2011.

**

Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RETAIN. (a) If the owner fails or refuses to comply with this subchapter, the claimants complying with Subchapter C or this subchapter have a lien, at least to the extent of the amount that should have been retained from the original contract under which they are claiming, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected. (b) The claimants share the lien proportionately in accordance with the preference provided by Section 53.104.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 13.02, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 17, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 4, eff. September 1, 2011.

**

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

- (1) the name and address of the owner;
- (2) the name and address of the original contractor;
- (3) a description, legally sufficient for identification, of the real property on which the improvements are located;
- (4) a description of the improvements furnished under the original contract;
- (5) a statement that the improvements under the original contract have been completed and the date of completion; and
- (6) a conspicuous statement that a claimant may not have a lien on retained funds unless the

claimant files an affidavit claiming a lien not later than the 40th day after the date the work under the original contract is completed.

(b) A copy of the affidavit must be sent by certified or registered mail to the original contractor not later than the date the affidavit is filed and to each claimant who sends a notice of lien liability to the owner under Section 53.056, 53.057, 53.058, 53.252, or 53.253 not later than the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later.

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

(d) Except as provided by this subsection, an affidavit filed under this section on or before the 10th day after the date of completion of the improvements is prima facie evidence of the date the work under the original contract is completed for purposes of this subchapter and Section 53.057. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter and Section 53.057 is the date the affidavit is filed. This subsection does not apply to a person to whom the affidavit was not sent as required by this section.

(e) Repealed by Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 18, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 5, eff. September 1, 2011.

**

Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER.

(a) Not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, the owner shall give notice to each subcontractor who, before the date of termination or abandonment, has:

(1) given notice to the owner as provided by Section 53.056, 53.057, or 53.058; or
(2) sent to the owner by certified or registered mail a written request for notice of termination or abandonment.

(b) The notice must contain:

(1) the name and address of the owner;
(2) the name and address of the original contractor;
(3) a description, legally sufficient for identification, of the real property on which the improvements are located;
(4) a general description of the improvements agreed to be furnished under the original contract;
(5) a statement that the original contract has been terminated or that performance under the contract has been abandoned;
(6) the date of the termination or abandonment; and

(7) a conspicuous statement that a claimant may not have a lien on the retained funds unless the claimant files an affidavit claiming a lien not later than the 40th day after the date of the termination or abandonment.

(c) A notice sent in compliance with this section on or before the 10th day after the date of termination or abandonment is prima facie evidence of the date the original contract was terminated or work was abandoned for purposes of this subchapter.

(d) If an owner is required to send a notice to a subcontractor under this section and fails to send the notice, the subcontractor is not required to comply with Section 53.057 to claim retainage and may claim a lien by filing a lien affidavit as prescribed by Section 53.052.

(e) This section does not apply to a residential construction project.

Added by Acts 2005, 79th Leg., Ch. 1003, Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 6, eff. September 1, 2011.

**

Sec. 53.156. COSTS AND ATTORNEY'S FEES. In any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H, I, or J or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just. With respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 4(a), eff. Oct. 2, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 22, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 51, Sec. 1, eff. September 1, 2011.

**

Sec. 53.159. OBLIGATION TO FURNISH INFORMATION. (a) An owner, on written request, shall furnish the following information within a reasonable time, but not later than the 10th day after the date the request is received, to any person furnishing labor or materials for the project:

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

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

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

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

(b) An original contractor, on written request by a person who furnished work under the original contract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of the person to whom the original contractor furnished

labor or materials for the construction project;

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

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

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

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

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

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

(d) Not later than the 30th day after the date a written request is received from the owner, the contractor under whom a claim of lien or under whom a bond is made, or a surety on a bond on which a claim is made, a claimant for a lien or under a bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.

(e) If a person from whom information is requested does not have a direct contractual relationship on the project with the person requesting the information, the person from whom information is requested, other than a claimant requested to furnish information under Subsection (d), may require payment of the actual costs, not to exceed \$25, in furnishing the requested information.

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

(g) A subcontractor who does not receive information requested under Subsection (a)(4) within the period prescribed by Subsection (a) is not required to comply with Section 53.057 and may perfect a lien for retainage by filing a lien affidavit under Section 53.052. This subsection expires September 1, 2013.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 7, eff. September 1, 2011.

**

Sec. 53.160. SUMMARY MOTION TO REMOVE INVALID OR UNENFORCEABLE LIEN.

(a) In a suit brought to foreclose a lien or to declare a claim or lien invalid or unenforceable, a party objecting to the validity or enforceability of the claim or lien may file a motion to remove the claim or lien. The motion must be verified and state the legal and factual basis for objecting to the validity or enforceability of the claim or lien. The motion may be accompanied by supporting affidavits.

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

(1) notice of claim was not furnished to the owner or original contractor as required by Section 53.056, 53.057, 53.058, 53.252, or 53.253;

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

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

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

(A) the claimant perfected the lien claim; and

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

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

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

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

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

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

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

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

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

(1) the claimant to prove that the notice of claim and affidavit of lien were furnished to the owner and original contractor as required by this chapter; and

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

(e) The court shall promptly determine a motion to remove a claim or lien under this section. If the court determines that the movant is not entitled to remove the lien, the court shall enter an order denying the motion. If the court determines that the movant is entitled to remove the lien, the court shall enter an order removing the lien claimed in the lien affidavit. A party to the proceeding may not file an interlocutory appeal from the court's order.

(f) Any admissible evidence offered at the hearing may be admitted in the trial of the case. The

court's order under Subsection (e) is not admissible as evidence in determining the validity and enforceability of the claim or lien.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499, Sec. 8, eff. September 1, 2011.

**

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a)

Any waiver and release of a lien or payment bond claim under this chapter is unenforceable unless a waiver and release is executed and delivered in accordance with this subchapter.

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

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

(2) the waiver and release is signed by the claimant or the claimant's authorized agent and notarized; and

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

**

Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to waive, release, or otherwise adversely affect a lien or payment bond claim is not enforceable and does not create an estoppel or impairment of a lien or payment bond claim unless:

(1) the statement is in writing and substantially complies with a form prescribed by Section 53.284;

(2) the claimant has actually received payment in good and sufficient funds in full for the lien or payment bond claim; or

(3) the statement is:

(A) in a written original contract or subcontract for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex; and

(B) made before labor or materials are provided under the original contract or subcontract.

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

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

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

(c) Subsection (a)(3) does not apply to a person who supplies only material, and not labor, for

the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

**

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

**

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

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

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

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

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

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above

referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

" _____ (Company name)

"By _____ (Signature)

" _____ (Title)"

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

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

"NOTICE:

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

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

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

following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

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

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

"Date _____

" _____ (Company name)

"By _____ (Signature)

" _____ (Title)"

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

"CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

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

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

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

"Date _____

" _____ (Company name)

"By _____ (Signature)

" _____ (Title)"

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

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

"NOTICE:

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

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

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

"Date _____

" _____ (Company name)

"By _____ (Signature)

" _____ (Title)"

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

For expiration of this section, see Subsection (c).

**

Sec. 53.285. ATTEMPTED COMPLIANCE. (a) A waiver or release shall be construed to comply with this subchapter and is enforceable in the same manner as a waiver and release under this subchapter if the waiver or release:

- (1) is furnished in attempted compliance with this subchapter; or
 - (2) evidences by its terms intent to comply with this subchapter.
- (b) Any provision in any waiver or release furnished in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this subchapter shall be disregarded and the provisions of this subchapter shall be read into that waiver or release.
- (c) This section expires August 31, 2012.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien or claim created under this chapter is void as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter does not apply to a written agreement to subordinate, release, waive, or satisfy all or part of a lien or bond claim in:

- (1) an accord and satisfaction of an identified dispute;
- (2) an agreement concerning an action pending in any court or arbitration proceeding; or
- (3) an agreement that is executed after an affidavit claiming the lien has been filed or the bond claim has been made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271, Sec. 3, eff. January 1, 2012.

**

Texas Government Code Chapter 2253 - 2011 Legislative Amendments

Sec. 2253.021. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) A governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity:

- (1) a performance bond if the contract is in excess of \$100,000; and
- (2) a payment bond if:
 - (A) the contract is in excess of \$25,000, and the governmental entity is not a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code; or
 - (B) the contract is in excess of \$50,000, and the governmental entity is a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code.

(b) The performance bond is:

- (1) solely for the protection of the state or governmental entity awarding the public work contract;
- (2) in the amount of the contract; and
- (3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

(c) The payment bond is:

- (1) solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and
- (2) in the amount of the contract.

(d) A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

(e) A bond executed for a public work contract with the state or a department, board, or agency of the state must be payable to the state and its form must be approved by the attorney general. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity.

(f) A bond required under this section must clearly and prominently display on the bond or on an attachment to the bond:

- (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.
- (g) A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.
- (h) A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under this section. In this subsection, "reverse auction procedure" has the meaning assigned by Section 2155.062 or a procedure similar to that described by Section 2155.062.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.43(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 380, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 614, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(86), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 11.122, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1304, Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129, Sec. 1.01, eff. September 1, 2011.