



ALL-BILLS-PAID AFFIDAVITS The Correct Filing & Submittal Procedures

All-bills-paid affidavits are commonly required in contracts between real estate developers and general contractors. This type of affidavit is a sworn statement by the general contractor stating subcontractors and laborers have been paid in full. An all-bills-paid affidavit gives the developer assurance from the general contractor that no subcontractor that contributed labor to the project may file a lien against the property for a general contractor's failure to pay. Such liens can greatly affect the developer's ability to close on the property. Notably, if a general contractor knowingly submits a false affidavit, it may be fined up to \$4,000.00 and/or sentenced to jail.

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IF CONTRACTOR PAID IN FULL

Chapter 53 of the Texas Property Code governs the procedure to correctly submit an all-bills-paid affidavit. The affidavit must include a statement that each contractor has been paid in full through a date specified in the affidavit and that the contractor is not indebted to anyone as a result of the project. The names and contact information of both parties must be included and the affidavit must be signed in front of a registered notary. Once a statutorily correct all-bills-paid affidavit is submitted, the real estate developer is obligated to pay the general contractor for its performance.

IF CONTRACTOR NOT PAID IN FULL

The Texas Property Code also specifies the requirements for an all-bills-paid affidavit if subcontractors have not received payment. In this case, a general contract must include a warranty or representation that certain bills will be paid from the money received in reliance on the affidavit. Then the general contractor must state the amount owed, as well as the name, address, and telephone number of each subcontractor or laborer to whom payment is owed. The all-bills-paid affidavit is statutorily deficient if any of the above information is lacking.





AFFIDAVIT SERVES AS CONDITION PRECEDENT

When a contract requires an all-bills-paid affidavit, Texas courts have held the affidavit is a condition precedent to the general contractor's payment. A condition precedent is defined as an act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises.

In most situations, payment does not become due until a statutorily correct affidavit is submitted.

In some situations, payment does not become due until a statutorily correct affidavit is submitted. Accordingly, the general contractor may not have a valid claim for breach of contract even though payment has been withheld. The general contractor has most likely not completed its contractual obligations until the developer receives a sufficient all-bills-paid affidavit. Thus, payment will not become due until the general contractor's duty has been completely discharged.

SUMMARY

In conclusion, all-bills-paid affidavits are commonly required by real estate developers when contracting with a general contractor. Chapter 53 of the Texas Property Code sets out specific instructions for the completion of a sufficient all-bills-paid affidavit.

Additionally, a general contractor may submit an all-bills-paid affidavit even if all subcontractors have not been paid as long as it specifies that not all debts have been paid and includes the proper information for those not paid in the affidavit.

Lastly, Texas courts have held payment does not become due until a sufficient all-bills-paid affidavit is submitted to the developer. If the affidavit is improperly completed, the developer may be permitted to withhold payment.



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