

By: Chisum

H.B. No. 3040

Substitute the following for H.B. No. 3040:

By: Quintanilla

C.S.H.B. No. 3040

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.

(b) For an improvement to real property for which financing is provided as described by Subsection (a), not later than the 30th day after the date a contractor begins work to improve the real property or otherwise provides construction services for the improvement, the contractor shall provide to the lender the contractor's name and address and the name of the person to whom any notice under this section should be sent.

(c) Except as provided by Subsection (e), not later than the seventh day after the date a lender takes an action for which notice is required by this subsection in response to a particular event described by this subsection, the lender must give written notice

1 of the action, including the date of the action, to the property
2 owner and to each contractor providing labor, materials, equipment,
3 or services for the improvement. Notice under this subsection is
4 required if the lender:

5 (1) exercises a default remedy provided by statute or
6 the loan or financing agreement;

7 (2) gives a notice of default to the borrower; or

8 (3) fails to timely fund, wholly or partly, a payment
9 request submitted in proper form by the borrower or a contractor.

10 (d) Notice to a contractor under Subsection (c) must be sent
11 by certified mail to the person identified under Subsection (b) and
12 state that the lender has provided notice to the owner under
13 Subsection (c) and that the contractor is required by this section
14 to provide a copy of the notice to each of the contractor's
15 subcontractors for the purpose of notifying each subcontractor of
16 the subcontractor's right under this section to suspend
17 contractually required performance without penalty or liability
18 for damages until the default is cured or the requested payment is
19 fully or substantially funded, as applicable.

20 (e) A lender is not required to give notice under Subsection
21 (c) with respect to an event described by that subsection if, on or
22 before the seventh day after the date of the occurrence of the
23 event:

24 (1) the default is cured; or

25 (2) the payment request is fully or substantially
26 funded.

27 (f) Not later than the third day after the date a contractor

1 receives a notice from a lender under Subsection (c), the
2 contractor shall give a copy of the written notice to each of the
3 contractor's subcontractors of the action taken by the lender.

4 (g) Not later than the third day after the date a
5 subcontractor receives a notice from a contractor under Subsection
6 (f), the subcontractor shall give a copy of the notice to each of
7 the subcontractor's subcontractors.

8 (h) If the default for which notice is required by
9 Subsection (c) is cured or the requested payment described by
10 Subsection (c) is fully or substantially funded, the lender shall,
11 not later than the third day after the date the default is cured or
12 the payment is funded, as applicable, give written notice of the
13 cure or payment to each contractor.

14 (i) Not later than the third day after the date a contractor
15 receives a notice of cure or payment under Subsection (h), the
16 contractor shall give written notice of the cure or payment to each
17 of the contractor's subcontractors.

18 (j) Not later than the third day after the date a
19 subcontractor receives a notice of cure or payment under Subsection
20 (i), the subcontractor shall give written notice of the cure or
21 payment to each of the subcontractor's subcontractors.

22 (k) After the 10th day after the earliest date on which the
23 lender takes an action for which notice is required by Subsection
24 (c), a contractor or subcontractor may suspend contractually
25 required performance without penalty or liability for damages on
26 giving the owner written notice of the contractor's or
27 subcontractor's intent to suspend performance and, if the notice is

1 given by a subcontractor, to the subcontractor's contractor. The
2 contractor or subcontractor may suspend performance under this
3 subsection until:

4 (1) the contractor and subcontractor receive a notice
5 of cure or payment under Subsection (h), (i), or (j); or

6 (2) the lender or the borrower provides the contractor
7 and subcontractor a written payment guarantee acceptable to the
8 contractor and subcontractor for all labor, materials, equipment,
9 or services provided or to be provided for the improvement to real
10 property after the action is taken.

11 (1) A contractor or subcontractor that has suspended
12 performance in accordance with this section is entitled to a
13 reasonable period without penalty to remobilize and recommence
14 performance after receipt of a notice or payment guarantee
15 described by Subsection (k).

16 (m) A subcontractor is a third-party beneficiary of a
17 lender's obligations under Subsection (c) with equal standing to a
18 contractor to enforce remedies.

19 SECTION 2. The change in law made by this Act applies only
20 to a construction loan or financing agreement entered into on or
21 after the effective date of this Act. A construction loan or
22 financing agreement entered into before the effective date of this
23 Act is governed by the law in effect immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.

26 SECTION 3. This Act takes effect September 1, 2011.