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To: Clients and Friends

From: David F. Dulock

Subject: Texas Legislative Update IV – House Bill 2237 Revises Chapter 53, Property Code, Relating to Mechanic’s, Contractor’s, and Materialman’s Liens

This legislative update addresses House Bill 2237 from the 2021 Regular Legislative Session. House Bill 2237 is effective January 1, 2022. Prior to this legislative update, we issued Legislative Update I, summarizing bills effective immediately; Legislative Update II, summarizing bills effective September 1, 2021; and Legislative Update III, summarizing Proposed Constitutional Amendments SJR 35 and HJR 125. Legislative Updates I, II and III may be found on the Resources page of the firm’s website www.bmandg.com.

According to the Original Author’s/Sponsor’s Statement of Intent in the Bill Analysis, [House Bill 2237](#) “seeks to streamline the current Texas lien statutes, remove redundant provisions, address various ambiguities, and provide for specific statutory forms for notice.”

House Bill 2237 amends the following Sections of Chapter 53 of the Property Code: §§53.001; 53003; 53.021 through 53.023; 53.026; 53.052; 53.055 through 53.057; 53.081; 53.082; 53.084; 53.101 through 53.107; 53.155; 53.157; 53.158; 53.160; 53.173; 53.205 through 53.208; 53.232; 53.238; 53.254; 53.255; and 53.281.

House Bill 2237 repeals the following provisions of Chapter 53 of the Property Code: 53.003(a); 53.026(b); 53.053; 53.056(b), (c), (d), (e), and (f); 53.057(b), (b-1), (c), (d), (e), and (g); 53.058; 53.081(d); 53.083; 53.158(b); 53.252 and 53.253.

Section 53.001 (Definitions) is amended by amending Subdivisions (2), (3), (4), (8), (11), (13), and (14) and adding Subdivision (7-a) to redefine “improvement,” “labor,” “material,” “residence,” “retainage,” “subcontractor,” and “work” and to define “purported original contractor.”

Section 53.003 (Notices) is amended by amending Subsections (b) and (c) and adding Subsection (e), as follows:

In Subsection (b), the existing text is deleted and replaced by a requirement that any notice or other written communication required by Chapter 53, except as provided by Subsection (c) or (d), be delivered: (1) in person; (2) by certified mail; or (3) by any other form of traceable, private delivery or mailing service that can confirm proof of receipt.

In Subsection (c), the words “registered or” are deleted regarding how notice is sent by mail.

New Subsection (e) provides that in computing the required number of days to provide a notice or to take action required under Chapter 53, if the last day is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(11 pages)

Section 53.021 (Persons Entitled to Lien) is amended by deleting portions of existing text, rearranging remaining text, and adding new text, to simplify Section 53.021 to provide that a person has a lien if the person, under a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor:

- (1) labors or furnishes labor or materials for construction or repair of an improvement;
- (2) specially fabricates material, even if the material is not delivered;
- (3) is a licensed architect, engineer, or surveyor providing services to prepare a design, drawing, plan, plat, survey, or specification;
- (4) provides labor, plant material, or other supplies for the installation of landscaping for an improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation; or
- (5) performs labor as part of, or furnishes labor or materials for, the demolition of an improvement on real property.

Section 53.022 (Property to Which Lien Extends) is amended by deleting portions of existing text in Subsections (a), (c) and (d) to provide as follows:

Subsection (a) provides that the lien extends to the improvements and to each lot of land necessarily connected.

Subsection (c) provides that a lien against land in a city, town, or village extends to each lot on which the improvement is situated or on which the labor was performed.

Subsection (d) provides that a lien against land not in a city, town, or village extends to not more than 50 acres on which the improvement is situated or on which the labor was performed.

Section 53.023 (Payment Secured by Lien) is amended by adding new text to Subdivision (1) and deleting Subdivision (3) to provide that the lien secures payment for:

- (1) the labor done or material furnished for the construction, repair, design, survey, or demolition; or
- (2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value.

Section 53.026 (Sham Contract) is amended by deleting portions of existing text in, and adding new text to, Subsection (a) and deleting Subdivisions (1), (2) and (3) to provide as follows:

Subsection (a) provides that a person who labors or furnishes labor or materials under a direct contractual relationship with a purported original contractor is considered to be an original contractor for purposes of perfecting a mechanic's lien.

Section 53.052 (Filing of Affidavit) is amended by amending Subsections (a), (b), and (c) by deleting portions of existing text, rearranging remaining text, adding new text, and by adding Subsections (d) and (e), to simplify Section 53.052 to provide as follows:

Subsection (a) requires an original contractor claiming the lien to file an affidavit with the county clerk:

- (1) for projects other than residential construction projects, not later than the 15th day of the fourth month after the month in which the original contractor's work was completed, terminated, or abandoned; or

(2) for residential construction projects, not later than the 15th day of the third month after the month in which the original contractor’s work was completed, terminated, or abandoned.

Subsection (b) requires a claimant other than an original contractor claiming the lien, except as provided by Subsection (c) or (d), to file an affidavit with the county clerk not later than the 15th day of the fourth month after the later of the month the claimant last provided labor or materials or the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

Subsection (c) requires a claimant other than an original contractor claiming a lien arising from a residential construction project to file an affidavit with the county clerk not later than the 15th day of the third month after the later of:

- (1) the month the claimant last provided labor or materials; or
- (2) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

Subsection (d) requires a claimant other than an original contractor claiming a lien for retainage to file an affidavit with the county clerk not later than the 15th day of the third month after the month in which the original contract under which the claimant performed was completed, terminated, or abandoned.

Subsection (e) requires that an affidavit under Chapter 53 be filed in the county where the improvements are located. Requires the county clerk to record the affidavit in records kept for that purpose and to index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Provides that failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

Section 53.055 (Notice of Filed Affidavit) is amended by deleting “by registered or certified mail” from text in Subsections (a) to provide as follows:

Subsection (a) requires a person who files an affidavit to send a copy of the affidavit to the owner or reputed owner at the owner’s last known business or residence address not later than the fifth day after the date the affidavit is filed with the county clerk.

Section 53.056 (Derivative Claimant: Notice to Owner and Original Contractor) is amended by amending its heading; amending Subsection (a) by deleting the words “Subchapter K”, inserting the words “Section 53.057”, deleting the words “this section”, inserting the words “Subsections (a-1) and (a-2)”; and adding Subsections (a-1), (a-2), (a-3), and (a-4), as follows:

Subsection (a) requires a claimant other than an original contractor, except as provided by Section 53.057, to give the notice prescribed by Subsections (a-1) and (a-2) for the lien to be valid.

Subsection (a-1) requires the claimant, for all unpaid labor or materials provided, to send a notice of claim for unpaid labor or materials to the owner or reputed owner and the original contractor. It also requires that the notice be sent: (1) for projects other than residential construction projects, not later than the 15th day of the third month after the month during which: (A) the labor or materials were provided; or (B) the undelivered specially fabricated materials would normally have been delivered; or (2) for residential construction projects, not later than the 15th day of the second month after the month during which: (A) the labor or materials were provided; or (B) the undelivered specially fabricated materials would normally have been

delivered.

Subsection (a-2) requires the notice to be in substantially the form attached as Form A to this legislative update.

Subsection (a-3) provides that the notice may include an invoice or billing statement.

Subsection (a-4) provides that a claimant may give to the original contractor a written notice of an unpaid labor or materials invoice that is past due, and that the notice under this subsection is not required for a lien to be valid.

Section 53.057 (Derivative Claimant: Notice of Claim for Unpaid Retainage) is amended by amending its heading; amending Subsections (a) and (f) by deleting parts of existing text; inserting new or revised text; and adding Subsections (a-1), (a-2), and (a-3), as follows:

Subsection (a) requires a claimant other than an original contractor whose contract provides for retainage, to the extent that a claim for unpaid retainage is not included wholly or partly in a notice provided under Section 53.056, to give notice under Section 53.057 for a lien for unpaid retainage to be valid.

Subsection (a-1) requires the claimant to send the notice of claim for unpaid retainage to the owner or reputed owner and the original contractor not later than the earlier of:

(1) the 30th day after the date the claimant’s contract is completed, terminated, or abandoned; or

(2) the 30th day after the date the original contract is terminated or abandoned.

Subsection (a-2) requires the notice to be in substantially the form attached as Form B to this legislative update.

Subsection (a-3) provides that the notice may include an invoice or billing statement.

Subsection (f) provides that a claimant has a lien on, and the owner is personally liable to the claimant for, the reserved funds under Subchapter E if the claimant:

(1) gives notice in accordance with Section 53.057 and: (A) complies with Subchapter E; or (B) files an affidavit claiming a lien not later than the date required for filing an affidavit under the applicable provision of Section 53.052; and

(2) gives the notice of the filed affidavit as required by Section 53.055.

Our Comment: The word “reserved” replaces the word “retained” in Subsection (f).

Section 53.081 (Authority to Withhold Funds for Benefit of Claimants) is amended by amending Subsections (a) and (b) by deleting portions of existing text and adding new text to provide as follows:

Subsection (a), as amended, authorizes an owner, if the owner receives notice under Section 53.056 or 53.057, to withhold from payments to the original contractor an amount necessary to pay the claim for which the owner receives notice and provides that the withholding may be in addition to any reserved funds.

Subsection (b), as amended, authorizes the owner, if notice is sent under Section 53.056, to withhold the funds immediately on receipt of the notice.

Section 53.082 (Time for Which Funds Are Withheld) is amended by deleting the words “payment is made under Section 53.083 or” so that it requires the owner, unless the claim is otherwise settled, discharged, indemnified against under Subchapter H (Bond to Indemnify

Against Lien) or I (Bond to Pay Liens or Claims), or determined to be invalid by a court’s final judgment, to retain the funds withheld until the time for filing the mechanic’s lien affidavit has passed or, if a lien affidavit has been filed, the lien claim has been satisfied or released.

Section 53.084 (Owner’s Liability) is amended by amending Subsection (a) by inserting the clause “the owner fails to reserve” in place of the phrase “required to be retained,” and by amending Subsection (b) by inserting the words “a notice” in place of the words “the notices” and inserting the words “Section 53.056 or 53.057” in place of the words “Subchapter C [Procedure for Perfecting Lien] or K [Residential Construction Projects],” to provide as follows:

Subsection (a) provides that except for the amount the owner fails to reserve under Subchapter E (Funds Reserved for Benefit of Lien Claimants), the owner is not liable for any amount paid to the original contractor before the owner is authorized to withhold funds under this Subchapter D (Funds Withheld by Owner Following Notice).

Subsection (b) provides that if the owner has received a notice required by Section 53.056 or 53.057, if the lien has been secured, and if the claim has been reduced to final judgment, the owner is liable and the owner’s property is subject to a claim for any money paid to the original contractor after the owner was authorized to withhold funds under Subchapter D and the owner is liable for that amount in addition to any amount for which the owner is liable under Subchapter E.

Subchapter E heading is amended by replacing the words “Required Retainage” with the words “Funds Reserved,” to read “Funds Reserved for Benefit of Lien Claimants.” Under Subchapter E., Sections 53.101, 53.102, 53.103, 53.104, and 53.105 are amended as follows:

Section 53.101 heading is amended by replacing the word “Retainage” with the words “Funds ... to be Reserved” so that it reads “Funds Required to be Reserved.”

Subsection (a) is amended by adding the words “under the contract” and replacing the word “retain” with the word “reserve.”

Section 53.102 heading is amended by replacing the word “Retainage” with the words “Reserved Funds” so that it reads “Payment Secured by Reserved Funds” and makes a conforming change to the text of this section by replacing the word “retained” with the word “reserved.”

Section 53.103 heading is amended by replacing the word “Retained” with the word “Reserved” so that it reads “Lien on Reserved Funds” and makes a conforming change to the text of this section by replacing the word “retained” with the word “reserved.”

Section 53.104 (Preferences) is amended by makes a conforming change to the text of Subsections (a) and (b) by replacing the word “retained” with the word “reserved.”

Section 53.105 heading is amended by replacing the word “Retain” with the words “Reserve Funds” so that it reads “Owner’s Liability for Failure to Reserve Funds.”

Subsection (a) is amended by replacing the word “retained” with the word “reserved” and by adding the word “improvements” in place of the words “house, building, structure, fixture, or improvement.”

Section 53.106 (Affidavit of Completion) is amended by amending Subsections (a), (b), and (d) by deleting portions of existing text and adding new text, as follows:

Subsection (a) permits an owner to file with the county clerk of the county in which the property is located an affidavit of completion and requires that the affidavit contain the information described in Subparts (a)(1) through (a)(6). The “conspicuous statement” information described in Subpart (a)(6) is amended by replacing the words “not later than the 40th day after the date the work under the original contract is completed” with the words “in the time and manner required by this chapter,” so that the conspicuous statement information in the affidavit of completion will state that “a claimant may not have a lien on retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter.”

Subsection (b) is amended by deleting the following words “by certified or registered mail”; “not later than the date the affidavit is filed”; “of lien liability”; “, 53.058, 53.252, or 53.253”; and by adding the words “or,” and “third day after the”. Subsection (b), as amended, requires that a copy of the affidavit of completion be sent to the original contractor and to each claimant who sends a notice to the owner under Section 53.056 or 53.057 not later than the third day after the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later.

Subsection (d) is amended by deleting the following words from the first sentence: “Except as provided by this subsection, an”; “on or before the 10th day after the date of completion of the improvements”; “subchapter and Section 53.057”; and adding the word “chapter” to the first sentence. It is further amended by deleting the words “and Section 53.057” from the second sentence. Subsection (d), as amended, provides that an affidavit of completion filed under this section is prima facie evidence of the date the work under the original contract is completed for purposes of this chapter; that if the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter is the date the affidavit is filed; and that Subsection (d) does not apply to a person to whom the affidavit was not sent.

Section 53.107 (Notice Relating to Termination of Work or Abandonment of Performance by Original Contractor or Owner) is amended by amending Subsections (a) and (b) by deleting portions of existing text and adding new text, as follows:

Subsection (a) requires the owner, not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, to give notice to each subcontractor who, before the date of termination or abandonment, has: (1) given notice to the owner as provided by Section 53.056 or 53.057 (rather than by Section 53.056, 53.057, or 53.058); or (2) sent to the owner (rather than sent to the owner by certified or registered mail) a written request for notice of termination or abandonment.

Subsection (b) requires that the notice contain the information described in Subparts (b)(1) through (b)(7). The “conspicuous statement” information described in Subpart (a)(7) is amended by replacing the words “not later than the 40th day after the date of the termination or abandonment” with the words “in the time and manner required by this chapter,” so that the conspicuous statement information in the notice will state that “a claimant may not have a lien on the retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter.”

Our Comment: *Subsection (e), which is not amended, states that Section 53.107 does not apply to a residential construction project.*

Section 53.155 (Transfer of Property Sold) is amended by deleting the words “house, building,”; “or any piece of railroad property”; “place”; “in in possession.”; “The purchaser is entitled to”; and “property”; and by adding the words “from the land”; “provide”; “and take possession of”; and “improvement”. As amended, Section 53.155 requires the officer making the sale, if the improvement is sold separately from the land, to provide the purchaser a reasonable time after the date of purchase within which to remove and take possession of the purchased improvement.

Section 53.157 (Discharge of Lien) is amended by deleting the words “A mechanic’s lien or” from the introductory statement; “property” from Subpart (2); “and a certificate from the clerk of the court that states” from Subpart (6); and by adding the word “improvement” to replace the word “property” in Subpart (2) and adding the word “provided” in Subpart (6); resulting in amended Section 53.157 authorizing an affidavit claiming a mechanic’s lien filed under Section 53.052 to be discharged of record by: Subpart (1) not amended; Subpart (2) makes above conforming amendment; Subparts (3), (4) and (5) not amended; or Subpart (6) recording a certified copy of the order removing the lien under Section 53.160 (Summary Motion to Remove Invalid or Unenforceable Lien), provided that no bond or deposit as described by Section 53.161 was filed by the claimant within 30 days after the date the order was entered.

Section 53.158 (Period for Bringing Suit to Foreclose Lien) is amended by amending Subsection (a) by adding the term “(a-2)” in place of the term “(b)”; by adding the words “not later than the first anniversary of” in place of the words “within two years after”; by deleting the words “or within one year after completion, termination, or abandonment of the work under the original contract under which the lien is claimed, whichever is later”; and by adding Subsections (a-1) and (a-2). . As amended, Section 53.158 provides as follows:

Subsection (a) provides that except as provided by Subsection (a-2), suit must be brought to foreclose the lien not later than the first anniversary of the last day a claimant may file the lien affidavit under Section 53.052.

Subsection (a-1) provides that notwithstanding Section 16.069 (Counterclaim or Cross Claim) of the Civil Practice and Remedies Code, or any other law, if suit is pursued solely to discharge a lien because limitations have expired on bringing a lien foreclosure suit, the lien claimant’s rights to pursue a suit to foreclose a lien are not revived.

Subsection (a-2) provides that the limitations period established under Subsection (a) may be extended to not later than the second anniversary of the date the claimant filed the lien affidavit under Section 53.052 if, before the expiration of the limitations period established under Subsection (a), the claimant enters into a written agreement with the then-current record owner of the property to extend the limitations period and requires that the agreement be recorded with the clerk of the same county where the lien was recorded and is considered to be notice of the extension to any subsequent purchaser.

Section 53.160 (Summary Motion to Remove Invalid or Unenforceable Lien) is amended by amending Subsections (b) and (c) as follows:

Subsection (b) is amended by adding the word “timely” and deleting the references to Sections “53.058, 53.252, or 53.253” in Subpart (1) to provide that the Subsection (b) grounds for objecting to the validity or enforceability of the claim or lien for purposes of the

motion are limited to the following Subparts: (1) the notice of claim was not timely furnished to the owner or original contractor as required by Section 53.056 or 53.057. **Our Comment:** *Subparts (2), (3), (4), (5), (6) and (7) are not amended.*

Subsection (c) is amended by adding “30” days in place of “21” days; “30th” day in place of “21st” day; and by adding the sentence “The claimant must be allowed expedited discovery regarding information relevant to the issues listed under Subsection (b).” As amended, Subsection (c) provides that the claimant is not required to file a response; requires the claimant and any other party that has appeared in the proceeding to be notified by at least 30 days before the date of the hearing on the motion; prohibits a motion from being heard before the 30th day after the date the claimant answers or appears in the proceeding; and requires the claimant to be allowed expedited discovery regarding information relevant to the issues listed under Subsection (b).

In Subchapter H (Bond to Indemnify Against Lien), Section 53.173 (Notice of Bond) is amended by amending Subsection (c) by deleting the words “United States” and “return receipt requested.” As amended, Subsection (c) requires the notice (of the bond) to be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail addressed to the claimant at the address stated in the lien affidavit for the obligee.

In Subchapter I (Bond to Pay Liens or Claims), Sections 53.205, 206, 207 and 208 are amended as follows:

Section 53.205 (Enforceable Claims) is amended by amending Subsection (a) by deleting the following words in Subpart (1) “or, if the claim relates to a residential construction project, under Subchapter K”. As amended, Subsection (a) provides that the bond protects all persons with a claim that is: (1) perfected in the manner prescribed for fixing a lien under Subchapter C; or (2) perfected in the manner prescribed by Section 53.206.

Section 53.206 (Perfection of Claim) is amended by amending Subsections (a), (b), (c), and (d) by deleting portions of existing text and adding new text to provide as follows:

Subsection (a) is amended by deleting “or K”; “(1)”; “all applicable notices under the appropriate subchapter; and”; “(2) give to the surety on the bond, instead of the owner, all notices under the appropriate subchapter required to be given to the owner”; and by adding the words “Except as provided by Subsection (b), to”; “notice under Sections 53.056 and 53.057, as applicable,”; “and surety on the bond”. As amended, Subsection (a) provides that except as provided by Subsection (b), to perfect a claim against a bond in a manner other than that prescribed by Subchapter C for fixing a lien, a person must give notice under Sections 53.056 and 53.057, as applicable, to the original contractor and surety on the bond.

Subsection (b) is amended by deleting the words “person”; “(1)”; “unless”; “and the agreed retainage is in excess of 10 percent of the contract”; “(2) give notice to the surety under Section 53.058(b) or, if the claim relates to a residential construction project, under Section 53.253(c); or”; “(3) file any affidavit with the county clerk”; and by adding the words “for retainage”; “claimant”; and “if”. As amended, Subsection (b) provides that to perfect a claim for retainage under this section, a claimant is not required to give notice to the surety under Section 53.057 if the claimant has a direct contractual relationship with the original contractor.

Subsection (c) is amended by replacing the existing text with new text, so that under Subsection (c) a claimant that provides the notices described by Section 53.206 is not required to file an affidavit claiming a mechanic's lien to perfect a claim under the bond.

Subsection (d) is amending by deleting the words "or registered" so that a person satisfies the requirements of Section 53.206 relating to providing notice to the surety if the person mails the notice by certified mail to the surety at: (1) the address stated on the bond or on an attachment to the bond; (2) the address on file with the Texas Department of Insurance; or (3) any other address allowed by law.

Section 53.207 (Owner's Notice of Claim to Surety) is amended by amending Subsection (a) by replacing the words "Subchapter C or K" with the words "this chapter". As amended, Subsection (a) requires the owner, if the owner receives any of the notices or a lien is fixed under Chapter 53, to mail to the surety on the bond a copy of all notices received.

In Subchapter J (Lien on Money Due Public Works Contractor), Sections 53.232 and 53.238 are amended as follows:

Section 53.232 (To Whom Notice Given; Manner) is amended to remove the words "registered or" regarding sending the lien claimant's claim notice by certified mail to the officials of the state, county, town, or municipality whose duty it is to pay the contractor and to the contractor at the contractor's last known business or residence address.

Section 53.238 (Notice of Bond) is amended to remove the words "registered mail or" regarding sending a copy of the bond by certified mail, return receipt requested, to all claimants.

In Subchapter K (Residential Construction Projects), Sections 53.254 and 53.255 are amended as follows:

Section 53.254 heading is amended by adding the words "Contractual Requirements for Lien on" so that it reads "'Contractual Requirements for Lien on Homestead."

Subsection (g) is amended by replacing the words "Section 53.252" with the words "Subchapter C" (Procedure for Perfecting Lien) in the introductory statement; and in Subpart (g)(2), replacing the word "construction" with the words "your contractor's work"; replacing the word "retain" with the word "reserve"; adding the words "reservation of"; replacing the word "retainage" with the words "of the contract price or value of work"; and replacing the word "retainage" with the word "reservation." As amended, Subsection (g) requires that for the lien on a homestead to be valid, the notice required to be given to the owner under Subchapter C must include or have attached the following statement:

"If a subcontractor or supplier who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if:

(1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or

(2) during construction and for 30 days after completion of your contractor's work, you fail to reserve 10 percent of the contract price or 10 percent of the value of the work

performed by your contractor.

“If you have complied with the law regarding the reservation of 10 percent of the contract price or value of work and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent reservation, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim.”

Section 53.255 (Disclosure Statement Required for Residential Contract) is amended by amending Subsection (b), which contains the disclosure statement required by Subsection (a) to be given to the owner by the original contractor before the owner executes the residential construction contract. The disclosure statement in Subsection (b) is amended by replacing the word “retainage” with the words “reservation of funds” in the GET IT IN WRITING section; by replacing the word “withhold” with the word “reserve” and deleting the sentence “This is sometimes referred to as ‘statutory retainage.’” in Subpart (2) of the CLAIMS BY SUBCONTRACTORS AND SUPPLIERS section; by replacing the words “fully complied with the law regarding statutory retainage” with the words “withheld the 10 percent of the contract price or value of work” in the SOME CLAIMS MAY NOT BE VALID section.

Our Comment: *The text of the disclosure statement is not included in this legislative update because of its length.*

In Subchapter L (Waiver and Release of Lien or Payment Bond Claim) Section 53.281 is amended by amending Subsection (b) by deleting the words “and notarized” from Subpart (2). As amended, Subsection (b) provides that a waiver and release is effective to release the owner, the owner’s property, the contractor, and the surety on a payment bond from claims and liens only if, among other requirement in Subparts (1) and (3), the waiver and release is signed by the claimant or the claimant's authorized agent. ***Our Comment:*** *Subparts (1) and (3) are not amended.*

House Bill 2237 provides that the changes in law made by House Bill 2237 apply only to an original contract entered into on or after the January 1, 2022 effective date. An original contract entered into before the January 1, 2022 effective date is governed by the law as it existed immediately before January 1, 2022, and that law is continued in effect for that purpose.

No attempt was made by this legislative update to address all the bills effective on January 1, 2022, that could affect residential mortgage lending, lenders, or loan originators. This legislative update is simply an attempt to advise our clients of House Bill 2237. This legislative update does not contain a complete description of House Bill 2237, and you are advised to review the entirety of House Bill 2237 if you believe it affects your business. You may request a copy of House Bill 2237 from us, or you may click on the House Bill 2237 hyperlink on page 1 of this legislative update.

Attachments: Form A (Notice of Claim for Unpaid Labor or Materials) - Section 53.056(a-2)
Form B (Notice of Claim for Unpaid Retainage) – Section 53.057(a-2)

FORM A
(Notice of Claim for Unpaid Labor or Materials)

<p>NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS "WARNING: This notice is provided to preserve lien rights. Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.</p> <p>Date: _____</p> <p>Project description and/or address: _____</p> <p>Claimant's name: _____</p> <p>Type of labor or materials provided: _____</p> <p>Original contractor's name: _____</p> <p>Party with whom claimant contracted if different from original contractor: _____</p> <p>Claim amount: _____</p> <p>_____ (Claimant's contact person)</p> <p>_____ (Claimant's address)</p>
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FORM B
(Notice of Claim for Unpaid Retainage)

<p>NOTICE OF CLAIM FOR UNPAID RETAINAGE WARNING: This notice is provided to preserve lien rights. Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.</p> <p>Date: _____</p> <p>Project description and/or address: _____</p> <p>Claimant's name: _____</p> <p>Type of labor or materials provided: _____</p> <p>Original contractor's name: _____</p> <p>Party with whom claimant contracted if different from original contractor: _____</p> <p>Total retainage unpaid: _____</p> <p>_____ (Claimant's contact person)</p> <p>_____ (Claimant's address)</p>
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