

**The University of Texas School of Law
55th Annual William W. Gibson, Jr.
Mortgage Lending and Servicing Institute
September 16-17, 2021**



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**Mechanics Liens and Legislative Changes From
HB 2237 Effective January 1, 2022
(Owners' and Lenders' Best Practices Version)**

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Introduction

- This outline includes statutory changes out of the Texas Legislature's 2021 Regular Session, specifically HB2237 (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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Retainage Issues

- 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.
- 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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- Section 53.103 generally limits an owner's liability to the total of trapped funds plus the required statutory retainage.
- If the owner maintains statutory retainage and does not pay the contractor funds otherwise "trapped" by a timely notice, the owner will generally not be liable for claims in excess of the retainage and the trapped funds.

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The Push Back

- Statutory retainage makes it harder to get the best pricing from subcontractors.
- Statutory retainage limits the contractor's available cash flow during construction.
- What if we only do 5%?
- How about releasing retainage on early completing subs?

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Also available as part of the eCourse

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