

LENDER NOTICE TO CONTRACTORS

BACKGROUND

There is no law in Texas that requires a lender on a construction project to give any notice to general contractors when a default on the construction loan or financing agreement occurs.

PROBLEM

If the construction team is not made aware of a default of the borrower on a construction loan, the team will continue to work on a project, and may never receive payment for that labor and material provided subsequent to the loan default.

SOLUTION

Lenders should be required by law to give notice to contractors, who in turn would give notice to subcontractors, when the lender has determined it will no longer disperse funds that are part of the loan for the construction project. The contractor and subcontractors should be allowed the opportunity to stop working on a project when this notice is given. The lender should not be enriched at the expense of the people furnishing labor and materials to improve the property.

Detailed Information on Reverse

LENDER NOTICE TO CONTRACTORS – Detailed Information

Background: There is no law in Texas that requires a lender on a construction project to give any notice to subcontractors and prime contractors when a default on the construction loan or financing agreement occurs. Without the notice of loan default, subcontractors, general contractors, and suppliers continue to work, with materials and labor being expended on a project which is no longer being funded by the lender.

Problem: On any construction project there is always the potential for a construction loan borrower to default on the loan. In most cases when a loan default occurs, the lender is under no obligation to notify a prime contractor or subcontractor of the default. The lender wants the project to be completed to give more value to its lien interest and will do everything possible to finish the construction, including not notifying the general contractor and subcontractors that they may never receive payment for work they perform on the project subsequent to the decision by the lender to cease funding a project.

Solution: Lenders should be required to give notice to known contractors, who in turn would give notice to subcontractors, that the lender has made a decision to no longer fund the loan for the construction project. Subcontractors and general contractors should have the right to suspend work on the project until the loan default has been cured or after they receive written assurances from the lender and the borrower that guarantees payment for all labor, materials, services, and equipment provided or to be provided for the project after the date of the default.

A lender should be required to notify the contractors on a project that the project will no longer be funded. The lender should not be enriched at the expense of people providing labor or materials to improve real property.