

A Brief Guide to Filing a Texas Mechanic's Lien

For Suppliers and Subcontractors

Disclaimer: This ebook is for educational purposes only and is not legal advice. Texas mechanic's lien law is highly technical and deadlines are strict. Always verify current statutes and consult a Texas construction attorney when needed.

Introduction

Texas mechanic's liens are powerful tools that allow subcontractors and suppliers to secure payment for labor or materials provided to a construction project. When used correctly, a lien can convert an unpaid invoice into a secured claim against the property itself. When used incorrectly—or late—the right can be lost entirely.

This brief ebook walks through the lien process from a practical, step-by-step perspective for **subcontractors and material suppliers** (not general contractors).

1. Determine Eligibility

You may have lien rights if: - You furnished **labor, materials, equipment, or specially fabricated materials** - The work or materials improved real property in Texas - You are a **subcontractor or supplier** (not in direct contract with the property owner)

Texas recognizes lien rights on: - Residential projects - Commercial projects - Public projects (bond claims instead of liens)

 Different rules apply to residential vs. commercial jobs. Always confirm which applies.

2. Identify the Project Type

Correct classification is critical because notice deadlines differ. **In Texas, the distinction between residential and commercial is determined primarily by the use of the property by the owner—not merely the structure type.**

A single-family home *can* be classified as commercial if it is not owned and occupied by an individual as their primary residence.

Residential

A project is generally considered **residential** if: - The property is owned by an **individual** (natural person), **and** - The property is used or intended to be used as the owner's **primary residence**

Examples: - Owner-occupied single-family home - Owner-occupied duplex, triplex, or four-plex

Commercial

A project is generally considered **commercial** if: - The owner is an **entity** (LLC, corporation, trust, partnership), **or** - The property is **not** used as the owner's primary residence

Examples: - Rental houses - Spec homes - Investor-owned single-family homes - Apartments (5+ units) - Office buildings, retail centers, industrial facilities

 **Do not assume a single-family home is residential.** Misclassification can result in missed deadlines and lost lien rights.

3. Send Required Monthly Notices

Texas requires **monthly preliminary notices**, and this is one of the most misunderstood parts of the lien process.

Key Concept: Notices Are Based on Work Performed — *Not Invoicing*

Monthly notices are calculated from the **month labor or materials were actually provided to the project, not** from: - The invoice date - The payment due date - Whether the amount is technically "past due"

These notices **must include retainage** and any unpaid balance for that month, even if payment is not yet contractually due.

What the Notice Is — and Is Not

- **A statutory notice** preserving lien rights
- A notification that work or materials were furnished and remain unpaid
- **Not** a demand for payment
- **Not** a collection notice
- **Not** an allegation of default

A party **does not need to be late** for a notice to be sent.

Many subcontractors and suppliers mistakenly believe they must wait until payment is overdue. Waiting can result in **lost lien rights**.

Notice Timing for Subcontractors & Suppliers

Texas does **not** require separate or multiple notices for the same month of work. Instead, the required notice deadline depends on whether the project is residential or commercial.

The notice is tied to the **month labor or materials were furnished**.

- **Residential Projects:** Notice must be sent **no later than the 15th day of the 2nd month** following the month of performance
- **Commercial Projects:** Notice must be sent **no later than the 15th day of the 3rd month** following the month of performance

Only **one timely notice** is required per month of unpaid work.

Delivery Requirements

Notices must: - Be sent by **certified mail** - Be sent to the **original contractor** and **property owner** - Clearly identify the project, hiring party, and unpaid amount

! Missing a required notice—even when payment is not yet due—usually eliminates lien rights for that billing period.

4. Constitutional Liens vs. Property Code Liens

Texas is unique in that it recognizes **two different sources of mechanic's lien rights**:

1. **Texas Constitutional Liens**
2. **Texas Property Code (Statutory) Liens**

Understanding the difference is important—especially for subcontractors and suppliers who often assume all lien rights are the same.

Texas Constitutional Liens

The Texas Constitution grants lien rights **only to original contractors** (those in direct contract with the property owner).

Key characteristics: - Applies **only** to original contractors - Exists automatically under the Texas Constitution - Does **not** require monthly notices - Can attach even if statutory requirements are not met

However: - Constitutional liens **do not apply** to subcontractors or suppliers - They are more limited in enforcement and title impact - Title companies often require statutory compliance anyway

Texas Property Code (Statutory) Liens

Subcontractors and suppliers rely almost entirely on **statutory lien rights** created by the Texas Property Code.

Key characteristics: - Available to subcontractors and suppliers - **Strict notice and filing requirements** apply - Monthly notices are mandatory - Deadlines are unforgiving

Failure to comply with the Property Code requirements typically results in **complete loss of lien rights**.

Practical Takeaway for Subs & Suppliers

- You **do not** have constitutional lien rights
- Your protection comes from **strict compliance** with the Texas Property Code
- Notices and deadlines are not optional

Because statutory liens are procedural, many payment issues arise not from the merits of the claim—but from missed steps.

5. Track Deadlines Meticulously

Texas lien rights are deadline-driven. Best practice is to: - Track unpaid invoices by **month of performance** - Calendar notice deadlines immediately - Maintain proof of mailing and delivery

Professional lien tracking systems or third-party processors can reduce risk.

5. Prepare the Mechanic's Lien Affidavit

If payment is still not received, the next step is preparing a **Lien Affidavit**.

The affidavit must include: - Legal property description - Owner's name - Original contractor's name - Hiring party - Amount claimed - First and last date of work or delivery

Accuracy is critical. Errors can invalidate the lien.

6. File the Lien with the County Clerk

The lien affidavit must be filed in the **county where the property is located**.

Filing Deadlines (General Rule)

- **Commercial Projects:** 15th day of the 4th month after last work

- **Residential Projects:** 15th day of the 3rd month after last work

Once filed: - Obtain a file-stamped copy - Retain receipt and recording details

7. Send Copies After Filing

Texas law requires sending a copy of the filed lien to: - The property owner - The original contractor

This must be done **within 5 business days** of filing, via certified mail.

8. Enforcing the Lien

A lien does not automatically result in payment.

Options include: - Negotiated settlement - Demand letters - Filing a lawsuit to foreclose the lien

 Lawsuits must be filed within statutory time limits or the lien expires.

9. Common Mistakes to Avoid

- Missing monthly notice deadlines
- Incorrect property descriptions
- Filing in the wrong county
- Claiming the wrong amount
- Waiting too long to act

Even small errors can eliminate lien rights.

10. Final Thoughts

Texas mechanic's liens are effective but unforgiving. For subcontractors and suppliers, success depends on:

- Early notice - Accurate documentation - Strict deadline compliance

Many companies outsource lien processing to ensure compliance and reduce administrative burden.

About the Author

This guide was prepared for educational and business-development purposes to help contractors, subcontractors, and suppliers better understand the Texas mechanic's lien process.

End of Ebook