

By: Farabee

H.B. No. 1261

A BILL TO BE ENTITLED

AN ACT

1
2 relating to placement of a mechanic's lien on residential real
3 property.

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

5 SECTION 1. Section 53.252(b), Property Code, is amended to
6 read as follows:

7 (b) The claimant must give to the owner or reputed owner and
8 the original contractor written notice of the unpaid balance. The
9 claimant must give the notice not later than the 15th day of the
10 second month following each month in which all or part of the
11 claimant's labor was performed or material or specially fabricated
12 material was delivered. The claimant may not file an affidavit
13 under Section 53.052 before the 15th day after the date notice is
14 provided under this subsection. The affidavit must contain, in
15 addition to the information required by Section 53.054, a sworn
16 statement that the notice required by this subsection was provided
17 by the claimant.

18 SECTION 2. Section 53.254, Property Code, is amended by
19 amending Subsections (a), (d), and (e) to read as follows:

20 (a) To fix a lien on a homestead:

21 (1) [7] the person who is to furnish material or
22 perform labor and the owner must execute a written contract setting
23 forth the terms of the agreement; and

24 (2) if the contract is made by an original contractor,

1 before the contract is executed, the disclosure statement required
2 by Section 53.255 must be provided to and signed by the owner.

3 (d) If the contract is made and the required disclosure
4 statement is given by an original contractor, the contract and the
5 provision of the statement inures to the benefit of all persons who
6 labor or furnish material for the original contractor.

7 (e) The contract and a copy of the signed disclosure
8 statement provided under Subsection (a) must be filed with the
9 county clerk of the county in which the homestead is located. The
10 county clerk shall record the contract and disclosure statement in
11 records kept for that purpose.

12 SECTION 3. Section 53.255(c), Property Code, is amended to
13 read as follows:

14 (c) Except as provided by Section 53.254, the [~~The~~] failure
15 of a contractor to comply with this section does not invalidate a
16 lien under this chapter, a contract lien, or a deed of trust.

17 SECTION 4. The change in law made by this Act applies only
18 to a residential construction contract entered into on or after the
19 effective date of this Act. A residential construction contract
20 entered into before the effective date of this Act is governed by
21 the law in effect immediately before that date, and that law is
22 continued in effect for that purpose.

23 SECTION 5. This Act takes effect September 1, 2005.