

10 Simple Mechanic's Lien Rules for Contractors and Subcontractors Doing Construction Business in the State of Texas

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1. Section 53.159 of the **Texas Property Code** imposes duties on Owners, Prime Contractors and Subcontractors to provide information to persons requesting information about a construction project. Owners are required to provide any potential lien claimant: (1) a legal description of the property; and (2) the name and address of any person having a prior recorded lien on the property; and (3) the name and address of the Surety, if any.
2. A Prime Contractor on a **Public Works** project for the state is required to provide a **Payment Bond** for all projects greater than \$25,000. For **Public Works** projects under \$25,000, a Subcontractor may file a lien for the funds due to the Prime Contractor from the governmental entity.
3. **Federal Public Works** projects over \$100,000 are governed by the **MILLER ACT**, which requires Prime Contractors to provide a bond guarantying payment for Subcontractors providing labor or materials.
4. Lien rights are available beyond the Prime Contractor to Subcontractors, Materialmen, Laborers, Architects, Engineers and Surveyors.
5. **Attorney fees** can be included on an **Affidavit for Mechanic's Lien**.
6. **Residential construction** by Texas Property Code means the construction or repair of a new or existing single family house, duplex, triplex, quadruplex or a unit in a multi-unit structure used for residential purposes that is (1) owned by one or more adult persons, and (2) used or intended to be used as a dwelling by one of the owners.
7. When construction work is done for a **Tenant** who is not the Owner within a strip shopping center, mall or office building, Prime Contractors and Subcontractors may only perfect a **Affidavit for Mechanic's Lien** against physical property on the premises that are owned by the Tenant.
8. An **Affidavit for Mechanic's Lien** (Residential Construction) must be filed by the 15th day of the third calendar month after the last day of the month in which material or labor is furnished. A **Affidavit for Mechanic's Lien** (Commercial Construction) must be filed by the 15th day of the fourth calendar month after the last day of the month in which material or labor is furnished. The **Affidavit for Mechanic's Lien** must be sent by Certified Mail to both the Owner and the Prime Contractor.
9. All Owners of a property being improved are required to retain ten percent (10%) of the original contract amount to satisfy lien claims. An Owner is also required to withhold payments to the Prime Contractor in the amount necessary to pay all lien claims for which he receives a **Affidavit for Mechanic's Lien**.
10. **Mechanic's Liens** take priority over other liens filed on the property after the commencement of construction. A **Deed of Trust** previously filed by a lender takes priority over any **Mechanic's Liens**.