



TO: TEXO Members  
FROM: Harrison Steck, P.C.  
DATE: March 18, 2020  
SUBJECT: Liens & Bond Claims Seminar - March 18

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To our Colleagues, Business Associates, and Friends:

TEXO postponed the March Lien and Bond Seminar in response to recent recommendations the Centers of Disease Control and the state of emergency declared by Dallas County in an effort to ensure the health and safety of TEXO's members, volunteers, and staff. We appreciate TEXO's foresight and social responsibility in taking that step.

With the uncertainty our country is currently facing, securing your company's right to payment for work already performed may be weighing on your mind. It is more important than ever for construction companies to follow adopted statutory protocols to increase the likelihood of payments. These protocols include timely making notices and perfecting lien rights or a bond claims.

For original contractors, a perfected lien claim can incentivize an owner to pay for work performed rather than responding to a lawsuit. For subcontractors and suppliers, a lien claim provides a source of payment, other than the assets of the contractor.

Since we cannot meet in person to provide you with the full Lien and Bond Claim Seminar until a later date, we wanted to provide you information now, so you can determine the deadlines for pre-lien notices and lien filings necessary to protect your business during the coming months.

First, please note that notice requirements will vary based on whether you are an original contractor or a first or second-tier subcontractor or supplier. The notice requirements and lien filing deadlines are short. Take note that these are deadlines by which you must act, but there is *no penalty for sending notices earlier* than the statutory deadlines. April 15<sup>th</sup> is the next monthly deadline to send pre-lien notices and to file liens.

The following general rules apply to prelien notices and lien filings:

1. For ***first-tier subcontractors or suppliers***, April 15th is the deadline to notify the Owner that it has not been paid for work that was performed/materials supplied during the month of **January**.
2. For ***second-tier subcontractors or suppliers***, April 15th is the deadline to provide the *general contractor* notice of nonpayment for work that was performed and materials supplied during the month of **February**. This is fairly quick deadline to send the notice of non-payment, but the failure to provide the notice will restrict your ability to make a claim. *Additionally*, in May, a second-tier

subcontractor or supplier is required to send notice to the owner if it remains unpaid for the **February** work. You must send a notice to both the owner and the general contractor. For this reason, we typically recommend sending the notice to the owner at the same time you send notice to the general contractor. Again, there is no penalty for early notice.

3. All claimants (original contractors and first and second-tier subcontractors and suppliers) must file liens that provide a detailed property description in the property records of the county where the work was performed no later than April 15 for any projects that were completed during the month of **December**. Subcontractors and suppliers must have complied with the pre-lien notice procedures in order to file a lien. If you are the original contractor, there is no pre-lien notice requirement. Please note that if you are an original contractor who has missed the lien filing deadline, you may qualify to file a constitutional lien.
4. All claimants must notify the owner (and the original contractor, if applicable) that a lien was filed within five days of the date the lien was filed in the property records.
5. For *specialty manufactured goods*, which are goods that cannot be readily used on another project, a supplier can assert lien rights even before the materials are delivered to the project. To do so, the supplier must provide notice to the owner and general contractor that it accepted an order for specialty manufactured goods no later than the fifteenth day of the second month from the date when the order for specialty manufactured goods is accepted. We recommend that you send this notice immediately for any orders. There is no penalty for early notice, and often both owners and general contractors want to know about specialty fabricated materials to assure timely procurement and delivery in the event of a default.
6. For any tier subcontractor or supplier on a project that completed work on a project within the last thirty days, the subcontractor or supplier should provide notice to the owner that it has a contractual retainage agreement. This notice is important even if your progress payments are current.
7. If you receive a notice of termination, abandonment, or completion of a project, please know that it will automatically shorten the lien filing deadline if certain conditions are met.

Texas's lien structure has some of the most onerous notice requirements in the country, but also some of the fairest to all parties in the industry. It would be impossible to address all of the potential issues in the lien statute in this memo. This letter serves as a general guide to assist you with identifying immediate needs for notices and filings, and is not meant to substitute for legal advice. Please contact your attorney for specific questions you may have.

We hope that the information provided is helpful in addressing any immediate concerns you may have with securing payment rights, especially in light of the uncertainties all of us will face in the coming months.