



## PROTECT YOURSELF

Do you provide a conditional lien release when paid by check? Do you send a notice of intent to lien if paid by check? Do you file your mechanic's lien if payment was by check on the eve of your lien deadline?

Consider the following:

It's May 13<sup>th</sup>; the party that owes you money pays you with a non-certified check. You deposit the check. You don't send your notice of intent to lien due on May 15<sup>th</sup> or file your mechanic's lien. You may even have provided a lien waiver or release. On May 16<sup>th</sup> payment is stopped on the check. Can you perfect your mechanic's lien in Texas?

Contractors working on projects in Texas must deal with some of the most complicated lien laws in the United States. The Texas system for perfecting a mechanic's lien is fraught with technicalities and strict deadlines. A perfected mechanic's lien is one which is enforceable. Contractors, subcontractors, material suppliers, persons who specifically fabricate materials, and in various situations, other claimants are entitled to file mechanic's liens; however, the "second month notice",

the "third month notice", the notice to surety and general contractor on a payment bond, and filing of the mechanic's lien must be accomplished by specifically stated deadlines.

While the mechanic's lien statute is to be liberally construed and substantial compliance with the statute may be sufficient to perfect a lien, that does NOT apply to the dates of notice or filing of the mechanic's lien. The court's interpretation is that, while the information provided may be less than perfect, the dates of notice and filing of liens must be strictly construed.

If you are not paid by certified funds and do not have time to verify funds in the account, if you wish to perfect your mechanic's lien, you must send your notices of intent to lien (second month or third month) or file your lien affidavit, as applicable. If you must provide a lien release, only provide a "conditional lien release" conditioned upon receiving actual funds. If the check has not cleared by the time it is the 15<sup>th</sup>, you must send your required notices or file your lien. If you don't send your notices or file your lien and the check bounces or a stop payment is

issued, your ability to perfect your mechanic's lien has passed.

If you fail to send your notices or file your lien, you will be left with a lawsuit alleging various theories for recovery. The lawsuit should be your last recourse since they are expensive and time consuming. The worst

case could be if the entity that owes you money filed bankruptcy. If this happens and you haven't perfected your mechanic's lien, you are an unsecured creditor, with little chance of recovery.

**Don't give up your rights without money in hand.**

*[Claimants are cautioned that filing an invalid lien can lead to serious sanctions, including recovery of damages and attorneys' fees from the claimant and can even create criminal liability in cases of knowingly filing false mechanic's liens. Any questions about the proper form or legitimacy of a specific lien or bond claim should be addressed by an attorney prior to filing.]*