

By: Thibaut

H.B. No. 3083

A BILL TO BE ENTITLED

1 AN ACT

2 relating to notice of dragnet clauses in deeds of trust.

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

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

6 CHAPTER 262. DEEDS OF TRUST

7 Sec. 262.001. NOTICE TO CERTAIN THIRD PARTIES OF DRAGNET  
8 CLAUSE AND RELATED INDEBTEDNESS. (a) If, after the closing date of  
9 a loan secured by a deed of trust, a person agrees to become  
10 obligated as a debtor or guarantor on the loan, the mortgagee must  
11 provide the person, before the person becomes obligated, written  
12 notice of:

13 (1) any provision in the deed of trust that could cause  
14 the deed of trust to secure any indebtedness that:

15 (A) was owed before the deed of trust was  
16 executed; or

17 (B) became owed after the deed of trust was  
18 executed; and

19 (2) all indebtedness secured by the deed of trust at  
20 the time the person becomes obligated, including any indebtedness  
21 that:

22 (A) was owed before the deed of trust was  
23 executed; or

24 (B) became owed after the deed of trust was

1 executed.

2 (b) If a mortgagee assigns or otherwise transfers all or  
3 part of the mortgagee's interest in a loan that contains a provision  
4 described by Subsection (a)(1) after a person entitled to notice  
5 under Subsection (a) has become obligated on the loan, the assignee  
6 mortgagee or other transferee must, prior to the assignment or  
7 other transfer or, if prior notice is not practicable, not later  
8 than the 15th day after the date of the assignment or transfer,  
9 provide to the person notice that reflects all indebtedness that is  
10 or will be secured by the deed of trust at the time the interest in  
11 the loan is assigned or otherwise transferred to the assignee  
12 mortgagee or transferee.

13 (c) If a person fails to give a notice required by this  
14 section:

15 (1) the obligations on the loan of the person entitled  
16 to the notice are voidable; and

17 (2) the person entitled to the notice is entitled to  
18 the refund of all payments made by the person on the loan to the  
19 mortgagee, or any subsequent assignee or transferee, who failed to  
20 provide the notice and is entitled to interest on those payments.

21 SECTION 2. Chapter 262, Business & Commerce Code, as added  
22 by this Act, applies only to a loan closed on or after the effective  
23 date of this Act. A loan closed before the effective date of this  
24 Act is governed by the law in effect when the loan was closed, and  
25 that law is continued in effect for that purpose.

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