

Mechanic's & Materialman's Lien Basics for the Consumer Lawyer

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Homeowner vs. Contractor

- Beware the Hurricane Season and the Roofing Contractors who follow
- Contractor's Rights are (surprisingly?) robust.
- So why are mechanic's lien foreclosures so rare?
 - Small stakes
 - Shoddy contractors are shoddy at perfecting liens too
- Primary use of lien: threat

The Constitutional Lien

- Constitutional Lien is established:
 - if the contractor has **privity of contract** with the owner of the building or article; and
 - the contractor **made or repaired** the building or article, and or **supplied goods incorporated** into the construction or repair of the building or article.

Constitutional Lien

- Most contractors will qualify as “mechanic, artisan, or materialman.”
 - If the court can’t quite understand what you do, maybe not.
- The work must be done upon a “building”
 - A home is a building
 - Things attached to the home/building qualify
 - Sewer lines/water pipes /road construction on a lot? Nope.
 - The well outside? Nope.

Enforcing the Constitutional Lien

- “Automatic” and “Self-Executing”
 - No messy notice or lien filing requirements.
- Other than establishing the existence of the debt and the fact of the work performed, no jury question
 - No quibbling over value of services or costs of materials
- Other defenses to underlying obligation, such as statute of limitations, still apply.

Constitutional vs. Statutory Lien

- Constitutional Lien is a very powerful tool for contractors who have a written contract with the owner.
- Homeowners beware: your contractor may have a lien on your house even without providing you with notice.
- Statutory Lien Advantages: lien preference or priority, applies against subsequent purchasers of property

Statutory Lien

- Chapter 53 of the Property Code
- Contract directly with the owner? If so:
 - File affidavit with county clerk no later than the 15th day of the 3rd month after indebtedness accrues
 - “accrues” when contractor provides notice of completion, or
 - Last day of the month in which work stopped

Statutory Lien Affidavit

- Property Code Section 53.054 sets forth the technical requirements:
 - (a)(1) “sworn statement” of claim – which requires an additional signed jurat inside the affidavit in addition to the acknowledgment at the end of the affidavit
 - (a) (3) Statement, broken down by month, of work done and/or materials furnished
 - (a) (6) “legally sufficient” description of the property

Statutory Lien Affidavit

- Note: only “substantial compliance” with the statute is required.
- The lien statute is liberally construed for the purpose of protecting laborers and materialmen:
 - If a court can find a way to enforce a lien, expect that it will...

Statutory Lien for Subcontractors

- Don't have a contract with the owner?
- “derivative claimants” must comply with the above affidavit requirements and much more.
- Also must provide “trapping notice” prior to filing of affidavit (Section 53.252):
 - 15th day of the second month in which all or part of the labor was provided.
 - Contents of notice are highly technical, especially for residential construction (Subchapter K)

Enforcing the Statutory Lien

- Lien enforced by judicial foreclosure
- One year to foreclose a lien on residential property
 - runs from last day to file the affidavit, or within one year of “completion” whichever is later.
- Burden is on the claimant to prove the contract, the location of the property, and the perfection of the lien.
- Court may award reasonable attorneys fees as are “equitable and just.”

The Homestead Exemption

- Homestead Rights are “liberally construed to protect the homestead.”
- But, the Texas Constitution and Property Code have carved out an exception for work done on the homestead where:
 - Repairs or improvements were made to the homestead, and
 - Written contract will **all the owners of the property** executed, prior to commencement of work.

Challenging a Lien

- Property Code Section 53.160: may bring suit and file a summary motion to declare a lien invalid or unenforceable.
 - May be awarded attorneys fees
- Civil Practice and Remedies Code § 12.002: the knowing filing of a false lien should be a violation of this section, with potential for recovery of \$10K and/or actual damages, costs and fees, and exemplary damages.

Useful Resources

- Texas Property Code, Chapter 53, “Mechanic’s, Contractor’s, or Materialman’s Lien.”
- *The Complete Guide to Mechanic’s and Materialman’s Lien Laws of Texas*, Fifth Edition, Steves and Barnes, 2008, Matthew Bender and Company.