

## **AN OVERVIEW OF THE TEXAS STATUTORY LIENS AVAILABLE TO CREDITORS**

This paper addresses the statutory liens created by the imposition of Texas law, as opposed to the voluntary contractual liens created by agreement of the parties.

Attached to this paper are copies of the Texas statutory liens. Many of these liens are narrow in scope and apply only in limited circumstances. The purpose of this paper is to provide an awareness of the different types of statutory liens available to creditors under Texas law.

### **I. CONTRACTUAL LIENS AS COMPARED TO STATUTORY LIENS**

#### **A. Definition of Liens**

A lien is a charge on the property of another person for the payment or discharge of a debt or obligation owed by the other person. A lien is an independent claim creating and existing as a security interest for some obligation. A lien does not confer or convey title to the other person's property. *Bankers Home Bldg. & Loan Ass'n. v. Wyatt*, 139 Tex. 173, 162 S.W.2d 694 (Tex. 1942). A lien exists distinctly from the claim, debt, or obligation that it secures. *University Savings and Loan Ass'n. v. Security Lumber Company*, 423 S.W.2d 287 (Tex. 1967). A lien is merely an incident of the underlying claim or obligation. *Western M & I Company v. Jackman*, 77 Tex. 622, 14 S.W. 305 (Tex. 1890); *Inesco, Inc. v. Sears*, 567 S.W.2d 827 (Tex. App. -- Beaumont 1978, writ ref'd n.r.e.). Liens, as legal rights, are created only by contract or by operation of law. *Horton v. Gibson*, 274 S.W. 292

(Tex. Civ. App. 1925, no writ). Liens that arise by operation of law are broadly classified depending from the source from which they are derived. *Williams v. Greer*, 122 S.W.2d 247 (Tex. Civ. App. 1938, no writ). Those three categories include common law liens, equitable liens, and statutory liens. *Ward v. McKenzie*, 33 Tex. 297 (Tex. 1870).

This paper describes those liens that arise from and take effect by operation of statute. The description of each of these statutes will be broken into three subtopics.

1. The creation and effect of the lien;
2. Waiver and a discharge of the lien;
3. Enforcement of the lien.

Before embarking on the description of the statutory liens, it may be helpful to understand how contractual liens are created, discharged, and enforced. The Texas statutes creating liens do not affect the right to create a lien by special contract or agreement. Tex. Prop. Code § 51.001(1).

A lien may be created by a contract where the language of the agreement or the surrounding circumstances clearly indicate that the parties intended to create a lien. An instrument creating a lien is a conveyance. While the instrument does not convey title to the property, it does convey an encumbrance upon title to the property by giving the lienholder a security interest. Therefore, like other conveyances, liens may be subject to the Statute of Frauds. A lien on real estate must be evidenced by a written instrument unless a statute or the Constitution provides otherwise. Except where governed by the Uniform Commercial Code, a lien on personal property may

arise from and be proven by oral statements, conduct, custom and usage, and other parole evidence. *Edinburg Theaters, Inc. v. Raicheter*, 367 S.W.2d 354 (Tex. Civ. App. -- San Antonio 1963, no writ).

### **B. Who May Create a Contractual Lien**

A contractual lien on property can only be created by the owner of the encumbered property. *Continental Credit Corp. v. Norman*, 303 S.W.2d 449 (Tex. Civ. App. -- San Antonio 1957, writ ref'd n.r.e.). Additionally, a lien only exists if it is incident to a debt. However, while the lien may only encumber property owned by the person granting the lien, the debt which the lien secures need not be that of the owner of the property. *Hodges v. Roberts*, 74 Tex. 517, 12 S.W. 222 (Tex. 1889). Additionally, the debt need be connected with the property encumbered. *Dabney v. Schutze*, 228 S.W. 176 (Tex. Com. App. 1921). Unless the parties explicitly contract otherwise, a lien only encumbers property in existence and owned by the owner of the property at the time the lien contract is executed. However, the parties may contract to create a lien that attaches to after-acquired property. Additionally, unless the contract specifies otherwise, a lien does not attach to the proceeds of a sale of the encumbered property.

A lienholder may not enforce the lien against a bona fide purchaser of the encumbered property. *Coleman v. Dunman*, 67 Tex. 390, 3 S.W. 319 (Tex. 1887). The lien may be enforced against a third-party who purchases the encumbered property with actual or constructive notice of the lien. *Edinburg Theaters*, 67 S.W.2d at 354; *Continental Radio Company v. Continental Bank and Trust Company*, 369

S.W.2d 359 (Tex. Civ. App. -- Houston [1st Dist.] 1963, writ ref. n.r.e.). One who purchases the encumbered property and assumes the seller's indebtedness takes the property subject to the lienholder's security interest and remains personally liable for the seller's indebtedness. *Continental State Bank v. Trabue*, 150 S.W. 209 (Tex. Civ. App. -- 1912, writ ref.). However, a purchaser of encumbered land may escape personal liability on the underlying debt by not assuming the debt. *Garza v. Hammond*, 39 S.W. 610 (Tex. Civ. App. -- 1897, writ ref.).

Contract liens, which include mortgages and deeds of trust, take effect only from the moment of execution and have no retroactive effect. *Lippencott v. York*, 86 Tex. 276, 24 S.W. 275 (Tex. 1893).

### **C. Priorities of Contractual Liens**

Conflicts may arise when several lienholders hold liens on the same piece of property. The rules of priority govern resolution of these conflicts. The general rule is "first in time, first in right." Otherwise stated, lienholders who hold different liens on the same property have priority in the order of creation. Several exceptions exist under the law that mitigate this rule. First, priorities may be altered by statutory recordation requirements. These recordation statutes deprive prior lienholders of protection if they do not record their lien prior to the execution of a subsequent lien. Second, a superior lienholder may contractually subordinate its lien to that of a junior lienholder. These subordination agreements will be enforced if the intent of the superior lienholder to subordinate its lien is clearly expressed. *Vahlsing Christina Corp. v. First National Bank*, 491 S.W.2d 954 (Tex. Civ. App. -- El Paso 1973, writ

ref'd n.r.e.). Third, the legislature may provide that a statutory lien takes priority over prior contractual liens where the purpose of the statutory lien is to secure an obligation necessary to preserve the property. *Texas Bank and Trust Company v. Smith*, 105 Tex. 265, 192 S.W. 533 (Tex. 1917). Fourth, Federal law may control the priority of liens authorized by federal statute. Finally, under the doctrine "marshaling of assets," a lienholder holding liens on two parcels of property securing one debt must satisfy that lien on the parcel of property not encumbered by other subsequent liens, wherever applicable and possible.

Recordation requirements are the most common mitigation of the above-mentioned rule. Lien recordation statutes were enacted to protect bona fide purchasers who give value in exchange for a debt and a lien without knowledge that a prior lien existed. Prior lienholders may protect their priority by promptly recording the execution of their liens. This provides subsequent creditors with a means of acquiring knowledge that the security for their debt is subject to that of another.

A lien continues in existence until it is satisfied or terminated in some manner recognized by law. *Sixty-Seven Properties v. Cutsinger*, 536 S.W.2d 268 (Tex. App. -- Corpus Christi 1976, no writ). The sale of encumbered property does not extinguish a lien. *Continental State Bank*, 150 S.W. 209. A lienholder may waive the lien if they consent to an absolute sale of the property. However, a lienholder may require that the seller grant the lienholder an enforceable lien on the proceeds of the sale as a condition of its consent to the sale. *Permian Petroleum Company v. Barrow*, 484 S.W.2d 631 (Tex. Civ. App. -- El Paso 1972, no writ). If the lien

depends on the lienholders possession of the property, the lien may be waived if the lienholder voluntarily surrenders possession of the property back to its owner. *Coldwell v. Auto Sales and Supply Company*, 158 S.W. 1030 (Tex. Civ. App. -- 1913, no writ).

Payment of the underlying debt discharges the lien securing the debt. *Milburn v. Athans*, 190 S.W.2d 388 (Tex. Civ. App. -- Fort Worth 1945, writ dism'd w.o.j.). *Train Company v. Worthum*, 428 S.W.2d 417 (Tex. Civ. App. -- Houston [1st Dist.] 1968, writ ref., n.r.e.).

#### **D. Enforcement of Contractual Liens**

In the absence of a statutory or contractual provision stating otherwise, a lienholder's sole remedy to enforce the lien is a judicial proceeding called foreclosure. Foreclosure extinguishes all right, title, or interest, if any, of defendant's in the property. *Southwestern Peanut Growers Association v. Womack*, 179 S.W.2d 371 (Tex. Civ. App. -- Eastland 1944, no writ). The Texas Rules of Civil Procedure govern the foreclosure of mortgages and other contractual liens. TRCP 309, 310. The statutory liens described in this paper generally have their own unique foreclosure procedures as well. When a debt is evidenced by a note and secured by a lien, the note and lien constitute separate obligations. The creditor may file suit on the note to obtain a personal judgment and later file suit on the lien if the personal judgment is not satisfied. *Taylor v. Rigby*, 574 S.W.2d 833 (Tex. Civ. App. -- Tyler 1978, writ ref. n.r.e.).

## **II. STATUTORY LIENS**

Texas statutes create the following types of liens:

1. Judgment Liens, Tex. Prop. Code §§ 52.001-52.043; (attached at **Tab 1, Pages 1-7**)
2. Liens incident to writs of attachment, Tex. Civ. Prac. & Rem. Code §§ 61.061-61.063; (attached at **Tab 2, Page 1**)
3. Mechanic and Materialmen Liens, Tex. Prop. Code §§ 53.001-53.260; (attached at **Tab 3, Pages 1-42**)
4. Agricultural Landlord's Lien, Tex. Prop. Code §§ 54.001-54.007; (attached at **Tab 4, Pages 1-3**)
5. Building Landlord's Lien, Tex. Prop. Code §§ 54.021-54.025; (attached at **Tab 5, Pages 1-2**)
6. Residential Landlord's Lien, Tex. Prop. Code §§ 54.041-54.048; (attached at **Tab 6, Pages 1-4**)
7. Hospital Liens, Tex. Prop. Code §§ 55.001-55.008; (attached at **Tab 7, Pages 1-4**)
8. Liens against mineral property, Tex. Prop. Code §§ 56.001-56.045; (attached at **Tab 8, Pages 1-5**)
9. Railroad Laborer's Lien, Tex. Prop. Code §§ 57.001-57.006; (attached at **Tab 9, Page 1-2**)
10. General Laborer Liens, Tex. Prop. Code §§ 58.001-58.009; (attached at **Tab 10, Pages 1-3**)

11. Self Service Storage Facility Liens, Tex. Prop. Code §§ 59.001-59.046; (attached at **Tab 11, Pages 1-5**)
12. Newspaper Employee's Lien, Tex. Prop. Code §§ 60.001-60.002; (attached at **Tab 12, Page 1**)
13. Motor Vehicle Mortgagee's Lien, Tex. Prop. Code §§ 61.001-61.005; and (attached at **Tab 13, Pages 1-2**)
14. Miscellaneous Liens, Tex. Prop. Code Ch. 70. (attached at **Tab 14, Pages 1-9**)
  - a. Stable Keepers, Garagemen's, Pasturers, Cottonginners Liens
  - b. Liens on Motor Vehicles, Motor Boats, Vessels, or Outboard Motors
  - c. Plastic Fabricator Liens
  - d. Liens on Vessels
  - e. Stock Breeders Liens
  - f. Aircraft Repair and Maintenance Liens

Similarly to contractual liens, the statutory liens discussed in this paper arise as an incident to a debt or obligation. However, the liens arise as a matter of law and not by a separate agreement between the parties. Further, these liens do not need to be evidenced by a separate writing.

It is beyond the scope of this paper to discuss in depth each of these liens. The following is a brief discussion of some of the statutory liens.

### **III. MECHANICS AND MATERIALMEN'S LIENS ON REAL PROPERTY**

#### **A. Constitutional Mechanics Liens on Real Property**

Texas is the only state in the union that provides a self-executing, constitutional lien in favor of those who perform work or provide materials for the construction or repair of buildings and articles. Art. 16 § 37 of the Texas Constitution provides:

Mechanics, artisans, and materialmen of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefore; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Recently, the fundamental principles of the constitutional mechanic's lien were laid out in the case of *In Re: A & M Operating Company, Inc.*, 182 B.R. 997 (E.D. Tex. 1995). Those principles are as follows:

1. Constitutional liens exist independently and apart from any Legislative act.
2. Constitutional liens are self-executing. The lienholder does not need to comply with any statutory notice of recordation requirements to perfect the lien. The lienholder's protection is automatic.
3. The constitutional lien may only be asserted by one in privity of contract with the owner of the property that the lienholder impaired or

improved. The constitutional lien is never available to a subcontractor who does not have a direct contractual relationship with the owner.

4. The constitutional lien is ineffective against subsequent, bona fide good faith purchasers who acquire the repaired property for value and without notice of the lien. The lien only encumbers property to the extent of the value of the work performed on an “article” or “building.”
5. Suppliers of basic building materials and components are not deprived of their constitutional lien when those components are assimilated into larger building projects, as long as the privity requirements between the materialman and the owner is met.

In summary, the elements of a constitutional lien are as follows:

1. The debtor is the owner of a building or article;
2. The materialman had privity of contract with the debtor;
3. The materialman made or repaired the building or article by:
  - a. Supplying goods and constructing all or part of the building or article;
  - b. Supplying goods and repairing the building or article;
  - c. Supplying unique goods manufactured in accordance with the debtor’s specifications;

- d. Furnishing off-the-shelf general inventory goods with the intent of both the materialman and debtor that such goods be incorporated into specified buildings or articles;
4. The materialman actually supplied those goods to the debtor; and
5. The goods were incorporated into the building or article.

*A & M Operating Company, Inc.*, 182 B.R. at 1004; *First Nat'l Bank in Dallas v. Whirlpool Corp.*, 517 S.W. 2d 262 (Tex. 1974). If the improvements and materials for which the mechanic's lien exists can be removed from the project without material injury to the land, preexisting improvements, or the improvements and materials themselves, then the mechanic's lien on those improvements and materials is superior to a prior recorded Deed of Trust Lien on the property as a whole. *FDIC v. Bodin Concrete Co.*, 869 S.W.2d 372 (Tex. App. -- Dallas 1993, writ denied). Conversely, the constitutional mechanic's lien is inferior to a prior recorded Deed of Trust Lien if the improvements and materials cannot be removed without causing material injury.

While it is not required, a constitutional lienholder may protect their lien position against a bona fide purchaser by recording the constitutional lien in the County Clerk's office in the same manner as a statutory lien affidavit. *Wood v. Barnes*, 420 S.W.2d 425 (Tex. Civ. App. -- Dallas 1967, writ ref'd n.r.e.). It is recommended that the constitutional lien be used as a back up system. Laborers and materialmen should rely on the constitutional lien only when a statutory lien cannot be properly perfected.

**B. Statutory Mechanics and Materialmens Liens on Real Property**

**1. Who May Claim a Statutory Mechanics and Materialmens Lien on Real Property**

Under the Texas Property Code, a person has a lien if:

1. The person performs labor, fabricates materials, or furnishes labor or materials to be used in the construction or repair of a house, building, improvement, embankment, or railroad.
2. The property being constructed, repaired, or fabricated must be in the state.
3. The person who performs labor or furnishes materials must do so by virtue of a contract with the owner or with the owner's agent or contractor or subcontractor.

See Tex. Prop. Code § 53.021(a)(b). One who specially fabricates material has a lien on the house, building, or improvement even if the fabricated material is not delivered. Tex. Prop. Code § 53.021(b). The lien encumbers a very broad range of property related to the work. Specifically, the lien extends to the house, building, fixtures, or improvements and to each lot of land necessarily connected. Tex. Prop. Code § 53.022(a). The lien secures payment for the labor done or material furnished during the construction or repair. Tex. Prop. Code § 53.023(1). Additionally, the lien secures the amount of the specially fabricated material, if any, even if the material has not been delivered or incorporated into the project. However, if the fabricated material has not been delivered yet, the lienholder must subtract the fair

salvage value of the material from the amount secured by the lien. Tex. Prop. Code § 53.023(2). The amount of a subcontractor's lien is further limited. A subcontractor's lien may not exceed the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs, and profit margin minus the sum of previous payments received by the claimant on the subcontract.

## **2. Procedures for Obtaining Statutory Mechanics and Materialmens Lien on Real Property**

A lienholder claiming a lien must file an affidavit with the County Clerk no later than the fifteenth day of the fourth calendar month after the day on which the indebtedness accrues. However, one claiming a lien on residential property must file the affidavit no later than the fifteenth day of the third calendar month. Tex. Prop. Code § 53.052 (a-b). When the indebtedness accrues depends on the lienholders status as an original contractor, subcontractor, or fabricator of special material. Tex. Prop. Code § 53.053. Indebtedness to an original contractor accrues on the last day of the month in which the original contract has been completed, settled, or abandoned. Either party may establish a definite time when the contract is terminated by sending the other party a written declaration stating that the contract has been terminated. Tex. Prop. Code § 53.053(b). Indebtedness to a subcontractor who has furnished labor or material to an original contractor accrues on the last day of the last month in which the labor was performed or the materials were furnished. Tex. Prop. Code § 53.053(c). Indebtedness for specially fabricated material accrues on the last day of the last month:

1. In which materials were delivered, or
2. In which materials normally would have been delivered to the job site, or
3. Any material breach or termination of any contract under which the specially fabricated material was furnished.

Tex. Prop. Code § 53.053(d).

The lienholder's affidavit must be signed and must contain:

1. A sworn statement of the amount of the claim;
2. The name and last known address of the owner;
3. A general statement of the type of work done and materials furnished;
4. The name and last known address of the person by whom the claimant was employed;
5. The name and last known address of the original contractor;
6. A description of the property sought to be charged with the lien;
7. The claimant's name, mailing address, and physical address; and
8. For subcontractors, a statement identifying the date each notice of the claim was sent to the owner and the method by which the notice was sent.

The lienholder may attach to the affidavit a copy of any written contract and a copy of each notice sent to the owner. The lienholder does not have to specify in the affidavit each individual item of work done or material furnished or fabricated.

Tex. Prop. Code § 53.054.

A lienholder who files an affidavit must also send a copy of the affidavit by registered or certified mail to the owner at the owner's last known business or residence address not later than one business day after the affidavit is filed. Additionally, if the lienholder is a subcontractor, he or she must also send a copy of the affidavit to the original contractor's last known address. Tex. Prop. Code § 53.055. Special rules also apply for giving notice of derivative claims. Tex. Prop. Code §§ 53.056, 53.057, 53.058. A derivative claim is any claim arising from work performed or materials fabricated or furnished by anyone other than an original contractor. If the lienholder's unpaid claim arises from the debt of a subcontractor, the claimant must give notice to the original contractor and to the owner. If the lien arises from a debt incurred by the original contract, the claimant must give notice to the owner. The purpose of these notice provisions is to allow an owner or original contractor to pay the unpaid claim and avoid having their property or right to payment subjected to the derivative claim. An owner who receives notice of a derivative claim may withhold payments to an original contractor in an amount necessary to pay the claim. Tex. Prop. Code § 53.081(a). Depending on the situation, different rules govern the time during which the owner may withhold funds. See Tex. Prop. Code §§ 53.081(b-d); 53.082; 53.083. Additionally, the owner of a home may condition payment for a contractor's services upon the contractor signing an affidavit that the contractor has paid all of the subcontractor's claims. A purchaser of real property may similarly require the seller to provide the purchaser

with an affidavit stating that all of the contractors and subcontractors claims on a property have been paid. Tex. Prop. Code § 53.085.

In addition to funds that the owner may withhold upon notice of a derivative claim, the mechanic's lien statute requires owners of property to retain up to 10% of the amount of the original contract. Tex. Prop. Code § 53.101. These retained funds secure the payment of artisans and mechanics who perform labor or provide materials under contract with the contractor or another subcontractor. Tex. Prop. Code § 53.102. A subcontractor has a lien on these retained funds if the subcontractor sends the notices required for derivative claims and files an affidavit not later than 30 days after the work is completed. Tex. Prop. Code § 53.103. When all of the work required under the original contract is completed, the owner of the property may file an affidavit of completion with the County Clerk. Tex. Prop. Code § 53.106. The filing of this affidavit starts the clock for a contractor's or subcontractor's time period for filing claims. Tex. Prop. Code § 53.106(a)(6).

**C. Priorities of Statutory Mechanics and Materialmens Lien on Real Property**

Once perfected, mechanic's liens are given priority over most other types of liens and claims. For example, subcontractors, laborers, and materialmen with mechanic's liens have preference over other creditors of the original contractor. Tex. Prop. Code § 53.121. However, with the exception of artisans and mechanics, mechanic's liens over the same piece of property are on equal footing as against each other. Tex. Prop. Code § 53.122.

The mechanic's lien does not affect any lien, encumbrance, or mortgage on the land or improvement at the time of the inception of the mechanic's lien. Tex. Prop. Code § 53.123(b). The general rule is that the inception of a mechanic's lien is the commencement of construction or the delivery of materials, to the extent that such construction or materials are visible for inspection. Tex. Prop. Code § 53.124(a-b). The moment of commencement may be established with more certainty if the owner and original contractor file a joint affidavit with the County Clerk not later than thirty (30) days after the actual date of commencement of construction. An affidavit that complies with the statutory requirements is *prima facie* evidence of the date of commencement stated in the affidavit. Tex. Prop. Code § 53.124(c-d). The money that is owed contractors and subcontractors by owners is exempt from collection, enforcement, garnishment, and execution by other creditors. Tex. Prop. Code § 53.151. As soon as the lienholder's claim is satisfied, the lienholder must, within ten (10) days of the request, provide a release of the indebtedness and the lien so that it may be recorded. Tex. Prop. Code § 53.152.

**D. Foreclosure on Mechanics and Materialmens Lien on Real Property**

A mechanic's lien may be foreclosed only through a judicial proceeding. Tex. Prop. Code § 53.154. A suit to foreclose the lien must be brought within the later of two years after the date of filing the lien affidavit, or one year after completion of the work under the original contract. Tex. Prop. Code § 53.158. The statute of limitations is different for residential construction liens. Suits to foreclose

liens on residential housing must be brought within the first anniversary of the date the lien affidavit is filed. These rules differ relating to residential construction projects. The Texas Property Code requires many statutory forms for notices. Those forms are included as an Appendix to this paper and should be consulted.

#### **IV. AGRICULTURAL LANDLORD'S LIENS**

A landlord who leases land to a tenant has a preference lien for the rent that becomes due and for the money and the value of property that the landlord furnishes to a tenant to grow a crop on the leased premises. Tex. Prop. Code § 54.001. The lien attaches to the property that the landlord furnishes and to the crop grown on the premises in the year that the rent accrues. However, if the landlord provides everything except labor, the lien only attaches to the crop. The lien does not arise in two circumstances, however. First, no lien exists if a tenant provides everything necessary to cultivate the leased premises, and the landlord charges rent of more than 1/3 the value of the grain or 1/4 the value of the cotton grown on the premises. Second, no lien exists if a landlord provides everything except the labor and directly or indirectly charges rent of more than 1/2 of the grain and cotton grown on the premises. The lien continues for so long as the property to which it attaches remains on the leased premises and continues further for one month from the date on which the property is removed. If the tenant removes agricultural products and places them in a public warehouse before the 31st day after the day they are removed from the leased premises, the lien exists while they remain in the warehouse. Tex. Prop. Code § 54.004. Tenants may not remove agricultural products and other property

encumbered by a landlord's lien without the landlord's consent. Tex. Prop. Code § 54.005. An agricultural landlord has an emergency remedy in the form of a distress warrant. The landlord must apply to a Justice of the Peace for that distress warrant if the tenant owes any money, is about to abandon the premises, or is about to remove the tenant's property from the premises. Tex. Prop. Code § 54.006.

#### **V. COMMERCIAL BUILDING LANDLORD'S LIEN**

A commercial landlord has a preference lien over the property of the tenant in the building. This lien covers the amount of rent that is due, as well as rent that is to become due during the current 12-month period. However, the lien is unenforceable for rent on a commercial building that is more than six (6) months past due unless the landlord files a lien statement with the County Clerk. The lien statement must contain an itemized, month-by-month account of the rent for which the lien is claimed, the name and address of the tenant, a description of the leased premises, and the beginning and termination dates of the current lease. Additionally, the commercial landlord's lien does not affect statutes exempting property from forced sale. The lien exists while the tenant occupies the building and until one (1) month after the date the tenant abandons the building. The landlord may apply to a justice court for a distress warrant if the tenant owes rent, is about to abandon the building, or is about to remove the tenant's property from the building.

#### **VI. RESIDENTIAL LANDLORD'S LIEN**

Residential landlords have a lien for unpaid rent that is due. The lien attaches to nonexempt property that is in the residence or that the tenant has stored in a

storage room. In addition to the exemptions listed elsewhere in the property code, other items such as wearing apparel, tools, school books, family portraits, living room furniture, and kitchen furniture are also exempted. Tex. Prop. Code § 54.042. In addition to the statutory lien, landlords may provide contractual liens, however, those liens are not enforceable unless they are underlined or printed in conspicuous bold print in the lease agreement. Tex. Prop. Code § 54.043.

Landlords may not seize exempt property. They may seize nonexempt property only if authorized by a written lease and if it would not breach the peace. Tex. Prop. Code § 54.044(a). After seizing property, the landlord must leave a written notice of entry and an itemized list of the items removed. If the tenant has abandoned the premises, the landlord may remove all of the contents.

Property thus seized may not be sold, unless the sale is authorized in a written lease. Tex. Prop. Code § 54.045(a). Before selling the property, the landlord must give written notice by both first class mail and certified mail, return receipt requested at the tenant's last known address at least thirty (30) days before the date of the sale. The notice must include an itemized account of the amount owed by the tenant, the date, time and place of the sale, and the name, address, and telephone number of the person the tenant may contact regarding the sale. The proceeds from the sale are subject to recorded chattel mortgages and financing statements. Proceeds from the sale must be applied first to delinquent rents and, if authorized by the written lease, reasonable packing, moving, storage and sale costs. Any excess funds must be mailed to the tenant's last known address no later than thirty (30) days after the date

of the sale. The tenant has the right to redeem the property at any time before the sale by paying the full amount due to the landlord and reasonable packing, moving, storage, and sale costs, if those were recoverable by the landlord under a written lease. If a landlord conducts a seizure or sale not in compliance with this statute, the tenant may recover actual damages. The landlord must also return any property seized that has not been sold and return the proceeds of sold property. Additionally, the tenant may recover one month's rent or \$500.00 whichever is greater, minus any amount for which the tenant is liable. The tenant can also recover reasonable attorney's fees. These provisions are similar to the rights and remedies afforded commercial landlords and tenants under Chapter 93 of the Texas Property Code, §§ 93.001-93.003.



**TABLE OF CONTENTS**

I.	CONTRACTUAL LIENS AS COMPARED TO STATUTORY LIENS .....	1
A.	Definition of Liens .....	1
B.	Who May Create a Contractual Lien.....	3
C.	Priorities of Contractual Liens .....	4
D.	Enforcement of Contractual Liens .....	6
II.	STATUTORY LIENS .....	7
III.	MECHANICS AND MATERIALMEN’S LIENS ON REAL PROPERTY .....	9
A.	Constitutional Mechanics Liens on Real Property .....	9
B.	Statutory Mechanics and Materialmens Liens on Real Property .....	12
1.	Who May Claim a Statutory Mechanics and Materialmens Lien on Real Property.....	12
2.	Procedures for Obtaining Statutory Mechanics and Materialmens Lien on Real Property .....	13
C.	Priorities of Statutory Mechanics and Materialmens Lien on Real Property.....	16
D.	Foreclosure on Mechanics and Materialmens Lien on Real Property.....	18
IV.	AGRICULTURAL LANDLORD’S LIENS .....	18
V.	COMMERCIAL BUILDING LANDLORD’S LIEN.....	19
VI.	RESIDENTIAL LANDLORD’S LIEN.....	20

**TABLE OF AUTHORITIES**

**CASES**

*Bankers Home Bldg. & Loan Ass'n. v. Wyatt*, 139 Tex. 173,162 S.W.2d 694 (Tex. 1942)..... 1

*Coldwell v. Auto Sales and Supply Company*, 158 S.W. 1030(Tex. Civ. App. -- 1913, no writ) ..... 6

*Coleman v. Dunman*, 67 Tex. 390, 3 S.W. 319 (Tex. 1887)..... 3

*Continental Credit Corp. v. Norman*, 303 S.W.2d 449(Tex. Civ. App. -- San Antonio 1957, writ ref'd n.r.e.) ..... 3

*Continental Radio Company v. Continental Bank and Trust Company*,369 S.W.2d 359 (Tex. Civ. App. -- Houston [1st Dist.] 1963, writ ref. n.r.e.) ..... 4

*Continental State Bank v. Trabue*, 150 S.W. 209(Tex. Civ. App. -- 1912, writ ref.)4

*Dabney v. Schutze*, 228 S.W. 176 (Tex. Com. App. 1921)..... 3

*Edinburg Theaters, Inc. v. Raicheter*, 367 S.W.2d 354(Tex. Civ. App. -- San Antonio 1963, no writ) ..... 3

*FDIC v. Bodin Concrete Co.*, 869 S.W.2d 372 (Tex. App -- Dallas 1993, writ denied) ..... 11

*First Nat'l Bank in Dallas v. Whirlpool Corp.*,517 S.W. 2d 262 (Tex. 1974)..... 11

*Garza v. Hammond*, 39 S.W. 610 (Tex. Civ. App. -- 1897, writ ref.) ..... 4

<i>Hodges v. Roberts</i> , 74 Tex. 517, 12 S.W. 222 (Tex. 1889) .....	3
<i>Horton v. Gibson</i> , 274 S.W. 292 (Tex. Civ. App. 1925, no writ).....	2
<i>In Re: A &amp; M Operating Company, Inc.</i> , 182 B.R. 997 (E.D. Tex. 1995).....	9, 11
<i>Inesco, Inc. v. Sears</i> , 567 S.W.2d 827 (Tex. App. -- Beaumont 1978, writ ref'd n.r.e.) .....	1
<i>Lippencott v. York</i> , 86 Tex. 276, 24 S.W. 275 (Tex. 1893) .....	4
<i>Milburn v. Athans</i> , 190 S.W.2d 388 (Tex. Civ. App. -- Fort Worth 1945, writ dism'd w.o.j.).....	6
<i>Permian Petroleum Company v. Barrow</i> , 484 S.W.2d 631 (Tex. Civ. App. -- El Paso 1972, no writ) .....	6
<i>Sixty-Seven Properties v. Cutsinger</i> , 536 S.W.2d 268 (Tex. App. -- Corpus Christi 1976, no writ) .....	5
<i>Southwestern Peanut Growers Association v. Womack</i> , 179 S.W.2d 371 (Tex. Civ. App. -- Eastland 1944, no writ).....	6
<i>Taylor v. Rigby</i> , 574 S.W.2d 833 (Tex. Civ. App. -- Tyler 1978, writ ref. n.r.e.) ...	7
<i>Texas Bank and Trust Company v. Smith</i> , 105 Tex. 265, 192 S.W. 533 (Tex. 1917)	5
<i>Train Company v. Worthum</i> , 428 S.W.2d 417 (Tex. Civ. App. -- Houston [1st Dist.] 1968, writ ref., n.r.e.).....	6

<i>University Savings and Loan Ass’n. v. Security Lumber Company</i> , 423 S.W.2d 287 (Tex. 1967).....	1
<i>Vahlsing Christina Corp. v. First National Bank</i> , 491 S.W.2d954 (Tex. Civ. App. -- El Paso 1973, writ ref’d n.r.e.) .....	5
<i>Ward v. McKenzie</i> , 33 Tex. 297 (Tex. 1870).....	2
<i>Western M &amp; I Company v. Jackman</i> , 77 Tex. 622,14 S.W. 305 (Tex. 1890).....	1
<i>Williams v. Greer</i> , 122 S.W.2d 247 (Tex. Civ. App. 1938, no writ) .....	2
<i>Wood v. Barnes</i> , 420 S.W.2d 425 (Tex. Civ. App. -- Dallas 1967, writ ref’d n.r.e.)ll	

STATUTES

Texas Civil Practice & Remedies Code §§ 61.061-61.063..... 7

Texas Property Code Ch. 70..... 8

Texas Property Code § 51.001 ..... 2

Texas Property Code §§ 52.001-52.043 ..... 7

Texas Property Code §§ 53.001-53.260 ..... 7, 12-18

Texas Property Code §§ 54.001-54.007 ..... 7, 18, 19

Texas Property Code §§ 54.021-54.025 ..... 7

Texas Property Code §§ 54.041-54.048 ..... 7, 20

Texas Property Code §§ 55.001-55.008 ..... 7

Texas Property Code §§ 56.001-56.045 ..... 7

Texas Property Code §§ 57.001-57.006 ..... 8

Texas Property Code §§ 58.001-58.009 ..... 8

Texas Property Code §§ 59.001-59.046 ..... 8

Texas Property Code §§ 60.001-60.002.....	8
Texas Property Code §§ 61.001-61.005.....	8
Texas Property Code §§ 93.001-93.003.....	21
Texas Rules of Civil Procedure 309.....	6
Texas Rules of Civil Procedure 310.....	6
OTHER	
Texas Constitution Art. 16 § 37 .....	9