

By: Deshotel

H.B. No. 1860

Substitute the following for H.B. No. 1860:

By: Quintanilla

C.S.H.B. No. 1860

A BILL TO BE ENTITLED

AN ACT

relating to waiver of priority for removables in certain mechanic's, contractor's, or materialman's lien claims.

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

SECTION 1. Section 53.001, Property Code, is amended by adding Subdivision (7-a) to read as follows:

(7-a) "Removable" means material furnished that can be removed without material injury to the land, a preexisting improvement, or the material.

SECTION 2. Subchapter F, Chapter 53, Property Code, is amended by adding Section 53.1231 to read as follows:

Sec. 53.1231. WAIVER OF PRIORITY FOR REMOVABLES IN A LIEN CLAIM. (a) This section applies only to:

(1) a property owner who acquired title to the property:

(A) by foreclosing the person's lien on the property; or

(B) by purchasing the property:

(i) at a foreclosure sale; or

(ii) from a person who foreclosed the person's lien on the property; or

(2) a title company seeking to insure title for the sale of property by a person who acquired title to the property by foreclosing the person's lien on the property to a third-party

1 buyer.

2 (b) A property owner or title company to whom this section
3 applies may send a written notice to a lien claimant who has filed
4 an affidavit claiming a mechanic's lien on the property requesting
5 the lien claimant to:

6 (1) confirm in writing whether the lien claim includes
7 a claim for a removable; and

8 (2) provide invoices or other supporting documents for
9 any material for which the lien claimant claims a priority
10 mechanic's lien for a removable under Section 53.123(a).

11 (c) The notice must be sent by personal delivery or
12 certified mail, return receipt requested, to the lien claimant's
13 address in the claimant's lien affidavit. If the claimant's address
14 is not provided in the lien affidavit, notice must be sent to the
15 lien claimant's last known address as determined through reasonable
16 efforts by the person sending the notice.

17 (d) The notice must contain:

18 (1) the requestor's name, the company name, if
19 applicable, and the domestic mailing address to which the lien
20 claimant may send a response; and

21 (2) the following statement conspicuously printed at
22 the top of the page in boldface type that is at least 10-point and
23 not smaller than the largest type used in the notice document:

24 NOTICE: "YOU MUST PROVIDE TO THE PERSON NAMED BELOW NOT LATER
25 THAN THE 30TH DAY AFTER THE DATE OF RECEIPT OF THIS NOTICE A WRITTEN
26 CONFIRMATION OF YOUR CLAIM OF A PRIORITY MECHANIC'S LIEN FOR A
27 REMOVABLE UNDER SECTION 53.123(a) OF THE TEXAS PROPERTY CODE,

1 INCLUDING ANY INVOICE OR OTHER SUPPORTING DOCUMENT FOR THE
2 REMOVABLE. FAILURE TO RESPOND TIMELY WILL RESULT IN THE WAIVER OF
3 THE PRIORITY OF YOUR LIEN FOR THE REMOVABLE."

4 (e) A property owner or title company may not send more than
5 one notice under this section to a lien claimant claiming a
6 mechanic's lien on a particular property.

7 (f) If a lien claimant fails to provide a written
8 confirmation of the mechanic's lien for a removable for which a
9 mechanic's lien is claimed, as requested by the notice, on or before
10 the 30th day after the date the notice is received by the lien
11 claimant or the date delivery of the notice is reasonably
12 attempted:

13 (1) the preference under Section 53.123(a) of the
14 claimant's mechanic's lien for the removable over any prior lien,
15 encumbrance, or mortgage on the property is waived; and

16 (2) the requestor may file an affidavit with the
17 county clerk of the county in which the property is located that
18 includes:

19 (A) a statement that the notice was sent in
20 compliance with this section and the lien claimant failed to
21 respond; and

22 (B) proof of delivery or, if delivery was
23 reasonably attempted and failed, a statement of the means of
24 attempted delivery and the reason for the failure of delivery.

25 (g) The sufficiency of the invoice or other supporting
26 document provided in response to the notice is not grounds for the
27 waiver under Subsection (f)(1) of the lien claimant's priority

1 under Section 53.123(a).

2 (h) An affidavit filed under Subsection (f)(2) is prima
3 facie evidence that the lien claimant waived any preference under
4 Section 53.123(a) of the claimant's mechanic's lien for a removable
5 over any prior lien, encumbrance, or mortgage on the property.

6 (i) An invoice or other supporting document provided by a
7 lien claimant in response to a notice under this section is
8 considered a general statement of the existence and general nature
9 of a removable and does not limit:

10 (1) the evidence a claimant may present at a trial or
11 other proceeding to establish the claimant's mechanic's lien for
12 the removable; or

13 (2) the specific quantity or nature of the removables
14 that may be actually proven at a trial or other proceeding.

15 SECTION 3. The change in law made by this Act applies only
16 to a lien relating to a contract entered into on or after the
17 effective date of this Act. A lien relating to a contract entered
18 into before the effective date of this Act is governed by the law
19 applicable to the lien immediately before the effective date of
20 this Act, and that law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect January 1, 2012.