

DEMANDS FOR PAYMENT UNDER TEXAS PROPERTY CODE
SECTION 53.083 – GENERAL CONTRACTOR MUST ACT

Have you, as a General Contractor (“GC”) ever received a claim for payment or lien notice from a subcontractor of any tier or other demand for payment that has the following language?

“that all or part of the claim has accrued under Section 53.053 or is past due according to the agreement between the parties.”

If you receive such a claim or notice and you do not send the owner of the property a written notice that you dispute the claim or notice within thirty days, then the Owner must pay the demand within thirty days of receipt of the demand. The demand may accompany an original notice of nonpayment or of a past-due claim and may be stamped or written in legible form on the face of the notice.

Practical application

For example, if a GC has not paid a subcontractor for the past month or months for any reason (including subcontract default), during the course of the project, subcontractor can take steps to “trap” funds owing to the GC and make the above 53.083 demand. The demand under the statute may be in the form of a Notice of Lien, or in a separate claim letter following the lien notice. GC must send the Owner a notice disputing the claim within thirty days.

For a claim only for retainage, it is not required that the GC receive the notice of retainage agreement, but the GC would still be required to be copied on the 53.083 demand. A subcontractor can give a notice of retainage under § 53.057 and include the demand for payment or send the demand separately. The GC must send the notice of dispute within thirty days of receipt of the demand or the owner must pay the claim.

There are some other statutory hoops that the claimant must meet. You will want to consult with an attorney to see that all prerequisites have been met. However, if you receive a notice or claim with the quoted language above, it is prudent, if you dispute any part of the claim, to send the owner timely notice that you dispute the claim.