

1-1 By: Carona S.B. No. 889
1-2 (In the Senate - Filed February 23, 2011; March 1, 2011,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 9, 2011, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; March 9, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to assignment of rents to holders of certain security
1-9 interests in real property.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (d), Section 9.109, Business &
1-12 Commerce Code, is amended to read as follows:

1-13 (d) This chapter does not apply to:

1-14 (1) a landlord's lien, other than an agricultural
1-15 lien;

1-16 (2) a lien, other than an agricultural lien, given by
1-17 statute or other rule of law for services or materials, but Section
1-18 9.333 applies with respect to priority of the lien;

1-19 (3) an assignment of a claim for wages, salary, or
1-20 other compensation of an employee;

1-21 (4) a sale of accounts, chattel paper, payment
1-22 intangibles, or promissory notes as part of a sale of the business
1-23 out of which they arose;

1-24 (5) an assignment of accounts, chattel paper, payment
1-25 intangibles, or promissory notes that is for the purpose of
1-26 collection only;

1-27 (6) an assignment of a right to payment under a
1-28 contract to an assignee that is also obligated to perform under the
1-29 contract;

1-30 (7) an assignment of a single account, payment
1-31 intangible, or promissory note to an assignee in full or partial
1-32 satisfaction of a preexisting indebtedness;

1-33 (8) a transfer of an interest in or an assignment of a
1-34 claim under a policy of insurance, other than an assignment by or to
1-35 a health care provider of a health-care-insurance receivable and
1-36 any subsequent assignment of the right to payment, but Sections
1-37 9.315 and 9.322 apply with respect to proceeds and priorities in
1-38 proceeds;

1-39 (9) an assignment of a right represented by a
1-40 judgment, other than a judgment taken on a right to payment that was
1-41 collateral;

1-42 (10) a right of recoupment or set-off, but:

1-43 (A) Section 9.340 applies with respect to the
1-44 effectiveness of rights of recoupment or set-off against deposit
1-45 accounts; and

1-46 (B) Section 9.404 applies with respect to
1-47 defenses or claims of an account debtor;

1-48 (11) the creation or transfer of an interest in or lien
1-49 on real property, including a lease or rents, as defined by Section
1-50 64.001, Property Code [thereunder], the interest of a vendor or
1-51 vendee in a contract for deed to purchase an interest in real
1-52 property, or the interest of an optionor or optionee in an option to
1-53 purchase an interest in real property, except to the extent that
1-54 provision is made for:

1-55 (A) liens on real property in Sections 9.203 and
1-56 9.308;

1-57 (B) fixtures in Section 9.334;

1-58 (C) fixture filings in Sections 9.501, 9.502,
1-59 9.512, 9.516, and 9.519; and

1-60 (D) security agreements covering personal and
1-61 real property in Section 9.604;

1-62 (12) an assignment of a claim arising in tort, other
1-63 than a commercial tort claim, but Sections 9.315 and 9.322 apply
1-64 with respect to proceeds and priorities in proceeds; or

2-1 (13) an assignment of a deposit account, other than a
 2-2 nonnegotiable certificate of deposit, in a consumer transaction,
 2-3 but Sections 9.315 and 9.322 apply with respect to proceeds and
 2-4 priorities in proceeds.

2-5 SECTION 2. Subtitle B, Title 5, Property Code, is amended by
 2-6 adding Chapter 64 to read as follows:

2-7 CHAPTER 64. ASSIGNMENT OF RENTS TO LIENHOLDER

2-8 SUBCHAPTER A. GENERAL PROVISIONS

2-9 Sec. 64.001. DEFINITIONS. In this chapter:

2-10 (1) "Assignee" means a person entitled to enforce an
 2-11 assignment of rents.

2-12 (2) "Assignment of rents" means a transfer of an
 2-13 interest in rents in connection with an obligation secured by real
 2-14 property from which the rents arise. The term does not include a
 2-15 contract for a charge authorized by Section 306.101, Finance Code,
 2-16 or a true sale of rents.

2-17 (3) "Assignor" means an owner of real property who
 2-18 makes an assignment of rents arising from the property or that
 2-19 owner's successor in interest.

2-20 (4) "Cash proceeds" means proceeds that are money,
 2-21 checks, deposit accounts, or similar legal tender.

2-22 (5) "Day" means a calendar day.

2-23 (6) "Deposit account" means a demand, time, savings,
 2-24 passbook, escrow, or similar account maintained with a bank,
 2-25 savings bank, savings and loan association, credit union, trust
 2-26 company, or other person.

2-27 (7) "Document" means information that is inscribed on
 2-28 a tangible medium or that is stored on an electronic or other medium
 2-29 and is retrievable in perceivable form.

2-30 (8) "Proceeds" means personal property that is
 2-31 received, collected, or distributed on account of an obligation to
 2-32 pay rents.

2-33 (9) "Rents" means:

2-34 (A) consideration payable for the right to
 2-35 possess or occupy, or for possessing or occupying, real property;

2-36 (B) consideration payable to an assignor under a
 2-37 policy of rental interruption insurance covering real property;

2-38 (C) claims arising out of a default in the
 2-39 payment of consideration payable for the right to possess or occupy
 2-40 real property;

2-41 (D) consideration payable to terminate an
 2-42 agreement to possess or occupy real property;

2-43 (E) consideration payable to an assignor for
 2-44 payment or reimbursement of expenses incurred in owning, operating,
 2-45 and maintaining, or constructing or installing improvements on,
 2-46 real property; or

2-47 (F) any other consideration payable under an
 2-48 agreement relating to the real property that constitutes rents
 2-49 under a law of this state other than this chapter.

2-50 (10) "Secured obligation" means an obligation secured
 2-51 by an assignment of rents.

2-52 (11) "Security instrument" means:

2-53 (A) a security instrument, as that term is
 2-54 defined by Section 51.0001; or

2-55 (B) an agreement containing an assignment of
 2-56 rents.

2-57 (12) "Security interest" means an interest in property
 2-58 that arises by agreement and secures an obligation.

2-59 (13) "Sign" includes to sign by an electronic
 2-60 signature, as defined by Section 15.002.

2-61 (14) "Tenant" means a person who has an obligation to
 2-62 pay for the right to possess or occupy, or for possessing or
 2-63 occupying, real property.

2-64 Sec. 64.002. MANNER OF PROVIDING NOTICE. (a) A person may
 2-65 provide a notice under this chapter:

2-66 (1) by transmitting the notice in the manner described
 2-67 by Section 51.002(e);

2-68 (2) by depositing the notice with the United States
 2-69 Postal Service or a commercially reasonable delivery service,

3-1 properly addressed to the intended recipient's address in
 3-2 accordance with this section, with first class postage or other
 3-3 cost of delivery paid; or

3-4 (3) by transmitting the notice to the intended
 3-5 recipient by any means agreed to by the intended recipient.

3-6 (b) Except as agreed under Subsection (a)(3), notice to an
 3-7 assignee must be sent to the assignee's address as provided in the
 3-8 relevant security instrument or another document entered into for
 3-9 the purposes of this section by the assignee and the person sending
 3-10 the notice, unless a more recent address for notice has been given
 3-11 in a manner provided by Subsection (a) by the assignee to the person
 3-12 sending the notice or in a security instrument or other document
 3-13 signed by the assignee.

3-14 (c) Except as agreed under Subsection (a)(3), notice to an
 3-15 assignor must be sent to the assignor's address as provided in the
 3-16 relevant security instrument or another document entered into for
 3-17 the purposes of this section by the assignor and the person sending
 3-18 the notice or an address for the assignor to which a notice of
 3-19 default under Section 51.002 is properly sent, unless a more recent
 3-20 address for notice has been given in a manner provided by Subsection
 3-21 (a) by the assignor to the person sending the notice or in a
 3-22 security instrument or other document signed by the assignor.

3-23 (d) Except as agreed under Subsection (a)(3), notice to a
 3-24 tenant must be sent to:

3-25 (1) an address for notice to the tenant provided in a
 3-26 signed document entered into by the tenant and the person providing
 3-27 the notice, unless a more recent address for notice has been given
 3-28 by the tenant in accordance with that document;

3-29 (2) if an address for notice described by Subdivision
 3-30 (1) does not exist, the address provided in a written agreement
 3-31 between the tenant and the assignor for notices to the tenant if the
 3-32 person sending the notice has received a copy of that agreement or
 3-33 has actual knowledge of the address for notice specified in that
 3-34 agreement; or

3-35 (3) if an address for notice described by Subdivision
 3-36 (1) or (2) does not exist, the tenant's address at the real property
 3-37 covered by the security instrument.

3-38 (e) Notice provided in accordance with this section is
 3-39 considered received on the earliest of:

3-40 (1) the date the notice is received by the person to
 3-41 whom the notice is provided;

3-42 (2) the fifth day after the date the notice is provided
 3-43 in accordance with Subsection (a)(2); or

3-44 (3) the date on which notice is considered provided in
 3-45 accordance with an agreement made by the person to whom the notice
 3-46 is provided for the purposes of this section.

3-47 [Sections 64.003-64.050 reserved for expansion]

3-48 SUBCHAPTER B. ASSIGNMENT OF RENTS

3-49 Sec. 64.051. SECURITY INSTRUMENT CREATES ASSIGNMENT OF
 3-50 RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST. (a) An
 3-51 enforceable security instrument creates an assignment of rents
 3-52 arising from real property securing an obligation under the
 3-53 security instrument, unless the security instrument provides
 3-54 otherwise or the security instrument is governed by Section
 3-55 50(a)(6), (7), or (8), Article XVI, Texas Constitution.

3-56 (b) An assignment of rents creates a presently effective
 3-57 security interest in all accrued and unaccrued rents arising from
 3-58 the real property described in the document creating the
 3-59 assignment, regardless of whether the document is in the form of an
 3-60 absolute assignment, an absolute assignment conditioned on default
 3-61 or another event, an assignment as additional security, or any
 3-62 other form. The security interest in rents is separate and distinct
 3-63 from any security interest held by the assignee in the real property
 3-64 from which the rents arise.

3-65 (c) An assignment of rents does not reduce the secured
 3-66 obligation except to the extent the assignee collects rents and
 3-67 applies, or is obligated to apply, the collected rents to payment of
 3-68 the secured obligation.

3-69 Sec. 64.052. RECORDATION AND PERFECTION OF SECURITY

4-1 INTEREST IN RENTS; PRIORITY OF INTERESTS IN RENTS. (a) A document
 4-2 creating an assignment of rents may be recorded in the county in
 4-3 which any part of the real property is located.

4-4 (b) On recordation of a document creating an assignment of
 4-5 rents, the security interest in the rents is perfected. This
 4-6 subsection prevails over a conflicting provision in the document
 4-7 creating the assignment of rents or a law of this state other than
 4-8 this chapter that prohibits or defers enforcement of the security
 4-9 interest until the occurrence of a subsequent event, such as a
 4-10 subsequent default of the assignor, the assignee's obtaining
 4-11 possession of the real property, or the appointment of a receiver.

4-12 (c) Except as provided by Subsection (d), a perfected
 4-13 security interest in rents has priority over the rights of a person
 4-14 who, after the security interest is perfected, acquires:

4-15 (1) a lien on or other security interest in the rents
 4-16 or the real property from which the rents arise; or

4-17 (2) an interest in the rents or the real property from
 4-18 which the rents arise.

4-19 (d) An assignee of a perfected security interest in rents
 4-20 has the same priority over the rights of a person described by
 4-21 Subsection (c) with respect to future advances as the assignee has
 4-22 with respect to the assignee's security interest in the real
 4-23 property from which the rents arise.

4-24 Sec. 64.053. ENFORCEMENT OF SECURITY INTEREST IN RENTS
 4-25 GENERALLY. (a) An assignee may enforce an assignment of rents
 4-26 using one or more of the methods provided by Section 64.054 or
 4-27 64.055 or another method sufficient to enforce the assignment under
 4-28 a law of this state other than this chapter.

4-29 (b) On and after the date on which an assignee begins to
 4-30 enforce an assignment of rents, the assignee is entitled to collect
 4-31 all rents that:

4-32 (1) accrued before but remain unpaid on that date; and

4-33 (2) accrue on or after that date.

4-34 Sec. 64.054. ENFORCEMENT BY NOTICE TO ASSIGNOR. (a) After
 4-35 default, or as otherwise agreed by the assignor, the assignee may
 4-36 provide the assignor a notice demanding that the assignor pay the
 4-37 assignee the proceeds of any rents that the assignee is entitled to
 4-38 collect under Section 64.053.

4-39 (b) For the purposes of Section 64.053, the assignee begins
 4-40 enforcement under this section on the date on which the assignee
 4-41 provides notice to the assignor in accordance with Section 64.002.

4-42 (c) An assignee may not enforce an assignment of rents under
 4-43 this section if, on the date the security instrument was signed and
 4-44 the date of prospective enforcement, the real property constitutes
 4-45 the assignor's homestead on which is located a one-family to
 4-46 four-family dwelling.

4-47 Sec. 64.055. ENFORCEMENT BY NOTICE TO TENANT. (a) After
 4-48 default, or as otherwise agreed by the assignor, the assignee may
 4-49 provide to a tenant of real property that is subject to an
 4-50 assignment of rents a notice demanding that the tenant pay to the
 4-51 assignee all unpaid accrued rents and all unaccrued rents as they
 4-52 accrue. The assignee shall provide a copy of the notice to the
 4-53 assignor in the manner provided by Section 64.002. The notice must
 4-54 substantially comply with the form prescribed by Section 64.056 and
 4-55 be signed by the assignee or the assignee's authorized agent or
 4-56 representative.

4-57 (b) For the purposes of Section 64.053(b), the assignee
 4-58 begins enforcement under this section on the date on which the
 4-59 tenant receives a notice complying with Subsection (a).

4-60 (c) Subject to Subsection (d) and any other claim or defense
 4-61 that a tenant has under a law of this state other than this chapter,
 4-62 after a tenant receives a notice under Subsection (a):

4-63 (1) the tenant is obligated to pay to the assignee all
 4-64 unpaid accrued rents and all unaccrued rents as they accrue, unless
 4-65 the tenant has previously received a notice under this section from
 4-66 another assignee of rents provided by that assignee in accordance
 4-67 with this section and the other assignee has not canceled that
 4-68 notice;

4-69 (2) except as otherwise provided by a document signed

5-1 by the tenant, the tenant is not obligated to pay to an assignee
 5-2 rent that was prepaid to the assignor before the tenant received the
 5-3 notice under Subsection (a);

5-4 (3) unless the tenant occupies the premises as the
 5-5 tenant's primary residence, the tenant is not discharged from the
 5-6 obligation to pay rents to the assignee if the tenant pays rents to
 5-7 the assignor;

5-8 (4) the tenant's payment to the assignee of rents then
 5-9 due satisfies the tenant's obligation under the tenant's agreement
 5-10 with the assignor to the extent of the payment made; and

5-11 (5) the tenant's obligation to pay rents to the
 5-12 assignee continues until the earliest date on which the tenant
 5-13 receives:

5-14 (A) a court order directing the tenant to pay the
 5-15 rents in a different manner;

5-16 (B) a signed notice that a perfected security
 5-17 instrument that has priority over the assignee's security interest
 5-18 has been foreclosed; or

5-19 (C) a signed document from the assignee canceling
 5-20 the assignee's notice.

5-21 (d) Except as otherwise provided by a document signed by the
 5-22 tenant, a tenant who has received a notice under Subsection (a) is
 5-23 not in default for nonpayment of rents that accrue during the 30
 5-24 days after the date the tenant receives the notice until the earlier
 5-25 of:

5-26 (1) the 10th day after the date the next regularly
 5-27 scheduled rental payment would be due; or

5-28 (2) the 30th day after the date the tenant receives the
 5-29 notice.

5-30 (e) On receiving a notice from another creditor who has
 5-31 priority under Section 64.052(c) that the creditor with priority
 5-32 has conducted a foreclosure sale of the real property from which the
 5-33 rents arise or is enforcing the creditor's interest in rents by
 5-34 notice to the tenant, an assignee that has provided a notice to a
 5-35 tenant under Subsection (a) shall immediately provide another
 5-36 notice to the tenant canceling the earlier notice.

5-37 Sec. 64.056. FORM OF NOTICE TO TENANT. The following form
 5-38 of notice, when properly completed, satisfies the requirements of
 5-39 Section 64.055(a):

5-40 NOTICE TO PAY RENTS TO PERSON OTHER THAN LANDLORD

5-41 Tenant: [Name of tenant]

5-42 Property Occupied by Tenant (the "Premises"): [Address]

5-43 Landlord: [Name of landlord]

5-44 Assignee: [Name of assignee]

5-45 Address of Assignee and Telephone Number of Contact Person:

5-46 [Address of assignee] [Telephone number of person to contact]

5-47 1. Assignee is entitled to collect rents on the Premises
 5-48 under [Name of Document] (the "Assignment of Rents") dated [Date of
 5-49 Assignment of Rents], and recorded at [Recording Data] of [Name of
 5-50 County] County, Texas. You may obtain additional information about
 5-51 the Assignment of Rents and the Assignee's right to enforce it at
 5-52 the address of the Assignee.

5-53 2. A default exists under the Assignment of Rents or related
 5-54 documents between the Landlord and the Assignee. The Assignee is
 5-55 entitled to collect rents from the Premises.

5-56 3. This notice affects your rights and obligations under the
 5-57 agreement under which you occupy the Premises (your "Lease
 5-58 Agreement"). Unless you have otherwise agreed in a document signed
 5-59 by you, if your next scheduled rental payment is due within 30 days
 5-60 after you receive this notice, you will not be in default under your
 5-61 Lease Agreement for nonpayment of that rental payment until the
 5-62 10th day after the due date of that payment or the 30th day
 5-63 following the date you receive this notice, whichever occurs first.

5-64 4. You may consult a lawyer at your expense concerning your
 5-65 rights and obligations under your Lease Agreement and the effect of
 5-66 this notice.

5-67 5. You must pay to the Assignee at the Address of the
 5-68 Assignee all rents under your Lease Agreement that are due and
 5-69 payable on the date you receive this notice and all rents accruing

6-1 under your Lease Agreement after you receive this notice.

6-2 6. If you pay rents to the Assignee after receiving this
6-3 notice, the payment will satisfy your rental obligation to the
6-4 extent of that payment.

6-5 7. If you pay any rents to the Landlord after receiving this
6-6 notice, your payment to the Landlord will not discharge your rental
6-7 obligation, and the Assignee may hold you liable for that rental
6-8 obligation notwithstanding your payment to the Landlord unless you
6-9 occupy the Premises as your primary residence.

6-10 8. If you have previously received a notice from another
6-11 person who also holds an assignment of the rents due under your
6-12 Lease Agreement, you should continue paying your rents to the
6-13 person that sent that notice until that person cancels that notice.
6-14 Once that notice is canceled, you must begin paying rents to the
6-15 Assignee in accordance with this notice.

6-16 Name of assignee: _____

6-17 By: [Officer/authorized agent of assignee]

6-18 Sec. 64.057. EFFECT OF ENFORCEMENT. The enforcement of an
6-19 assignment of rents by a method provided by Section 64.054 or
6-20 64.055, the application of proceeds by the assignee under Section
6-21 64.059 after enforcement, the payment of expenses under Section
6-22 64.058, or an action under Section 64.060 does not:

6-23 (1) make the assignee a mortgagee in possession of the
6-24 real property from which the rents arise;

6-25 (2) make the assignee an agent of the assignor;

6-26 (3) constitute an election of remedies that precludes
6-27 a later action to enforce the secured obligation;

6-28 (4) make the secured obligation unenforceable;

6-29 (5) limit any right available to the assignee with
6-30 respect to the secured obligation; or

6-31 (6) bar a deficiency judgment under any law of this
6-32 state governing or relating to deficiency judgments following the
6-33 enforcement of any encumbrance, lien, or security interest.

6-34 Sec. 64.058. APPLICATION OF PROCEEDS GENERALLY. Unless
6-35 otherwise agreed by the assignor, an assignee who collects rents
6-36 under this chapter or collects on a judgment in an action under
6-37 Section 64.060 shall apply the sums collected in the following
6-38 order to:

6-39 (1) reimbursement of the assignee's expenses of
6-40 enforcing the assignee's assignment of rents, including, to the
6-41 extent provided for by agreement by the assignor and not prohibited
6-42 by a law of this state other than this chapter, reasonable
6-43 attorney's fees and costs incurred by the assignee;

6-44 (2) reimbursement of any expenses incurred by the
6-45 assignee to protect or maintain the real property that is subject to
6-46 the assignment of rents if the assignee elects or is required to
6-47 apply the proceeds to those expenses under Section 64.059;

6-48 (3) payment of the secured obligation;

6-49 (4) payment of any obligation secured by a subordinate
6-50 security interest or other lien on the rents if, before
6-51 distribution of the proceeds, the assignee receives a signed notice
6-52 from the holder of the interest or lien demanding payment of the
6-53 proceeds; and

6-54 (5) payment of any excess proceeds to the assignor.

6-55 Sec. 64.059. APPLICATION OF PROCEEDS TO EXPENSES OF
6-56 PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT.

6-57 (a) Unless otherwise agreed by the assignee, an assignee that
6-58 collects rents following enforcement under Section 64.054 or 64.055
6-59 is not obligated to apply the collected rents to the payment of
6-60 expenses of protecting or maintaining the real property subject to
6-61 an assignment of rents.

6-62 (b) Unless otherwise agreed by a tenant, the right of the
6-63 assignee to collect rents from the tenant is subject to the terms of
6-64 any agreement between the assignor and tenant and any claim or
6-65 defense of the tenant arising from the assignor's nonperformance of
6-66 that agreement.

6-67 Sec. 64.060. TURNOVER OF RENTS; LIABILITY OF ASSIGNOR.

6-68 (a) If an assignor collects rents that the assignee is entitled to
6-69 collect under this chapter, the assignor shall turn over the

7-1 proceeds to the assignee not later than the 30th day after the date
 7-2 the assignor receives notice from the assignee under Section 64.054
 7-3 or within another period prescribed by a security instrument or
 7-4 other document signed by the assignor and approved by the assignee,
 7-5 less any amount representing payment of expenses authorized by a
 7-6 security instrument or other document signed by the assignee.

7-7 (b) In addition to any other remedy available to the
 7-8 assignee under a law of this state other than this chapter, if an
 7-9 assignor does not turn over proceeds to the assignee as required by
 7-10 Subsection (a), the assignee may recover from the assignor in a
 7-11 civil action:

7-12 (1) the proceeds, or an amount equal to the proceeds,
 7-13 that the assignor was obligated to turn over under Subsection (a);
 7-14 and

7-15 (2) reasonable attorney's fees and costs incurred by
 7-16 the assignee to the extent provided for by an agreement between the
 7-17 assignor and assignee and not prohibited by a law of this state
 7-18 other than this chapter.

7-19 (c) The assignee may maintain an action under Subsection (b)
 7-20 with or without taking action to foreclose any security interest
 7-21 that the assignee has in the real property.

7-22 (d) Unless otherwise agreed by an assignee that has priority
 7-23 under Section 64.052, a subordinate creditor that has enforced the
 7-24 subordinate creditor's interest under Section 64.054 or 64.055
 7-25 before the priority assignee enforces the priority assignee's
 7-26 interests in rents is not obligated to turn over any proceeds that
 7-27 the subordinate creditor collects before the subordinate creditor
 7-28 receives a signed notice from the priority assignee informing the
 7-29 subordinate creditor that the priority assignee is enforcing the
 7-30 priority assignee's interest in rents. The subordinate creditor
 7-31 shall turn over to a priority assignee any proceeds that the
 7-32 subordinate creditor collects after the subordinate creditor
 7-33 receives the notice from the priority assignee that the priority
 7-34 assignee is enforcing the priority assignee's interest in rents not
 7-35 later than the 30th day after the date the subordinate creditor
 7-36 receives the notice or as otherwise agreed between the priority
 7-37 assignee and the subordinate creditor. Any proceeds subsequently
 7-38 collected by the subordinate creditor shall be turned over to the
 7-39 priority assignee not later than the 10th day after the date the
 7-40 proceeds are collected or as otherwise agreed between the priority
 7-41 assignee and the subordinate creditor.

7-42 Sec. 64.061. ATTACHMENT, PERFECTION, AND PRIORITY OF
 7-43 ASSIGNEE'S SECURITY INTEREST IN PROCEEDS. (a) An assignee's
 7-44 security interest in rents attaches to identifiable proceeds.

7-45 (b) If an assignee's security interest in rents is
 7-46 perfected, the assignee's security interest in identifiable cash
 7-47 proceeds is perfected.

7-48 (c) Except as provided by Subsection (b), the provisions of
 7-49 Chapter 9, Business & Commerce Code, or the comparable Uniform
 7-50 Commercial Code provisions of another applicable jurisdiction,
 7-51 determine:

7-52 (1) whether an assignee's security interest in
 7-53 proceeds is perfected;

7-54 (2) the effect of perfection or nonperfection;

7-55 (3) the priority of an interest in proceeds; and

7-56 (4) the law governing perfection, the effect of
 7-57 perfection or nonperfection, and the priority of an interest in
 7-58 proceeds.

7-59 (d) For purposes of this chapter, cash proceeds are
 7-60 identifiable if they are maintained in a segregated deposit account
 7-61 or, if commingled with other funds, to the extent they can be
 7-62 identified by a method of tracing, including application of
 7-63 equitable principles, that is permitted under a law of this state
 7-64 other than this chapter with respect to commingled funds.

7-65 Sec. 64.062. PRIORITY SUBJECT TO SUBORDINATION. This
 7-66 chapter does not preclude subordination by agreement by a person
 7-67 entitled to priority.

7-68 SECTION 3. (a) Except as otherwise provided by this
 7-69 section, Chapter 64, Property Code, as added by this Act, governs

8-1 the enforcement of an assignment of rents, the perfection and
8-2 priority of a security interest in rents, and the attachment and
8-3 perfection of a security interest in proceeds regardless of whether
8-4 the document creating the assignment of rents was signed and
8-5 delivered before the effective date of this Act.

8-6 (b) Chapter 64, Property Code, as added by this Act, does
8-7 not affect an action or other proceeding commenced before the
8-8 effective date of this Act.

8-9 (c) Subsection (a), Section 64.051, Property Code, as added
8-10 by this Act, applies only to a security instrument signed and
8-11 delivered on or after the effective date of this Act. A security
8-12 instrument signed and delivered before the effective date of this
8-13 Act is governed by the law that applied to the instrument
8-14 immediately before that date, and the former law is continued in
8-15 effect for that purpose.

8-16 (d) Chapter 64, Property Code, as added by this Act, does
8-17 not affect:

8-18 (1) the enforceability of an assignee's security
8-19 interest in rents or proceeds if, immediately before the effective
8-20 date of this Act, that security interest was enforceable;

8-21 (2) the perfection of an assignee's security interest
8-22 in rents or proceeds if, immediately before the effective date of
8-23 this Act, that security interest was perfected; or

8-24 (3) the priority of an assignee's security interest in
8-25 rents or proceeds with respect to the interest of another person if,
8-26 immediately before the effective date of this Act, the interest of
8-27 the other person was enforceable and perfected and that priority
8-28 was established.

8-29 SECTION 4. This Act takes effect immediately if it receives
8-30 a vote of two-thirds of all the members elected to each house, as
8-31 provided by Section 39, Article III, Texas Constitution. If this
8-32 Act does not receive the vote necessary for immediate effect, this
8-33 Act takes effect September 1, 2011.

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