

Smells Like Lien Spirit: Texas Enacts First Purchaser Statutory Liens

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In our last update, we discussed House Bill No. 3794, which was introduced to the Texas Legislature in March of last year.¹ The bill sought to shore up the protections granted to Texas mineral interest owners against first purchasers who fail to pay for such mineral owners' production which were found deficient in the 2009 bankruptcy court decision *In Re Sem Crude*. The court in *Sem Crude* found that similar statutes in both Texas and Oklahoma were ineffective to create an enforceable lien in favor of their mineral owners' claims against out of state purchasers. Oklahoma wasted little time to revise its first purchaser protection statute, known as the Oklahoma Oil and Gas Owners' Lien Act of 2010, to cure defects highlighted by the decision *In re SemCrude, L.P.* Oklahoma's efforts were validated a decade later in another first purchaser's bankruptcy *In Re First River Energy LLC* decided in 2019. The *First River* court found that Oklahoma's revised statute successfully protected Oklahoma mineral interest owners, whereas because of its inaction, Texas interest owners were left unsecured based on the statutory deficiency identified ten years previously by the court in *In Re Sem Crude*.

In response to the *First River* holding, House Bill No. 3794, which was signed by Governor Abbott in June and went into effect on September 1, 2021, repealing the old Texas First Purchaser Statute (Section 9.343 of the Texas Business and Commerce Code) and replacing it with a new Chapter 67 of the Texas Property Code titled Oil and Gas Liens (the "**Statute**"). The Statute is consistent with the Oklahoma Oil and Gas Owners' Lien Act of 2010 and grants each interest owner an oil and gas real property lien, rather than a personal property security interest, to secure obligations of a first purchaser to pay amounts owed such mineral interest owner for its production. The lien is perfected automatically without the need to file a financing statement or take any other action and, except for a "permitted lien,"² an interest owner's lien takes priority over any other lien or any security interest, including a previously recorded interest encumbering all of a first purchaser's assets. The lien exists until the interest owner has received payment for its oil and gas.

Though the Statute has yet to be tested in the courts, since it mirrors the Oklahoma Oil and Gas Owners' Lien Act of 2010, Texas interest owners are hopeful that they are now provided with automatic lien protection on the same footing as their neighbors north of the Red River.

For additional information or assistance, please contact Buddy Clark, [Ellen Conley](#), or [Elizabeth Felicidadario](#) at Haynes Boone.

¹ For more background on first purchaser statutes, please find our March 2020 article from the *Texas Bar Journal* [here](#) and our February 2021 update [here](#). For more background on the now enacted House Bill No. 3794, please see our March 2021 update [here](#).

² A permitted lien is (i) a perfected and enforceable lien created by statute or rule of a governmental agency for storage or transportation charges owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell; or (ii) a validly perfected, first priority mortgage lien

or security interest in oil or gas that is granted before September 1, 2021 by a first purchaser in favor of an entity that is not an affiliate of the first purchaser, securing payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee before September 1, 2021 with an unmodified principal amount and a fixed maturity stated in the instrument.