

Texas Mineral Lien Law Update

Liens Against Mineral Property

Chapter 56 - Texas Property Code §§ 56.001 et seq.

Purpose:

The purpose of this update is to provide a basic framework of information relative to Texas' statutory lien law concerning mineral properties and the services and materials provided in connection with mineral activities. Chapter 56 of the Texas Property Code provides the statutory framework governing mineral liens. Although mineral liens are commonly referred to as Mechanics & Materialman's (or M&M) liens, mineral liens have different filing, notice and perfection procedures than real estate construction M&M liens. Real estate construction M&M liens are governed by Chapter 53 of the Texas Property Code and are beyond the scope of this summary.

Who has the right to file a lien:

A mineral contractor or subcontractor has a the right to file a lien to secure payment for labor or services related to mineral activities. Texas Property Code § 56.001 provides the following relevant definitions:

"Mineral contractor" means a person who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under an express or implied contract with a mineral property owner or with a trustee, agent, or receiver of a mineral property owner.

"Mineral subcontractor" means a person who (A) furnishes or hauls material, machinery, or supplies used in mineral activities under contract with a mineral contractor or with a subcontractor; (B) performs labor used in mineral activities under contract with a mineral contractor; or (C) performs labor used in mineral activities as an artisan or day laborer employed by a subcontractor.

"Mineral activities" means digging, drilling, torpedoing, operating, completing, maintaining, or repairing an oil, gas, or water well, an oil or gas pipeline, or a mine or quarry.

Property subject to the lien:

Pursuant to Texas Property Code § 56.003(a), the following property is subject to a mineral lien:

- (1) the material, machinery, and supplies furnished or hauled by the lien claimant;
- (2) the land, leasehold, oil or gas well, water well, oil or gas pipeline and its right-of-way, and lease for oil and gas purposes for which the labor was performed or

material, machinery, or supplies were furnished or hauled, and the buildings and appurtenances on this property;

(3) other material, machinery, and supplies used for mineral activities and owned by the owner of the property listed in Subdivision (2); and

(4) other wells and pipelines used in operations related to oil, gas, and minerals and located on property listed in Subdivision (2).

Notwithstanding this relatively broad coverage, a lien which arises from the performance of labor or furnishing or hauling material, machinery, or supplies *for a leaseholder*, does not attach to the fee title to the property. Tex. Prop. Code § 56.003(b).

What to file:

In order to secure the mineral lien, the lien claimant must file a lien affidavit, commonly entitled Verified Statement in Support of Lien on Mineral Property. To comply with the statutory requirements, the affidavit must include the following information:

- (1) the name(s) of the mineral property owner(s) involved, if known;
- (2) the name and mailing address of the claimant;
- (3) the dates of performance or furnishing;
- (4) a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved; and
- (5) an itemized list of amounts claimed.

Tex. Prop. Code § 56.022(a).

When the lien claimant is a mineral subcontractor, the lien affidavit must include the following additional information:

- (1) the name of the person for whom labor was performed or material was furnished or hauled; and
- (2) a statement that the subcontractor timely served written notice that the lien is claimed on the property owner or the owner's agent, representative, or receiver.

Tex. Prop. Code § 56.022(b). A form lien affidavit is attached.

Notice requirements:

A mineral subcontractor must comply with an additional requirement to secure its lien. Not later than the 10th day before the day the lien affidavit is filed, the mineral subcontractor must serve written notice that the lien is claimed against all property owners. The Property Code defines

“mineral property owner” as an owner of 1) land, 2) an oil, gas or other mineral leasehold, 3) an oil or gas pipeline, or 4) an oil or gas pipeline right-of-way.

The subcontractor’s notice must include:

- (1) the amount of the lien;
- (2) the name of the person indebted to the subcontractor; and
- (3) a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved.

Tex. Prop. Code § 56.023. A form notice letter is attached.

Although Courts generally require substantial, as opposed to strict, compliance with the requirements of Chapter 56, the subcontractor’s notice requirement is a condition precedent to the enforceability of the lien. *Trevor Rees-Jones v. Trevor Rees-Jones*, 799 S.W.2d 463, 467 (Tex. App. – El Paso 1990, writ denied). Failure to give the required notice is fatal to existence of the lien. Tex. Prop. Code § 56.022. Therefore, it is imperative that the lien claimant properly identify the nature of his relationship in connection with the work performed on the well. If there is any doubt, or a challenge is anticipated, the safe practice is to consider oneself a subcontractor and comply with the additional requirements. Because of the additional time required to identify all property owners, it is essential that the mineral subcontractor initiate the lien-filing process well in advance of its filing deadline.

In addition to being a requirement for perfecting a lien, the notice may also serve to trap funds held by the owner at the time notice is given. The Property Code permits a property owner—who has been served with the notice—to withhold any payments due to the contractor (up to the amount of the debt claimed) until the debt has been paid or determined not to be due. Tex. Prop. Code § 56.043. Property owners are usually more than willing to withhold payments to the contractor to avoid having a lien filed against their property.

Where to file:

To secure the mineral property lien provided by Chapter 56 of the Texas Property Code, the lien claimant must file an affidavit with the County Clerk of the county in which the property is located. Tex. Prop. Code § 56.021. If the mineral property is located in more than one county, the affidavit should be filed in each county where any portion of the property is located. *Id.*

While the Code provides certain uniform requirements concerning when and where to file the lien affidavit, the Code does not address local filing policies and procedures. For instance, filing costs are typically on a per page basis but vary from county to county. It is always helpful to call the County Clerk where the lien affidavit will be filed to determine the applicable fees and ensure compliance with local filing procedures. This will facilitate the timely filing and recording of the lien.

Accrual of indebtedness

The lien affidavit must be filed not later than six months after the indebtedness accrues. The accrual of indebtedness varies depending upon the types of services provided and the period of time over which the services are provided.

Labor Performed by the Day or Week. When the indebtedness is for labor performed by the day or week, the indebtedness accrues at the end of each week during which the labor is performed. Tex. Prop. Code § 56.005(a).

Materials or Services. The indebtedness for material or services accrues on the date the materials or services were last furnished. All materials or services which are provided by a particular lien claimant for the same land, leasehold, pipeline or right-of-way are considered to be furnished under a single contract. However, if more than six months elapses between the dates the materials or services are provided, this “single contract” presumption does not apply. Tex. Prop. Code § 56.005(b). In such a case, the 6-month filing window will have passed, and furnishing additional materials or services will not revive a claimant’s lien rights. However, furnishing additional materials or services after a period of five months may effectively extend the lien affidavit filing deadlines. A lien claimant is well-advised to file its lien as early as possible to avoid claims that the “single contract” presumption does not apply to the claimant’s particular situation.

Maintaining perfection in moveable property:

Some of the property covered by a mineral lien is moveable, and this property is occasionally removed from the county in which the lien affidavit was filed. In such a case, the lienholder may maintain his security interest in that property by filing an itemized inventory of the property moved. The inventory must state the amount of the unpaid debt and must be filed with the clerk of the county to which the property has been moved not later than the 90th day after the date the property was relocated. The filed inventory gives notice of the existence of the lien in the new county.

The burden of monitoring the location of such property is made easier by Texas Property Code § 56.042(a), which forbids the sale or removal of property to which the lien has attached without the written consent of the lienholder. Compliance with this section will ensure that the lienholder has sufficient time to file its inventory in the new county.

Under § 56.042, if property is sold or removed without the written consent of the lienholder, the lienholder is entitled to possession of the property regardless of where it is located. The lienholder may then have the property sold to satisfy the debt.

Enforcement of the lien - procedures and timing

A mineral lien is enforced under the same time and procedural requirements as an M&M lien under Chapter 53 of the Property Code. To enforce the lien, the lienholder must file a lawsuit requesting foreclosure of the lien and secure an order from the Court compelling the sale of the property subject to the lien. Tex. Prop. Code § 53.154.

Time to Bring Suit. Suit to foreclose the lien must be brought (1) within two years after the last day a lien claimant may file its lien affidavit or (2) within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later. Tex. Prop. Code § 53.158. If suit is not filed within this time, the lien is automatically discharged by operation of law. Tex. Prop. Code § 53.157.

Where to Bring Suit. Property Code § 53.157(2) suggests that the only proper place to bring the suit is in the county where the property is located. However, parties often file suit in other counties, joining lien foreclosure with other claims such as breach of contract or suit on sworn account. This practice is supported by case law holding that venue of a lien foreclosure suit is not mandatory in the county where the property is located. Although no reported cases have discussed venue in connection with § 53.157(2), the preferred practice would be to file the suit for foreclosure in the county where the property is situated.

Production and Proceeds

There is generally a considerable passage of time between the date a lien claimant secures its lien and the date the claimant actually sees the property sold to satisfy the debt. During this time, oil and/or gas is usually being produced and sold from the well. This production is obviously depleting one of the most valuable assets to which the lien has attached, raising questions about whether the value of the leasehold will be sufficient to satisfy the lien if the property is ever sold. The problem is that the lien does not attach to the oil and gas produced from the well or the proceeds from its sale.

There may be a way, however, for the lienholder to realize value from the production and sale of the hydrocarbons. In the case of *Abella v. Knight Oil Tools*,¹ the plaintiff-lienholders requested and obtained the appointment of a receiver under Chapter 64 of the Texas Civil Practice and Remedies Code to take possession of the proceeds of production from the wells to which their liens attached. The lienholders were effectively able to extend the reach of their lien to the proceeds even though the lien itself did not attach to them. Accordingly, a lienholder should consider seeking the appointment of a receiver where the facts support such a request.

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¹ *Abella v. Knight Oil Tools*, 945 S.W.2d 847 (Tex. App.–Houston [1st Dist.] 1997, no writ).