



Texas Mineral Liens: What Oil and Gas Companies Need to Know

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The unprecedented economic crisis facing the oil and gas industry is likely to increase lien claims by oil and gas contractors. Texas law contains certain statutory lien provisions by which a contractor may recover payment for labor or services without filing a lawsuit. In addition to mechanic's liens, Texas law also provides for a statutory mineral lien as set forth in Chapter 56 of the Texas Property Code. The following summary provides an overview of such mineral liens in Texas.

Mineral Liens – What Are They and Who Can File Them?

Parties entitled to statutory mineral liens are not entitled to liens provided by other statutes. Mineral liens are the exclusive method to secure payment for labor and services related to mineral activities. *Noble Exploration. v. Nixon Drilling Co.*, 794 S.S.D. 589, 597 (Tex. App.—Austin 1990, no writ).

A mineral contractor or subcontractor may file a mineral lien. Section 56.001 of the Texas Property Code defines a mineral contractor as any person who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under a contract with a mineral property owner, or such owner's trustee, agent or receiver. A mineral subcontractor is generally any person who performs such activities pursuant to a contract with the mineral contractor. Notably, the contractual relationship between a mineral contractor and mineral interest owner may be express or implied.

"Mineral activities" is defined as the "digging, drilling, torpedoing, operating, completing, maintaining, or repairing an oil, gas or water well, an oil or gas pipeline, or a mine quarry." TEX. PROP. CODE § 56.001.

Mineral Liens – What Property is Subject to the Lien?

Section 56.003(a) of the Texas Property Code sets forth the following property subject to a mineral lien:

- The material, machinery, and supplies furnished or hauled by the lien claimant;
- 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;

- Other material, machinery, and supplies used for mineral activities and owned by the debtor; and
- Other wells and pipelines used in operations related to oil, gas, and minerals and located on property covered by the lease.

A mineral lien may subject all of the wells on a particular leasehold to the lien. In addition, property not directly subject to the labor or services performed by a contractor may be subject to a mineral lien when such property is used in oil and gas production and owned by the same mineral interest owner.

However, absent an appointment of receiver, oil and gas production and its related proceeds are not subject to a mineral lien. In addition, because of the contractual relationship required by the statute, a mineral lien will generally not attach to the interest of a non-operator working interest owner unless the claimant can establish that a mining partnership, joint venture, or other agency relationship exists.

Mineral Liens – Filing and Notice Requirements

In order to secure the mineral lien, the party claiming the lien must file a lien affidavit, commonly titled “Verified Statement in Support of Lien on Mineral Property,” in the county in which the property is located not later than six months after the day the indebtedness accrues. TEX. PROP. CODE § 56.021(a). The priority date of a mineral lien relates back to the first date the work was performed.

The lien affidavit must include the information set forth in Section 56.022 of the Texas Property Code. In addition, a mineral subcontractor must serve written notice on the property owner at least 10 days before the lien affidavit is filed. TEX. PROP. CODE § 56.021(b).

Mineral Liens – Enforcement

A mineral lien is enforced under the same time and procedural requirements as a mechanic’s lien under Chapter 53 of the Texas Property Code. Any suit to foreclose the lien must be brought either within two years after the last day a lien claimant may file its lien affidavit, or 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. The only proper venue in which to bring a suit to enforce a lien is in the county where the property is located. If suit is not filed within this time, the lien is automatically discharged by operation of law. TEX. PROP. CODE §53.157. In the context of bankruptcy proceedings involving the debtor, limitation periods and other provisions pursuant to federal bankruptcy laws may also be applicable.

For more information about mineral liens in Texas, please contact [Craig Berube](#) or [Deana Allen](#).