

By: Thibaut

H.B. No. 3083

Substitute the following for H.B. No. 3083:

By: Elkins

C.S.H.B. No. 3083

A BILL TO BE ENTITLED

AN ACT

relating to notice of dragnet clauses in deeds of trust.

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

SECTION 1. Title 8, Business & Commerce Code, is amended by adding Chapter 262 to read as follows:

CHAPTER 262. DEEDS OF TRUST

Sec. 262.001. NOTICE TO CERTAIN GUARANTORS AND SURETIES.

(a) Before a person agrees to become obligated as a surety or guarantor on a loan secured by a deed of trust, the mortgagee must provide the person with the following written notice:

"NOTICE TO SURETY OR GUARANTOR: You are being asked to become obligated as a surety or guarantor on a loan secured by a deed of trust. Please read the documents carefully and review with your own attorney. Please note that if the deed of trust contains a 'dragnet clause,' which provides that the deed of trust secures other indebtedness, then the deed of trust may not be released in the event you are called on to honor your obligation as a surety or guarantor.

I have read and understand the above notice.

Date

Signature of Surety or Guarantor"

(b) The notice required under this section must be provided

1 on a form separate from the guaranty or surety agreement and signed
2 and dated by the surety or guarantor.

3 (c) If a mortgagee does not provide the notice required by
4 this section, the person entitled to the notice is not liable for
5 obligations on the loan if any dragnet clause included in the deed
6 of trust would prevent the surety or guarantor from being
7 subrogated to the mortgagee's or other holder's security interest
8 in the property subject to the deed of trust.

9 SECTION 2. Chapter 262, Business & Commerce Code, as added
10 by this Act, applies only to an agreement to become obligated as a
11 surety or guarantor on a loan secured by a deed of trust that is
12 entered into on or after January 1, 2010. An agreement to become
13 obligated as a surety or guarantor on a loan secured by a deed of
14 trust that is entered into before January 1, 2010, is governed by
15 the law in effect when the agreement was entered into, and that law
16 is continued in effect for that purpose.

17 SECTION 3. This Act takes effect September 1, 2009.