

Mechanics Liens and Legislative Changes - HB 2237 Effective January 1, 2022



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Introduction

- This outline includes statutory changes out of the Texas Legislature's 2021 Regular Session, specifically HB 2237 (referred to herein as the "Amendment").
- The Amendment is effective for construction contracts signed January 1, 2022.
- The current rules under Texas Property Code Chapter 53 will be relevant for all construction contracts signed before January 1, 2022.

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Changes to the Definitions Section

- The definitional section of the statute, § 53.001, is tweaked to clarify and add a number of defined terms.
- Under the Amendment, “improvement” also includes plant materials or other supplies for landscaping, including retention ponds, retaining walls, berms, irrigation systems, fountains or similar installations, formerly placed in a separate category of liens under § 53.021(4). (See § 53.001(2)(D). Under § 53.001(2)(E), design, drawings, plans, plats, survey, or specifications provided by a licensed architect, engineer or surveyor are classed as lienable “improvements” under the 2021 Amendment.

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- At § 53.001(3), the definition of “Labor” is revised to include certain professional services, to make the claims of architects, engineers and surveyors fit within the definition of lienable labor so the specific provisions for those professional services under § 53.021 could be streamlined.
- At § 53.001(4), the definition of “Material” is amended to include specially fabricated materials so that providing a special notice for specially fabricated materials is no longer necessary.

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- At § 53.001(7)(a), a new definition is added for “purported original contractor” to facilitate the changes in the sham contractor provisions, discussed below.
- At § 53.001(8) the definition of “Residence” is modified to add the “*real property and improvements*” for a single residence, duplex, triplex or quadruplex or a unit in a multiunit structure used for residential purposes “*in which title to the individual units is transferred to the owners under a condominium or cooperative system*” and complies with subsections (A) and (B) for ownership and occupancy requirements.

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- At § 53.001(11), the definition of “retainage” is tweaked to delete the confusing language that “[t]he term does not include retainage under Subchapter E.” Retainage under Subchapter E is now called Reserved funds.

Refresher: Property Code Chapter 53, Subchapter E, requires an owner to retain ten percent of the total contract price until 30 days after completion.

- The retained funds give the owner a pool out of which to pay perfected lien claims and Subchapter E, Section 53.103 provides a safe harbor against certain lien claims where the statutory retainage is held for 30 days from final completion.

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