

BY: _____ .B. No. _____

Substitute the following for .B. No. _____:

BY: _____ C.S. .B. No. _____

A BILL TO BE ENTITLED
AN ACT

1
2 relating to lender notice to contractors regarding a construction
3 loan or financing agreement for the improvement of real property
4 and related procedures for suspending contractors' and
5 subcontractors' performance.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 28, Property Code, is amended by adding
8 Section 28.0091 to read as follows:

9 Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS;
10 SUSPENSION OF PERFORMANCE PENDING CURE. (a) This section applies
11 only to a lender that provides financing through a construction
12 loan or under a financing agreement for an improvement to real
13 property for which the real property or improvement is collateral.
14 This section does not apply with respect to a loan or financing
15 agreement used primarily for personal, family, or household
16 purposes.

17 (b) For an improvement to real property for which financing
18 is provided as described by Subsection (a), the contractor shall
19 provide to the lender:

20 (1) the contractor's name, physical and mailing
21 addresses and e-mail address, if available, and telephone number;
22 and

23 (2) the name of the person to whom any notice under
24 this section should be delivered.

1 (c) Except as provided by Subsection (f), each contractor
2 and subcontractor providing labor, materials, equipment, or
3 services for an improvement to real property for which financing is
4 provided as described by Subsection (a) is entitled to suspend
5 contractually required performance without penalty or liability
6 for damages if a contractor receives notice under Subsection (d).

7 (d) Except as provided by Subsection (f), a lender shall
8 immediately notify the contractor identified under Subsection (b)
9 on the earliest date on which the lender sends to the borrower one
10 of the following notices in connection with a particular default
11 under the loan or financing agreement:

12 (1) a notice of intention to accelerate;

13 (2) a notice of acceleration;

14 (3) a notice of set-off; or

15 (4) a notice of foreclosure.

16 (e) On receipt of notice under Subsection (d), a contractor
17 shall immediately notify each of the contractor's subcontractors of
18 the contractor's receipt of the notice and of the subcontractor's
19 right under this section as a result of the notice to suspend
20 contractually required performance without penalty or liability
21 for damages.

22 (f) A lender is not required to give notice to a contractor
23 under Subsection (d) and the contractor and the contractor's
24 subcontractors are not entitled to suspend performance under this
25 section if, before the lender sends a notice described by
26 Subsection (d) to the borrower, a written agreement exists between
27 the lender and the contractor that:

1 (1) provides for the continued performance by the
2 contractor and for payment to the contractor in the event of a
3 default by the borrower or property owner under the loan or
4 financing agreement;
5 (2) provides for notice from the lender to the
6 contractor that the borrower or property owner is in default under
7 the loan or financing agreement;
8 (3) requires that, on the receipt of notice under
9 Subdivision (2), the contractor shall immediately notify the
10 contractor's subcontractors of the borrower's or property owner's
11 default under the loan or financing agreement; and
12 (4) specifically states that subcontractors of the
13 contractor are third-party beneficiaries of the lender's
14 obligations under the agreement.
15 (g) A subcontractor is a third-party beneficiary of a
16 lender's obligations under Subsection (d) with equal standing to a
17 contractor to enforce remedies.
18 (h) A lender that provides timely notice to a contractor
19 under Subsection (d) is not liable for damages to the contractor or
20 any of the contractor's subcontractors for any costs incurred to
21 provide labor, materials, equipment, or services contemplated
22 under the loan or financing agreement, except for those costs for
23 which the lender has expressly agreed to be obligated to pay.

24 SECTION 2. The change in law made by this Act applies only
25 to a construction loan or financing agreement entered into on or
26 after the effective date of this Act. A construction loan or
27 financing agreement entered into before the effective date of this

1 Act is governed by the law in effect immediately before the
2 effective date of this Act, and that law is continued in effect for
3 that purpose.

4 SECTION 3. This Act takes effect September 1, 2013.