

**Figure: 7 TAC §90.604(a)(16)**

## Mechanic's Lien Note (Second Lien- Home Improvement)

CREDITOR/LENDER _____	DATE OF NOTE _____
CREDITOR/LENDER NMLS ID _____	ACCOUNT/CONTRACT NO. _____
LOAN ORIGINATOR _____	BORROWER _____
LOAN ORIGINATOR NMLS ID _____	ADDRESS (include county) _____
ADDRESS (include county) _____	_____

PROPERTY ADDRESS: (include county) \_\_\_\_\_

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is \_\_\_\_\_. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: \_\_\_\_\_

Terms of Payment (principal and interest): \_\_\_\_\_

### SECURITY FOR PAYMENT

The Deed of Trust and the Lien created in the Contract secure this Note. You will have a security interest in the following described property: (property description) \_\_\_\_\_

### DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated \_\_\_\_\_ and includes all amounts secured by this Contract. The Note states that the amount I owe you is \_\_\_\_\_ dollars (U.S. \$ \_\_\_\_\_) plus interest.
- (J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.
- (K) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.
- (M) "Forcible Detainer" means a lawsuit to remove a person from the Property.
- (N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.
- (O) "Successor in Interest" means any party that has taken title to the Property.
- (P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

## **BORROWER'S PROMISE TO PAY**

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ \_\_\_\_\_. This amount plus interest must be paid by \_\_\_\_\_ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ \_\_\_\_\_. This amount plus interest must be paid by \_\_\_\_\_ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

## **LATE CHARGE**

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

## **AFTER MATURITY INTEREST**

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

## **PREPAYMENT**

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

## **FINANCE CHARGE AND REFUND METHOD**

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is \_\_\_\_%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is \_\_\_\_%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is \_\_\_\_%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.



**CREDIT INSURANCE**

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ \_\_\_\_\_ Credit Life, both borrowers \$ \_\_\_\_\_ Term \_\_\_\_\_  
Credit Disability, one borrower \$ \_\_\_\_\_ Credit Disability, both borrowers \$ \_\_\_\_\_ Term \_\_\_\_\_

**If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Co-Borrower's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

			_____ Borrower's Signature	_____ Date
Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:		
\$	\$			
\$	\$			
\$	\$			
			_____ Co-Borrower's Signature	_____ Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.\*\* I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

\*\*Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

**MAILING OF NOTICES TO BORROWER**

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

**STATEMENT OF TRUTHFUL INFORMATION**

I promise that all information I gave you is true.

**DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION**

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

**NO WAIVER OF LENDER'S RIGHTS**

If you don't enforce your rights every time, you can still enforce them later.

**COLLECTION EXPENSES**

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

**JOINT LIABILITY**

I understand that you may seek payment from only me without first looking to any other Borrower.

**USURY SAVINGS CLAUSE**

I do not have to pay interest or other amounts that are more than Applicable Law allows.

**SAVINGS CLAUSE**

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

**PRIOR AGREEMENTS**

**This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.**

**THIS NOTE SECURED BY A DEED OF TRUST**

In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note.

**APPLICATION OF LAW**

Federal law and Texas law apply to this Loan Agreement.

**OCCC NOTICE**

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: [occc.texas.gov](http://occc.texas.gov). E-mail: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).

**COLLATERAL**

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

**NOTICE**

**ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

\_\_\_\_\_(Seal)  
-Borrower

(Sign Original Only)

(Option for witness signatures)