

Top 5 Takeaways from Texas Lien Law Changes

By Brian R. Gaudet

Over the last decade of helping the AGC Houston Chapter with their mission of educating construction professionals in the Houston market, I always remind those who attend our lien classes that the Texas Legislature meets every two years and there is a possibility each time that some changes in the lien law could result. This year was one of the years we saw the Legislature make many significant changes to the lien statutes. While there were many changes, some relatively insignificant and some more significant, below are the five most significant takeaways and a piece of practical advice I give to all the participants in any lien class I teach.

One. The changes in the lien law did not affect bond claims on public projects in Texas.

Two. The changes only apply to an original contract entered into on or after the effective date of the act, which was January 1, 2022. For original contracts entered into prior to January 1, 2022, the previous version of the law applies. Accordingly, unless claimants know for certain that they are providing labor and or materials under a prime contract that was entered into after January 1, 2022, they should continue to comply with the previous version of the law (i.e. second tier claimants should continue to provide second month notice letters).

Three. There are now forms for notices and retainage included in the statute. Claimant's notices must "substantially" match the forms in the statute. Accordingly, everyone needs to review their current forms and the statute and change their current forms to match the statutory ones. It is better to avoid the argument of whether a notice that is not the same is "substantially" the same or not.

Four. The second month notice requirement for second tier claimants on non-residential projects is going away. This will mean that prime contractors will no longer have a notice that their subcontractor has not paid a lower tier in time to do anything about it before the owner receives a notice requiring them to trap funds. Before the change in the law, second tier claimants had to provide notice to the prime contractors a month in advance of the notice to the Owner, which gave them time to get the non-payment issue resolved before the owner received notice and withheld payment from the prime contractor.

Five. The statute of limitations to file suit to foreclose on a lien has been reduced from two years to one year, with the ability to extend it for an additional year. The language of the statute may limit the effectiveness of any attempts to extend it beyond two years, so claimants should err on the side of caution, in attempting to extend it any further before filing suit.

Practical Advice: Remember that the goal of the lien statute is to get the claimant paid. A claimant must comply with the statute at a minimum. However, keep focused on the goal. If sending a second month notice letter to the contractor helps get you paid, why not keep doing that?

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