

By: Bell

H.B. No. 1208

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

1 (c) Except as provided by Subsection (g), 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 (g), 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) A lender and a contractor may devise and agree on an
17 effective, efficient, and economical method for delivering any
18 notice required under Subsection (d). If the lender and the
19 contractor do not devise or agree on the method by which the notice
20 will be delivered, the notice must be delivered by certified mail,
21 return receipt requested.

22 (f) On receipt of notice under Subsection (d), a contractor
23 shall immediately notify each of the contractor's subcontractors of
24 the contractor's receipt of the notice and of the subcontractor's
25 right under this section as a result of the notice to suspend
26 contractually required performance without penalty or liability
27 for damages.

1 (g) A lender is not required to notify a contractor under
2 Subsection (d) and the contractor and the contractor's
3 subcontractors are not entitled to suspend performance under this
4 section if, before the lender sends a notice described by
5 Subsection (d) to the borrower, a written agreement exists between
6 the lender and the contractor that:

7 (1) provides for the continued performance by the
8 contractor and for payment to the contractor in the event of a
9 default by the borrower or property owner under the loan or
10 financing agreement;

11 (2) provides for notice from the lender to the
12 contractor that the borrower or property owner is in default under
13 the loan or financing agreement; and

14 (3) requires that, on the receipt of notice under
15 Subdivision (2), the contractor shall immediately notify the
16 contractor's subcontractors of the borrower's or property owner's
17 default under the loan or financing agreement.

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.

27 SECTION 3. This Act takes effect September 1, 2015.