

**A. §53.160 Summary Motion to Remove Invalid or Unenforceable Lien**

- a. *In a suit brought to foreclose a lien or to declare a claim or lien invalid or unenforceable, a party objecting to the validity or enforceability of the claim or lien may file a motion to remove the claim or lien. The motion must be verified and state the legal and factual basis for objecting to the validity or enforceability of the claim or lien. The motion may be accompanied by supporting affidavits.*
- b. *The grounds for objecting to the validity or enforceability of the claim or lien for purposes of the motion are limited to the following:*
  1. *notice of claim was not furnished to the owner or original contractor as required by Section 53.056, 53.057, 53.j058, 53.252, or 53.253;*
  2. *an affidavit claiming a lien failed to comply with Section 53.054 or was not filed as required by Section 53.052;*
  3. *notice of the filed affidavit was not furnished to the owner or original contractor as required by Section 53.055;*
  4. *the owner complied with the requirements of Section 53.101 and paid the retainage and all other funds owed to the original contractor before.*
    - A. *the claimant perfected the lien claim; and*
    - B. *the owner received a notice of the claim as required by this chapter;*
  5. *all funds subject to the notice of a claim to the owner and the perfection of a claim against the statutory retainage have been deposited in the registry of the court and the owner has no additional liability to the claimant;*
  6. *when the lien affidavit was filed on homestead property:*
    - A. *no contract was executed or filed as required by Section 53.254;*
    - B. *the affidavit claiming a lien failed to contain the notice as required by Section 53.254; or*
    - C. *the notice of the claim failed to include the statement required by Section 53.254; and*
  7. *the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit.*
- c. *The claimant is not required to file a response. The claimant and any other party that has appeared in the proceeding must be notified by at least 21 days before the date of the hearing on the motion. A motion may not be heard before the 21<sup>st</sup> day after the date the claimant answers or appears in the proceeding.*
- d. *At the hearing on the motion, the burden is on:*
  1. *the claimant to prove that the notice of claim and affidavit of lien were furnished to the owner and original contractor as required by this chapter; and*
  2. *the movant to establish that the lien should be removed for any other ground authorized by this section.*
- e. *The court shall promptly determine a motion to remove a claim or lien under this section. If the court determines that the movant is not entitled to remove the lien, the court shall enter an order denying the motion. If the court determines that the movant is entitled to remove the lien, the court shall enter an order removing the lien claimed in the lien affidavit. A party to the proceeding may not file an interlocutory appeal from the court's order.*

- f. *Any admissible evidence offered at the hearing may be admitted in the trial of the case. The court's order under Subsection (e) is not admissible as evidence in determining the validity and enforceability of the claim or lien.*

☞ Section along with Chapter 12 of the *Civil Practices and Remedies Code* are very popular with owners and original contractors and not unusual to see the two pled at same time.

§53.160 provides summary method for removing lien from property:

1. Motion must be verified and must state legal and factual basis for objecting to lien affidavit. May, but does not have to be, supported by affidavits.
2. Grounds for objection limited to seven (7) grounds provided in §53.160(b):
  - a. Improper notice of claim;
  - b. Improper lien affidavit or filing of affidavit;
  - c. Improper notice of filing of lien;
  - d. Retainage already properly paid;
  - e. Interpleading of all required funds;
  - f. Improper lien on homestead; or
  - g. Execution of valid release.

NO OTHER GROUNDS ARE AVAILABLE UNDER §53.160.

3. Claimant doesn't have to file response BUT SHOULD. Must have at least 21 days' notice of hearing. Hearing can't be scheduled prior to 21 days after claimant appearing in case.
4. Burden of Proof.
  - a. On claimant - if concerning notice of claim or affidavit  
otherwise
  - b. On movant
5. Court is to make a prompt determination concerning lien. If court decides to remove, claimant may make interlocutory appeal.
6. Order not admissible as evidence but evidence developed at hearing is.

No response to motion required but claimant has burden at hearing to prove conformed with requirements of the Property Code in perfecting lien claim. Burden of proof on movant for any other ground authorized by subsection. Court determines the validity of lien and denies motion or removes lien. Claimant cannot appeal ruling of court.

2. Claimant can post bond in amount of anticipated costs and attorney's fees to stay removal of lien. §53.161

3. Lien can be later revived if claimant obtains final judgment in suit establishing lien. §53.162

BUT

Removed lien is void as to qualifying subsequent purchasers.