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A REVIEW OF
TEXAS REAL PROPERTY LIENS

A. INTRODUCTION:

This article is a general review of various types of real property liens promulgated under Texas law. A review of real property liens promulgated under federal or other laws is beyond the scope of this article and has not been attempted.

Given the large number and wide variety of the types of real property liens available under Texas law, this article highlights only several of the most common Texas real property liens. Given that numerous issues may arise with respect to each type of real property lien available under Texas law, this article is not intended to be a comprehensive discussion of each highlighted real property lien. Instead, this article is intended to be a general guideline with respect to each of them. To properly analyze a situation concerning any given lien, one should refer to all relevant constitutional and statutory provisions and case law concerning it.

B. PROPERTIES EXEMPT FROM TEXAS REAL PROPERTY LIENS:

A few types of real property in Texas are exempt or partially exempt from the enforcement of Texas real property liens. Thus, in analyzing the effect of a given lien on a given tract of real property, one should initially determine whether the characteristics of such tract preclude the enforcement of the lien.

1. HOMESTEADS.

A homestead is a tract of land exempted from forced sale by general creditors. This is a special protection not extended to other types of property. The exemption provides protection of the homestead from all liens except those which are constitutionally permitted.

To establish a homestead, the claimant must show a combination of both overt acts or usage and intent to claim the property as a permanent residence. Generally, a present possessory interest in real property and the requisite occupancy will support a homestead claim. Ownership alone is insufficient to establish a property as a homestead.

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2 CVN Group, Inc. v. Delgado, 95 S.W.3d 234, 239 (Tex. 2002).
3 Stringer, 23 S.W.3d 354 (Tex. 2000).
5 Inwood North Homeowner’s Ass’n v. Harris, 736 S.W.2d 632, 636 (Tex. 1987).
Types of Homesteads:

<table>
<thead>
<tr>
<th>Family</th>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>One or more contiguous lots amounting to not more than 10 acres in a city, town, or village and used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant together with improvements</td>
<td>200 acres not in a city, town, or village used for the purposes of a home together with improvements</td>
</tr>
<tr>
<td>Single Adult</td>
<td>One or more contiguous lots amounting to not more than 10 acres in a city, town, or village and used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant together with improvements</td>
<td>100 acres not in a city, town, or village used for the purposes of a home together with improvements</td>
</tr>
</tbody>
</table>

Liens that may attach to Homesteads:

The homestead may not be subjected to forced sale for the payment of debts except for:

a. Liens for Purchase Money;
b. Owelty Liens;
c. Liens for Improvements;
d. Home Equity Liens;
e. Liens for Taxes;
f. Reverse Mortgages;
g. Liens Predating the Establishment of the Homestead; and
h. Conversion or Refinance of a Lien Secured by the Homestead.

7 TEX. CONST. ART. XVI §§ 50, 51 (Vernon Supp. 2004); TEX. PROP. CODE ANN. § 41.002(a), § 41.005(b) (Vernon 2004).
8 TEX. CONST. ART. XVI §§ 50, 51 (Vernon Supp. 2004); TEX. PROP. CODE ANN. § 41.002(b)(1), § 41.005(a) (Vernon 2004).
10 TEX. CONST. ART. XVI §§ 50, 51 (Vernon Supp. 2004); TEX. PROP. CODE ANN. § 41.002(b)(2), § 41.005(c) (Vernon 2004).
All other lien claims against the homestead are considered void.\textsuperscript{11}

a. **Liens for Purchase Money**

A lien for purchase money is a lien granted against a tract of land for loan proceeds actually used for the purchase of the tract.

**Limitation of Use of Funds:** If some loan proceeds are used to purchase the tract and some are not, the lien is valid only to the extent of the amount of the loan proceeds used to purchase the tract.\textsuperscript{12}

**Non-Joinder of Spouses:** A purchase money lien on homestead does not require the signature of both spouses to be valid.\textsuperscript{13}

b. **Owelty Liens**

An owelty lien is a unique form of purchase money lien arising when there is an unequal partition among cotenants of real property in kind.\textsuperscript{14} The lien secures the payment of the difference in value between the partitioned tracts from one cotenant to the other.\textsuperscript{15}

c. **Liens for Improvements**

A lien for improvements is a lien encumbering a tract of land for improvements made to such tract.

A laborer or materialman may secure a lien on a homestead pursuant to certain constitutional and statutory provisions.\textsuperscript{16}

**Written Contract:** To fix a lien on a homestead for improvements, the person who is to furnish the materials or perform labor must execute a written contract setting forth the terms of the agreement.\textsuperscript{17} The contract must be executed before the contractor furnishes materials or performs any labor.\textsuperscript{18} To be valid, the written contract must be filed with the county clerk of the county in which the homestead is located.\textsuperscript{19}

\textsuperscript{11} *Laster v. First Huntsville Properties*, 826 S.W.2d 125, 129 (Tex. 1991).
\textsuperscript{14} *See Sayers v. Pyland*, 161 S.W.2d 769, 772 (Tex. 1942).
\textsuperscript{17} TEX. CONST. ART. XVI § 50(a)(5) (Vernon Supp. 2004); TEX. PROP. CODE ANN. § 53.254(a) (Vernon 2004).
\textsuperscript{18} TEX. PROP. CODE ANN. § 53.254(b) (Vernon 2004).
\textsuperscript{19} *Id.* at § 53.254(e).
Value Limitation of Lien: A lien for improvements is limited to the amount of money actually used to improve the homestead. The improvements must be made to the homestead property for the lien to be valid.

d. Home Equity Liens

A home equity lien is a lien encumbering a homestead in connection with a loan granted to a homeowner who has accumulated equity in his home and is using such equity to secure the loan.

Effective January 1, 1998, the Texas Constitution was amended to allow a homestead to be encumbered with a home equity lien. Strict compliance with the requirements of the Constitution are required.

Restriction on Loan-to-Value Ratio: The principal amount of a home equity loan may not exceed 80% of the fair market value of the homestead on the date that the loan is made.

Closing Expenses Limitation: Home equity loan closing expenses, other than interest, may not exceed 3% of the original principal amount of the loan.

Nonrecourse: A home equity loan must be a nonrecourse loan with no personal liability against the owner or the owner’s spouse.

Frequency: Home equity loans cannot be closed more frequently than one year after the closing date of the last such loan made on the same property.

Location of Closing: A home equity loan may be closed only at the offices of (i) the lender, (ii) an attorney at law, or (iii) a title company. This rule is to prevent a homeowner from encumbering the homestead under duress or undue influence without a full understanding of the implications.

Right of Recission: The homestead owner may rescind a home equity loan transaction within three days after the date that the extension of credit is made without penalty or charge.

e. Liens for Taxes

A tax lien is a lien granted to a governmental entity for the repayment of taxes.

22 Id. at § 50.
25 Id. at § 50.
26 Id. at § 50(a)(6)(M)(i).  
27 Id. at § 50(a)(6)(P).  
28 Id. at § 50(a)(6)(Q)(viii).
A homestead may be encumbered by a lien for ad valorem taxes. A homestead may not be encumbered by a lien for state inheritance taxes. Why? Such taxes are not taxes specifically against the homestead property itself.

Special assessments imposed against the homestead by a public entity are not taxes which may create a valid lien.

f. Reverse Mortgages

A reverse mortgage allows a debtor to borrow against the debtor’s home equity to create an annual-like debt providing for periodic payments to the debtor by the lender.

Effective January 1, 1998, certain debtors may encumber their homestead with a reverse mortgage. Strict compliance with the requirements of the Constitution are required.

**Limitation of Age of Borrower:** A reverse mortgage loan cannot be made unless the borrower or the borrower’s spouse is 62 years of age or older.

**Joinder of Spouse:** A reverse mortgage requires the signature of both spouses to be valid.

**Nonrecourse:** A reverse mortgage must be a nonrecourse loan with no personal liability against the owner or the owner’s spouse.

**No Monthly Payment Requirement:** Reverse mortgages have no monthly repayment requirement. The note may not require repayment of principal or interest unless:

(i) all borrowers have died,

(ii) the homestead property is sold or otherwise transferred,

(iii) all borrowers cease occupying the homestead for a period of longer than 12 consecutive months without prior written approval of the lender,

(iv) the borrower defaults under the loan to repair or maintain, pay taxes and assessments, or insure the homestead property.

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29 *Id.* at § 50(a)(2).
31 *Id.*
34 *Id.* at § 50(k)(2).
35 *Id.* at § 50(k)(1).
36 *Id.* at § 50(k)(3).
(v) the borrower commits fraud in connection with the loan, or
(vi) the borrower fails to maintain the priority of the lender’s lien on the homestead property.\(^{37}\)

When the note becomes due, the lender must satisfy the note from the sale of the mortgaged homestead. Neither the note nor any deficiency will be an obligation of the borrower’s estate.

g. **Liens Predating Homestead**

An encumbrance will generally prevail over homestead rights if the encumbrance existed before the property became homestead.\(^{38}\) The establishment of a homestead will not destroy a pre-existing right.\(^{39}\)

h. **Conversion or Refinance of a Lien Secured by the Homestead**

A valid lien against a homestead may be renewed and refinanced without losing its validity so long as there is no increased burden on the homestead except as necessary for readjustment of the outstanding obligation (i.e., closing costs to be rolled into the new loan).\(^{40}\)

**Five Common Strategies Against a Homestead Claim**

a. **Abandonment.** The debtor has given up his homestead.

If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant’s spouse.\(^{41}\)

Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.\(^{42}\)

If a debtor acquires and occupies a new homestead, he thereby abandons and loses his former homestead.\(^{43}\) No one can have two homesteads at the same time.

b. **Alienation.** The debtor has sold the property.

c. **Estoppel.** The debtor has executed a homestead disclaimer to secure a loan for a non-homestead purpose.

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\(^{37}\) Id. at § 50(k)(6).

\(^{38}\) *Inwood North Homeowners Ass’n v. Harris*, 736 S.W.2d 632, 635 (Tex. 1987).

\(^{39}\) Id.


\(^{41}\) *T*EX.*PRO*P.*CODE ANN.* § 41.004 (Vernon 2004).

\(^{42}\) Id. at § 41.003.

\(^{43}\) *Coury v. Prot*, 85 F.3d 244, 254 (5th Cir. 1996).
d. **Judicial Estoppel.** A court may preclude a party from asserting that a property is the party’s homestead.

e. **Death.** The death of a claimant may terminate the homestead, although it will not terminate the family homestead when (i) the estate is insolvent and (ii) the claimant is survived by a spouse, minor child, or unmarried adult child remaining with the family.  

2. **PUBLIC AND STATE PROPERTIES.**

a. A public library is exempt from attachment, execution and forced sale.

b. The real property of the State of Texas, including the real property held in the name of state agencies and funds, and the real property of a political subdivision of the state are exempt from attachment, execution and forced sale. A judgment lien or abstract of judgment may not be filed or perfected against such property. Any such judgment lien or abstract of judgment is void.

C. **VOLUNTARY LIENS:**

DEED OF TRUST LIENS AND VENDOR’S LIENS.

(A) **Deed of Trust Liens:** A deed of trust lien is a voluntary contract lien in which the owner of the property pledges title to the property as security for performance of an obligation (typically, the payment of an indebtedness).

(B) **Vendor’s Liens:** A vendor’s lien is a voluntary lien granted by the purchaser to the seller upon the conveyance of real property financed in whole or in part by the seller. A vendor’s lien is typically, if not always, granted by the conveyance document.

In the event the purchaser of the real estate is obtaining purchase money financing from a third party lender, the third party lender may require the conveyance document to include a vendor’s lien granted by the purchaser to the seller and expressly assigned by the seller to the third party lender in the conveyance document.

**Priority of Deed of Trust Liens and Vendor’s Liens:** Priority is based upon the date of recording of the lien.

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45 Id. at § 43.001.
46 Id. at § 43.002.
Duration of Deed of Trust Liens and Vendor’s Liens: Such liens are void four (4) years after the date of maturity or default and acceleration of debt.\(^47\) Problem: Many deeds of trust and deeds with vendor’s liens do not contain a statement of the maturity of the indebtedness.

Master Form of Deed of Trust: A master form of deed of trust may be recorded in any county without acknowledgment. The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provisions were set out in the instrument.\(^48\)

Termination of Deed of Trust Lien and Vendor’s Lien

a. **Satisfaction of Debt.** The lien of a deed of trust is extinguished when the amount of the mortgage debt is paid.\(^49\)

b. **Release of Lien.**

   **Practice Tip:** Many times, a purchase money lender will hold both a deed of trust lien and a vendor’s lien in connection with a purchase money loan transaction. Upon the payoff of the indebtedness secured by the liens, be sure that the release document releases both liens.

   **Partial Release of Lien:** In the event of a partial release of the lien (releasing the lien from only a portion of the property), be sure that the partially released portion is properly described in the release document and that the document is clear that the intent is to release only a portion of the property from the lien.

   **Unique Release of Lien Rule Applicable to One-to-Four Family Residences and Condominium Regimes.** If a lender fails to execute and deliver a release of a mortgage to the borrower within 60 days after the date of the lender’s receipt of payment of the mortgage by the borrower in accordance with a payoff statement furnished by the lender, an authorized officer of a title company may, on behalf of the borrower, execute and record an affidavit, pursuant to statutory requirements, which shall operate as a release of the mortgage.\(^50\)

c. **Lien and Debt Owned by Same Person.** When the title to the mortgaged land and the mortgaged debt become vested in the same person, the mortgage is generally merged in the title and becomes extinguished. There can be no merger of the debt and ownership of the property contrary to the intention of the property owner. This is a question of fact for the jury.\(^51\)


\(^{50}\) *Tex. Prop. Code Ann.* § 12.017(c) (Vernon 2004).

d. **Foreclosure.** A foreclosure and sale extinguishes all interests junior to the mortgage being foreclosed. All superior interests in title remain. Foreclosure may be conducted by power of sale or by judicial sale.

e. **Assignment of Lien to Purchaser:** The borrower may assign the indebtedness to a purchaser of the property who agrees to assume the borrower’s obligations secured by the lien. Because the documentation for most loans contains a due on sale clause (a clause that provides that the loan is immediately due and payable upon transfer of the property), most loans are not freely assignable by the borrower and will require the lender’s written consent. In the event a deed of trust lien is assigned, be sure that any vendor’s lien is also properly assigned.

D. **INVAOLNTARY LIENS:**

1. **LIS PENDENS.**

A recorded lis pendens (which means litigation pending) provides notice to the world of its contents concerning pending litigation or a legal proceeding concerning the real property. The notice is effective from the time it is filed for record under the owner’s name in the county in which the property is located, regardless of whether service has been made on the parties to the proceeding.\(^{52}\)

A transfer of real property involved in a legal proceeding to a third party who has paid valuable consideration and who does not have actual or constructive notice of the proceeding is effective, even though the judgment is against the party transferring the property, unless a lis pendens has been recorded under that party’s name in the county in which the property is located.\(^{53}\)

**How is a Lis Pendens Canceled?** On the motion of a party, the court may cancel the lis pendens at any time during the proceeding if the court determines that the party seeking affirmative relief can be adequately protected by the deposit of money into court or by the giving of an undertaking.\(^{54}\)

2. **JUDGMENT LIENS.**

A judgment lien constitutes a lien on the real property of the defendant located in the county in which the abstract of judgment is recorded, including real property acquired after it is recorded.\(^{55}\)

A judgment operates as a lien on property only from the date its abstract is recorded.\(^{56}\) The specific contents of an abstract of judgment are statutorily prescribed.\(^{57}\)

\(^{52}\) [TEX. PROP. CODE ANN. § 13.004(a) (Vernon 2004)].

\(^{53}\) Id. at § 13.004(b).

\(^{54}\) Id. at §12.008(a).

\(^{55}\) Id. at § 52.001.
An abstract must substantially comply with the statutory provisions. In the event only a minor deficiency exists, the lien is still valid. 58

**Effect of Lien on Appeal of Judgment?**  An abstract of judgment does not constitute a lien on real property if (i) the defendant has posted security as provided by law; and (ii) the court finds that the creation of the lien would not substantially increase the degree to which a judgment creditor’s recovery under the judgment would be secured, and a certified copy of the finding of the court is properly recorded. 59

**Satisfaction of a Judgment Lien:**

a. Voluntary Payment.
b. Collection on Execution.
c. Obtaining another Judgment. A judgment is extinguished when, being used as a cause of action, it grows into another judgment. 60
d. Agreement to Satisfy and Release. A valid contractual agreement between the parties to satisfy the judgment and release the lien.

**Satisfaction of a Judgment may be Shown by Recordation of:**

a. A return on an execution issued on the judgment, or a copy of the return, certified by the office making the return; or
b. A receipt, acknowledgment or release that is signed and acknowledged by the party entitled to receive payment of the judgment or by that person’s attorney of record. 61

**Priority:** Priority is based upon the date of recording of the abstract of judgment.

**Duration of Lien:** A judgment lien continues for 10 years following the date of recording the abstract except that if the judgment becomes dormant during the 10 year period, the lien ceases to exist. 62

**Dormant Judgments:** A dormant judgment is one which has not been satisfied nor extinguished by lapse of time, but which execution on the judgment cannot occur unless the judgment is revived. If a writ of execution is not issued within 10 years after the rendition of a judgment, the judgment is dormant and execution may not be issued on the judgment unless revived. 63

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56 Id. at § 52.006.
57 Id. at § 52.003.
59 TEX. PROP. CODE ANN. § 52.0011 (Vernon 2004).
61 TEX. PROP. CODE ANN. § 52.005 (Vernon 2004).
62 Id. at § 52.006.
63 TEX CIV. PRAC. & REM. CODE ANN. § 34.001 (Vernon 2004).
Revival of a Dormant Judgment: A dormant judgment may be revived pursuant to an action brought not later than the second anniversary of the date the judgment becomes dormant in accordance with Texas Civil Practice & Remedies Code § 31.006.

Note: A judgment lien is unenforceable as to a homestead so long as it remains homestead.64

Homestead Case: In Tarrant Bank v. Miller,65 Tarrant Bank is the successor in interest to a judgment obtained against the Millers for a delinquent car loan. The judgment was properly abstracted and filed of record. The Millers subsequently entered into a contract to sell their homestead and Tarrant Bank refused the Millers’ request to partially release the lien from the homestead. The Millers lost the sale because the title company refused to issue an owner’s policy of title insurance without the partial release. The Millers sued Tarrant Bank for slander of title. Tarrant Bank defended that its abstracted judgment created no lien against the homestead and, thus, could not as a matter of law cloud the homeowner’s title. The court held for the Millers in the amount of $21,000. The lien did not need to be valid to create a cloud on title.

3. STATE AD VALOREM TAX LIENS.

A taxing authority has a lien on real property securing the payment of ad valorem taxes, penalties, and interest assessed against the property.66 The lien attaches on January 1 of each year to property to secure the payment of such taxes, penalties and interest imposed on the property for the year.67

The doctrine of innocent purchaser is not applicable with respect to a tax lien against real property.

Priority: A tax lien on real property takes priority over other liens encumbering the property regardless of whether the other lien existed prior to the attachment of the tax lien except that a tax lien on real property is inferior to a claim: (i) for any survivor’s allowance and funeral expenses, (ii) under a recorded restrictive covenant running with the land other than in favor of a property owners’ association recorded before January 1 of the year the tax lien arose, or (iii) under a valid easement of record recorded before January 1 of the year the tax lien arose.68 It is a determination of federal law as to whether a state tax lien has priority over a federal tax lien.69

66 TEX. TAX CODE ANN. § 32.01(a) (Vernon 2004).
67 Id.
68 Id. at § 32.05(b) and (c).
69 Id. at § 32.04(a).
Transfer of Tax Lien: A property owner may authorize, by written agreement, another person to pay taxes imposed against his property.\(^{70}\) In the event a person other than the property owner so pays such taxes, that person will be subrogated to the rights of the taxing authority in the lien and, thus, may file suit to foreclose the tax lien.\(^{71}\) The transfer of the tax lien must be recorded in the appropriate land records.\(^{72}\)

Right of Redemption Upon Transfer of Tax Lien and Subsequent Tax Sale: Upon the foreclosure of the property by the person holding the tax lien, the person whose property is sold, or any first priority lien holder of the property, is entitled to redeem the property from the purchaser at the tax sale within one (1) year after the date the property is sold by paying the tax sale purchase price, costs, and interest.\(^{73}\)

Duration: A tax lien is not ordinarily lost by lapse of time or transfer of the property.

Homestead or Agricultural Properties and Right of Redemption:

3 Basic Scenarios:

a. **Property Sold at Tax Sale to a Third Party:** The owner of a homestead or agricultural property sold at a tax sale to a purchaser other than the taxing entity may redeem the property within two (2) years of the date on which the purchaser’s deed is filed of record by paying the purchase price paid for the property, the recordation fee, the amount paid by the purchaser as taxes, penalties, interest and costs, plus a redemption premium of 25% of the aggregate total if the property is redeemed within the first year of the redemption period or 50% of the aggregate total if the property is redeemed in the second year of the redemption period.\(^{74}\)

b. **Property Sold at Tax Sale to Taxing Entity and Taxing Entity Still Owns Property:** The owner of a homestead or agricultural property sold at a tax sale to a taxing entity who has not resold the property may redeem the property within two (2) years of the date on which the taxing entity’s deed is filed of record by paying the recordation fee and the amount expended by the taxing entity plus (i) the lesser of the amount of the judgment against the property or the market value of the property specified in the judgment if the property was judicially foreclosed, or (i) the lesser of the amount of taxes, penalties, interest, and costs for

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\(^{70}\) *Id.* at § 32.06(a).
\(^{71}\) *Id.* at § 32.06(c).
\(^{72}\) *Id.* at § 32.06(d).
\(^{73}\) *Id.* at § 32.06(i).
\(^{74}\) TEX. CONST. ART. VIII § 13 (Vernon Supp. 2004); TEX. TAX CODE ANN. § 34.21(a) (Vernon 2004).
which the warrant was issued or the market value of the property specified in the warrant, if the property was seized.  

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c. Property Sold at Tax Sale to Taxing Entity and Taxing Entity Sold Property to Third Party: The owner of a homestead or agricultural property sold at a tax sale to a taxing entity who subsequently resells the property may redeem the property within two (2) years of the date on which the taxing entity’s deed is filed of record by paying the new owner the amount the owner paid for the property, the recordation fee, the amount paid by the purchaser as taxes, penalties, and costs, plus a redemption premium of 25% of the aggregate total if the property is redeemed within the first year of the redemption period or 50% of the aggregate total if the property is redeemed in the second year of the redemption period.  

Non-Homestead and Non-Agricultural Properties and Right of Redemption: The owner of a non-homestead and non-agricultural property sold at a tax sale may redeem the property in the same manners as above, except:

(A) the redemption period is only 180 days; and

(B) the redemption premium payable by the owner to a purchaser other than the taxing unit may not exceed 25%.  

4. STATE TAX LIENS.

All taxes, fines, interest, and penalties due by a person to the state are secured by a lien on all of the person’s property. The commissioner must file a tax lien notice in the land records.  

Types of Taxes Covered: Sales, excise, and use taxes, franchise taxes, business permit taxes, severance taxes, gross receipts taxes, state inheritance taxes, and unemployment commission taxes, among others.

Duration: The state tax lien on real estate continues until the taxes secured by the lien are paid.  

5. UNEMPLOYMENT TAX CONTRIBUTION LIENS.

If an employer does not pay the requisite amount of unemployment tax contribution to the State unemployment commission, a lien attaches to real property of the employing unit at the time the contribution, penalty, interest, or

75 TEX. CONST. ART. VIII § 13 (Vernon Supp. 2004); TEX. TAX CODE ANN. § 34.21(b) (Vernon 2004).
76 TEX. TAX CODE ANN. § 34.21(c) (Vernon 2004).
77 Id. at § 34.21(e).
78 Id. at § 113.001(a).
79 Id. at § 113.002(a).
80 Id. at § 113.105(a).
other charges become overdue. The lien is governed under the State Tax Lien provisions and is enforceable by the State Comptroller. An additional lien extends to the State unemployment commission for the amounts due from the employing unit to the commission. This lien is also governed by the State Tax Lien provisions and is enforceable by the State unemployment commission.

6. RESIDENTIAL HOMEOWNER’S ASSOCIATION LIENS.

A residential property owners’ association may have a lien encumbering each property subject to the association’s restrictions for assessment and other amounts due to the association. The lien is created by recordation of the restrictions, which constitutes record notice and perfection of the lien. No other recordation of lien or notice is required unless the restrictions provide otherwise.

Limitation of Foreclosure: A property owners’ association may not foreclose the assessment lien if the debt securing the lien consists solely of (i) fines assessed by the association, or (ii) attorney’s fees incurred by the association solely associated with fines assessed by the association.

Right of Redemption: After foreclosure of the assessment lien against a property, the owner of the property has a right to redeem the property, within 180 days after the date the association mails written notice of the sale to the owner, by repaying to the association all amounts due plus interest and other related costs. If the property was purchased at the foreclosure sale by a third party, the owner must also repay to the owner the purchase price paid by the purchaser and various other costs and expenses.

Note: A person who purchases property at a sale foreclosing a property owners’ associations’ lien may not transfer the property to another person other than the redeeming lot owner during the redemption period.

7. RESIDENTIAL CONDOMINIUM ASSOCIATION’S LIENS.

A residential condominium association may have a lien encumbering each condominium unit for assessments and other amounts due to the association. The lien is created by recordation of the condominium declaration, which constitutes record notice and perfection of the lien. No other recordation of lien or notice is required unless the condominium declaration provides otherwise.

81 TEX. LABOR CODE ANN. § 213.057(a) (Vernon 2004).
82 Id. at § 213.057(c) and (d).
83 Id. at § 213.058(a).
84 Id. at § 213.058(c).
85 TEX. PROP. CODE ANN. § 209.009(a) (Vernon 2004).
86 Id. at § 209.009(b) and (d).
87 Id. at § 209.009(e).
88 Id. at § 209.009(c).
89 Id. at § 82.113(a).
Priority: The association’s lien has priority over any other lien except: (i) tax
liens and governmental assessments, (ii) liens and encumbrances recorded before
the declaration is recorded, (iii) the first vendor’s lien or first deed of trust lien
recorded before the date on which the assessment sought to be enforced became
delinquent, and (iv) unless the declaration provides otherwise, a lien for
construction of improvements to the unit perfected before the date on which the
assessment sought to be enforced became delinquent.\textfootnote{90 Id. at § 82.113(b).}

Limitations: The association may not foreclose the lien for assessments
consisting solely of fines assessed by the association.\textfootnote{91 Id. at § 82.113(e).}

Right of Redemption: After foreclosure of the assessment lien against a
property, and in the event the association purchased the property at foreclosure,
the owner of the property has a right to redeem the property, within 90 days after
the date of the foreclosure sale, by repaying to the association all amounts due
plus interest and other related costs.\textfootnote{92 Id. at § 82.113(g).}

8. MECHANIC’S LIENS.

A person may have a lien on real property for labor performed or material
supplied to such real property for the payment of such labor and/or materials. The
applicable law is determined by whether the project is a public project or private
project and what type of payment bond, if any, has been provided.\textfootnote{93 See TEX.
PROP. CODE Chapter 53.} As mentioned previously, homestead properties are subject to specific additional
procedures.

Two Types of Mechanic’s Liens Available in Texas:

a. Constitutional Lien

The constitutional lien does not require compliance with the requirements of the
Texas Property Code to enforce the lien. It is available only to original
contractors for construction purposes and is generally limited to “buildings”. The
constitutional lien is limited and claimants should not rely solely on it to protect
their rights.\textfootnote{94 TEX. CONST. ART. XVI § 37 (Vernon Supp. 2004).}

b. The Statutory Lien

The statutory lien is available to both original contractors and subcontractors.\textfootnote{95 TEX.
PROP. CODE ANN. § 53.021 (Vernon 2004).} Lien claimants must file an affidavit of lien in the land records to perfect its lien.\textfootnote{96 Id. at § 53.051 (Vernon 2004).}
Note: A mechanic’s lien may arise after the sale by the owner of the real property for which labor was performed or material was supplied prior to the sale.

How does a title company become comfortable that there are no potential mechanics lien claims affecting the property for labor performed or labor supplied prior to the sale? The title company should obtain an Affidavit as to Debts and Liens from the seller whereby the seller swears that there are no such claims affecting the property. Some Affidavit as to Debts and Liens forms require indemnification by the seller to the title company for any such mechanic’s liens claims arising subsequent to the closing but for labor performed or materials supplied prior to closing.

9. LIENS AGAINST MINERAL PROPERTY.

A mineral contractor has a lien on real property to secure payment for labor or services related to mineral activities.97

Not later than six (6) months after (i) the end of each week during which labor is performed or (ii) the date the material or services were last furnished, a person claiming a lien must file an affidavit with the county clerk.98 The contents of the affidavit are statutorily prescribed.

10. RAILROAD LABORER’S LIENS.

A laborer in the construction of a railroad has a lien on the railroad for the amount owed for the labor or the use of the tools.99

Priority: A railroad laborer’s lien takes priority over all other liens on the same property.100

Duration of Lien: A railroad laborer’s lien expires twelve (12) months after the date it is created, unless the lien claimant has sued to foreclose the lien.101

11. BROKER’S LIENS.

A broker has a lien on a seller’s, buyer’s, lessor’s, or lessee’s commercial real estate interest in the amount specified in the brokerage commission agreement signed between the respective parties if (i) the broker has earned the commission pursuant to the agreement and (ii) a notice of lien is recorded.102 The contents of the notice are statutorily prescribed.103

97 Id. at § 56.002, § 56.003(a)(2).
98 Id. at § 56.005 and § 56.021(a).
99 Id. at § 57.001.
100 Id. at § 57.002.
101 Id. at § 57.003.
102 TEX. PROP. CODE ANN. § 62.021 (Vernon 2004).
103 Id. at § 62.025.
When must a broker file the notice of lien?

(A) If a broker earned a commission under an agreement signed by the seller, the broker must record the notice of lien before the conveyance of the property on which the broker is claiming a lien.\textsuperscript{104}

(B) If a broker earned a commission under an agreement signed by the buyer, the broker must record the notice of lien before the buyer conveys the property on which the broker is claiming a lien.\textsuperscript{105}

(C) If the lien is based on a lease transaction, the broker must record the notice of lien before the earlier of (i) the 91\textsuperscript{st} day after the date the event for which the commission becomes payable or (ii) the date the person obligated to pay the commission records a subsequent conveyance of that interest after executing the lease agreement relating to the lease transaction for which the lien is claimed.\textsuperscript{106}

**Duration of Lien:** A broker must bring a suit to foreclose the lien on or before the second anniversary of the date the notice of lien is recorded.\textsuperscript{107} Different time periods apply for a lien in the event the commission agreement contemplates deferred commission.\textsuperscript{108}

12. **COUNTY LITTER LIENS.**

A lien in favor of the county attaches to real property in the event the commissioners court orders the removal of litter from property near a public highway and the county removes the litter after the owner fails to do so.\textsuperscript{109} The commissioners court must file a record of the lien in the county land records.\textsuperscript{110} The lien secures the payment of the costs and interest accruing at an annual rate of ten (10) percent on any unpaid part of the costs.\textsuperscript{111}

**Note:** A violation of the court’s order to remove litter is also a Class C misdemeanor.\textsuperscript{112}

13. **COUNTY WEED AND SANITARY LIENS.**

A lien in favor of the county attaches to real property in the event the commissioners court determines that a public nuisance exists and the owner of the

\textsuperscript{104} Id. at § 62.041(b)(1).
\textsuperscript{105} Id. at § 62.041(b)(2).
\textsuperscript{106} Id. at § 62.041(c).
\textsuperscript{107} Id. at § 62.062(a).
\textsuperscript{108} Id. at § 62.062(b).
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Id. at § 365.034(d).
real property fails to abate it after written notice. The commissioners court must file a notice that contains a statement of costs, a legal description of the property and the name of the property owner, if known, in the appropriate county land records. The lien secures the payment of the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee not to exceed $100.

Priority of Lien: The lien attaches when notice of the lien is filed of record and is inferior to a previously recorded mortgage lien.

14. MUNICIPAL UTILITY SERVICES LIENS.

A municipality may by ordinance impose a lien against an owner’s property for delinquent bills for municipal utility service to the property. The lien may include penalties, interest and collection costs. The lien is perfected by recording in the appropriate county land records a notice of lien.

Priority: The lien is inferior to a previously recorded mortgage lien and is superior to all other liens, including previously recorded judgment liens.

15. MUNICIPAL WEED AND SANITARY LIENS.

A municipality may obtain a lien against the real estate on which it performed sanitation work or weed abatement on the owner’s behalf after notice to the owner and the owner’s failure to perform such sanitation work or weed abatement, by filing a statement of expenses in the appropriate county land records. The lien is security for the payment by the owner for expenditures made by the municipality and interest accruing at an interest rate of ten (10) percent on the amount due from the date of payment by the municipality.

Priority: The lien is inferior only to (i) tax liens and (ii) liens for streets and improvements.

16. MUNICIPAL STREET AND IMPROVEMENT ASSESSMENT LIENS.

A municipality may assess a landowner for the entire cost of constructing a public highway, street, alley, sidewalk, including a curb, abutting the owner’s land.

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113 Id. at § 343.023.
114 Id. at § 343.023(c).
115 Id. at § 343.023(a)(2).
116 Id. at § 343.023(d).
117 TEX. LOC. GOV. CODE ANN. § 401.0025(d) (Vernon 2004).
118 Id. at § 401.0025(g).
119 Id.
120 Id. at § 401.0025(h).
121 TEX. HEALTH & SAFETY CODE ANN. § 342.007(b) (Vernon 2004).
122 Id. at § 342.007(c).
123 Id. at § 342.007(d).
124 TEX. TRANSP. CODE ANN. § 311.091(a), § 311.093(a) (Vernon 2004).
The assessment creates a lien on the owner’s abutting land for the assessed cost.  

17. CHILD SUPPORT LIENS.

A child support lien arises against real property of an obligor for all amounts of child support due and owing, including any accrued interest, costs and reasonable attorney’s fees. A child support lien is perfected when an abstract of judgment for past due child support or a child support lien notice is recorded and delivered as statutorily required. The requirements of the child support lien notice are statutorily prescribed.

**Duration:** A child support lien is effective until all current support and child support arrearages have been paid or the lien is released by the claimant.

**Priority:** A child support lien is inferior to a lien recorded prior to the child support lien notice is recorded.

E. CONCLUSION

This article provides a general guideline with respect to various Texas real property liens. To properly analyze a situation concerning any given lien, one should refer to all relevant constitutional and statutory provisions and case law concerning it. This article may serve as an initial reference guide to such provisions and case law in analyzing various types of Texas real property liens.

125 Id. at § 311.091(c), § 311.093(b).
126 TEX. FAM. CODE ANN. § 157.312(d) (Vernon 2004).
127 Id. at § 157.316(a).
128 Id. at § 157.313.
129 Id. at § 157.318(a).
130 Id. at § 157.320.