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

Steven E. Kennedy

Author Contact Information:
McGuire, Craddock & Strother, P.C.
Dallas, TX

skennedy@mcslaw.com
214.954.6821

***Legislative Update From
2021 Regular Session of the Texas Legislature***

Following is an outline of the changes to the Texas Property Code affecting mechanic's liens from the Texas Legislature's 2021 Regular Session, specifically HB 2237 (referred to below as the "Amendment"). The Amendment is effective *for construction contracts signed on or after January 1, 2022*. Because the current statute will remain in effect for all contracts entered prior to January 1, 2022, the current rules under Texas Property Code Chapter 53 will be relevant for some time.

This Amendment only deals with commercial private development in Texas and does not include any bond claim issues related to State of Texas public work projects or federally funded projects that may be covered by payment bonds required by the Texas Government Code or the Federal Miller Act.

For the purpose of this Legislative Update Section, the text of the Amendment is set forth below in its entirety, following the "Summary." With the limited exception of the first section of the Amendment, which amends the Texas Insurance Code, all of the changes in HB 2237 discussed below are to Chapter 53 of the Texas Property Code.

Definitions Clarified (See Changes to § 53.001)

The definitional section of the statute, § 53.001, is modified to clarify some terms and add a number of new 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.

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.

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 mean 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.

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.

Deadlines Falling on Holidays/Weekends Extended (See Changes to § 53.003(e))

Section 53.003 is amended to codify the assumption that many attorneys make for deadlines that occur on a weekend or holiday to provide for the deadline to be extended to the next day that is not a holiday or a weekend. The Section is also amended to authorize delivery of notices by other means than certified mail, provided those methods are traceable and provide proof of receipt.

Special Conditions for Architects, Engineers and Others to Have a Lien are Removed (See Changes to §§ 53.001(E); 53.021(3))

Section 53.021, defining persons entitled to a lien is modified to generally clarify the intent and, among other things, remove the “under or by virtue of a written contract with the owner” requirement for architects, engineers, surveyors, landscapers and demolition contractors under the pre-Amendment statute to have a lien.

Separate Notice for Specially Fabricated Materials is No Longer Required (See Changes to §§53.001; 53.023; 53.052; 53.056; and 53.057)(§ 53.058 is repealed)

The new form for notice under § 53.056 includes any claim for specially fabricated materials such that a separate notice is no longer required.

The Sham Contractor Provisions are Revised (See Changes to § 53.026(a))(§ 53.026(b) is repealed)

Section 53.026(a) is revised to delete the definition of “sham contractor,” which is now referred to as a “purported original contractor” as now defined under § 53.001(7-a). Section 53.026(b), excluding those simply holding a security interest, is repealed, as that provision is now included in the definition under 53.001 (7-a).

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