

# Express Lien

Texas Lien Punchlist (Private)

## **NOTICE REQUIREMENTS**

Texas is a notice state and has some of the most complex notice requirements in the nation.

### **General Notices**

- **Original Contractors:** Original contractors, or those who contract with the property owner, do not have any notice requirements in the State of Texas.
- **First Tier Subs/Suppliers:** The “Third Month Notice” must be sent to the original contractor and the owner. On *commercial projects*, this must be sent by the 15<sup>th</sup> day of the month that is three months after work or materials were provided. On *residential projects*, the time period is shortened by 30 days.
- **Lower Tier Subs/Suppliers:** The “Second Month Notice” must be sent to the original contractor. On *commercial projects*, this is due by the 15<sup>th</sup> day of the month that is two months after work or materials were provided. On *residential projects*, the time period is shortened by 30 days. The “Third Month Notice” (described above) must also be sent to the original contractor and the owner.

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More than 1 notice may be required. Second and Third Month Notices only preserve the right to lien for the amounts due identified within those notices. An additional notice must be sent if additional amounts are due, after the sending of a notice.

### **Special Notices**

- **Notice of Contractual Retainage.** Since payment of retainage may not be due immediately, a preliminary notice can be sent at the start of work to later preserve the right to lien for retainage. It must be sent not later than the 15<sup>th</sup> day of the second month following the initial delivery of materials or labor by the claimant. It must be sent to the owner (and original contractor if a lower tier party).
- **Suppliers of Specially Ordered Materials:** If supplying “specially ordered materials” (i.e. something that can’t be used elsewhere), a lien can be filed even if the order is cancelled. To do so, a Notice of Specially Fabricated Items must be sent to the owner (and original contractor if a lower tier supplier) before the 15<sup>th</sup> day of the second month after the month the order is received and accepted for the materials.

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## **THE MECHANICS LIEN**

Generally, everyone except lenders and suppliers of equipment not permanently installed do not have lien rights.

- Referred to as a "Claim of Lien"
- On commercial projects, liens must be filed by the 15<sup>th</sup> day of the month four months after lien claimant completes work. On residential projects, liens must be filed by the 15<sup>th</sup> day of the month three months after lien claimant completes work.
- On commercial projects liens expire if a lawsuit is not filed to enforce the lien by the later of these two dates: (i) 2 years from the date of filing; or (ii) 1 year from completion of the entire construction project. On residential projects liens expire if a lawsuit is not filed to enforce the lien within 1 year from the date of its filing.
- If the original contractor is terminated, or if the original contractor abandons the project before work is complete...all subs/suppliers on the project are required to file their lien within 30 days of the termination/abandonment.
- A copy of the filed Lien must be delivered to the owner or reputed owner, and the original contractor, within 5 days of filing the lien. Failure to send the lien to the owner will cause the lien to become unenforceable.
- Be Careful: At the end of the construction entire project, all deadlines can be accelerated. Owners are only required to keep statutory retainage for 30 days after completion of an entire project. Therefore, to "trap" the retainage held by the owner, notices must be sent before this 30 day period...when the law allows the owner to release that money without fear of liens/notices.

Texas' Lien Deadline is Confusing. To help out, we created a Lien Deadline Chart.  
Take a look at it here:

<http://bit.ly/90zLDY>

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