

Texas Underwriting Manual Supplement

Construction and Mechanic's Liens

1. Procedural Rule P-8

- a) Procedural Rule P-8 requires the following exception on Schedule B of every title policy issued where the insured amount includes the cost of immediately contemplated improvements.

"Any and all liens arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does insure the Insured against loss, if any, sustained by the Insured under this Policy if such liens have been filed with the County Clerk of _____ County, Texas, prior to the date hereof."

- b) The policy must also contain the following liability paragraph:

"Liability hereunder at the date hereof is limited to \$_____. Liability shall increase as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum plus the amount actually expended by the Insured in improvements at the time the loss occurs. Any expenditures made for improvements, subsequent to the date of this policy, will be deemed made as of the date of this policy. In no event shall the liability of the Company hereunder exceed the face amount of this policy. Nothing contained in this paragraph shall be construed as limiting any exception or any printed provision of this policy."

2. Statutory Periods for Filing Construction/Mechanic's Lien Claim

- a) A mechanic's lien can be filed months after a contractor or subcontractor finishes the work on a property. For residential properties, a lien may be filed up to three months and fifteen days after the end of the month when the claimant last performed work or furnished materials; for commercial properties, a lien may be filed up to four months and fifteen days after the end of the month when work was last performed or materials furnished. (See charts below.)
- b) A policy may be issued without the P-8 exception after construction is completed and the statutory waiting period has passed. The date of completion should be based on the date attested to in the "Final Bills-Paid Affidavit" or "Affidavit of Completion" (both of which are described below) executed by the builder and owner.

Last Month In Which Work Was Performed Or Materials Furnished	Deadline For Filing Lien Claim Affidavit (As To Residential Property)
January	April 15
February	May 15
March	June 15

April	July 15
May	August 15
June	September 15
July	October 15
August	January 15
September	February 15
October	March 15
November	April 15
December	May 15

Last Month In Which Work Was Performed Or Materials Furnished	Deadline For Filing Lien Claim Affidavit (As To Commercial Property)
January	May 15
February	June 15
March	July 15
April	August 15
May	September 15
June	October 15
July	November 15
August	December 15
September	January 15
October	February 15
November	March 15
December	April 15

3. **Commencement Affidavit**

For each project with contemplated improvements, National Investors requires that the owner and original contractor jointly execute a Commencement Affidavit as provided by Section 53.124(c) of the Texas Property Code then file it with the Clerk of the County in which the land is located. The deadline to file the Commencement Affidavit is the 30th day after either the date of actual commencement of construction or the first delivery of materials to the land.

- a) Once it is recorded, the affidavit serves as *prima facie* evidence of the date of commencement on the construction project.
- b) This affidavit is important because a lien for any work performed or supplies delivered at the jobsite prior to the date of commencement may have priority over the lender's lien.
- c) The affidavit should be *substantially similar* to this [Commencement Affidavit sample form](#).

4. **Affidavit of Non-Commencement**

Additionally, the owner and original contractor should execute an Affidavit of Non-Commencement at the time of closing.

- a) This affidavit does not need to be filed with the County Clerk, unlike the Commencement Affidavit.
- b) The affidavit should be *substantially similar* to this [Affidavit of Non-Commencement sample form](#).

5. Independent Verification

It is recommended that the title professional conduct independent due diligence to ensure that the Commencement Affidavit and Affidavit of Non-Commencement are true at the time of closing. This can be accomplished by personal inspection or through dated photographs provided by the parties to the transaction, including satellite images, if the images can be confirmed as current and the file documented accordingly.

6. Final Bills-Paid Affidavit, Lien Waivers, and Affidavit of Completion

Unpaid subcontractors and suppliers who provided work or supplies for the construction may have a lien against the property even though no written lien claim is recorded. The priority of those liens can relate back to the first day that any construction began on the property (not just the day that claimant began working or brought supplies to the site). The risk of an unfiled lien is why truthful and complete Final Bills-Paid Affidavits and Affidavits of Completion from the General Contractor/Builder and Owner/Purchaser are so important when insuring a sale or permanent loan on a new home/improvement.

a) Final Bills-Paid Affidavit

National Investors requires that the original contractor execute a Final Bills-Paid Affidavit in compliance with Section 53.259 of the Texas Property Code.

- i. The Code states, “As a condition of final payment under a residential construction contract, the original contractor shall, at the time the final payment is tendered, execute and deliver to the owner, or the owner's agent, an affidavit stating that the original contractor has paid each person in full for all labor and materials used in the construction of improvements on the real property. If the original contractor has not paid each person in full, the original contractor shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.”
- ii. It is a crime for a person to knowingly sign a false Final Bills-Paid Affidavit.
- iii. The affidavit should be *substantially similar* to this [Final Bills-Paid Affidavit sample form](#).

b) Lien Waivers

National Investors requires [Lien Waivers](#) from subcontractors when:

- i. The Final Bills-Paid Affidavit (described above) indicates that subcontractors or suppliers remain unpaid;
- ii. Any subcontractor or supplier has filed a Lien Claim Affidavit; or
- iii. Any escrow officer or his company has notice that any subcontractor or supplier claims to be unpaid.

c) Affidavit of Completion

National Investors requires an Affidavit of Completion be executed then also filed with the County Clerk.

- i. The proper filing of this affidavit establishes a date certain for the completion of the construction project.
- ii. Both the owner (purchaser) and contractor should sign the affidavit. If the purchaser does not sign the Affidavit of Completion, they should sign an Acceptance Affidavit (included in the Lien Waiver.)
- iii. The Affidavit of Completion should be *substantially similar* to this [Affidavit of Completion sample form](#).