

BILL ANALYSIS

H.B. 1209
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Presently, the Property Code provides that construction payments are trust funds if payment is made to a contractor or subcontractor or to an officer, director, or agent of a contractor or subcontractor, under a construction contract for the improvement of specific real property in Texas. Similarly, loan receipts are considered trust funds if the funds are borrowed by a contractor, subcontractor, or owner or by an officer, director, or agent of a contractor, subcontractor, or owner for the purpose of improving specific real property in Texas, and the loan is secured in whole or in part by a lien on the property. However, the property owner is not included in this responsibility owed by the contractor under Section 162.003, Property Code, because the protection of this duty of trust is limited to the subcontractors and material suppliers. The property owner who makes the construction payments, and who may save or borrow tens of thousands or hundreds of thousands of dollars to make these construction payments, is excluded from the protection of this statutory trust duty.

The property owner needs to be protected under the definition of those who are beneficiaries of this duty owed by the contractor. H.B. 1209 amends Section 162.003, Property Code, to correct this exclusionary language. This change in law will be especially helpful to homeowners, in addition to other property owners, who make construction payments and find that the contractor has applied their funds to other projects, has commingled the project funds with operating account expenses, or has left the project unfinished and yet retained more of the construction payments than the contractor had actually earned. Fees earned by the contractor would cease to be trust funds once earned, but the construction payments should not be treated as fees earned in full from the outset of the contract date.

Disputes between property owners and contractors often center on the use of the project funds. If a construction defect is at issue, homeowners may seek assistance from the Texas Residential Construction Commission to inspect and identify defects, opening the way for the contractor to remedy the defect. However, the property owner also needs the ability under the law to request the contractor to account for funds held and to require the contractor to verify that the labor and materials used to date in line with the amount of the owner's funds expended or earned by the contractor up to that point. Property owners need to be included among those to whom a builder owes trust fund duties regarding construction funds advanced by the owner for the project. H.B. 1209 helps protect Texas homeowners who pay substantial amounts of money, sometimes borrowed from a financial institution or saved for several years, for residential construction or remodeling.

H.B. 1209 amends the Property Code to provide a fiduciary responsibility between the contractor and the property owner for certain funds.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1209 amends the Property Code to include in the conditions under which a fee payable to a contractor is not considered construction payment trust funds that the fee is earned as provided by the contract or disbursed to the contractor from a construction account in a financial institution in connection with a contract to make improvements to a residential homestead for an amount exceeding \$5,000. The bill establishes that a property owner is a beneficiary of construction payment trust funds in connection with a residential construction contract, including funds deposited into such a construction account.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.