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H.B. No. 1208

Substitute the following for H.B. No. 1208:

By: Simmons

C.S.H.B. No. 1208

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to lender notice of default to contractors regarding  
3 certain construction loans or financing agreements for the  
4 improvement of real property and related procedures for suspending  
5 contractors' and subcontractors' performance.

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

7 SECTION 1. Chapter 28, Property Code, is amended by adding  
8 Section 28.0091 to read as follows:

9 Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS;  
10 SUSPENSION OF PERFORMANCE. (a) This section applies only to a  
11 lender that provides financing through a construction loan or under  
12 a financing agreement for an improvement to real property for which  
13 the real property or improvement is collateral.

14 (b) This section does not apply with respect to a loan or  
15 financing agreement used primarily for:

16 (1) the construction or remodeling of an individual's  
17 single-family home, townhouse, or duplex; or

18 (2) land development directly related to the  
19 construction or remodeling of an individual's single-family home,  
20 townhouse, or duplex.

21 (c) For an improvement to real property for which financing  
22 is provided as described by Subsection (a), each contractor, not  
23 later than the 30th day after the date the contractor sends the  
24 contractor's first written pay request, shall provide a notice of

1 contractor identification that complies with Subsection (d) to the  
2 lender and the borrower and, if the borrower is not the owner of the  
3 real property, to the property owner.

4 (d) A notice of contractor identification provided under  
5 Subsection (c) must:

6 (1) be sent certified mail, return receipt requested;

7 (2) be identified by the heading "Notice of Contractor  
8 Identification" or words of similar meaning; and

9 (3) contain:

10 (A) the contractor's name, mailing address,  
11 e-mail address if available, and telephone number;

12 (B) the street address or project name or other  
13 information sufficient to describe the location of the property  
14 being improved; and

15 (C) the name of each person to whom the notice is  
16 being given.

17 (e) If the lender's name, a mailing address, a name of a  
18 particular individual, and a reference to this section are provided  
19 in the contract between the property owner and the contractor,  
20 notice to the lender under Subsection (c) must be sent to that  
21 mailing address and to the attention of the particular individual.

22 (f) Except as provided by Subsection (j), each contractor  
23 and subcontractor providing labor, materials, equipment, or  
24 services for an improvement to real property for which financing is  
25 provided as described by Subsection (a) is entitled to suspend  
26 contractually required performance without penalty or liability  
27 for damages for suspending contractually required performance if a

1 contractor receives notice under Subsection (g).

2 (g) Except as provided by Subsection (j), a lender shall  
3 notify each contractor identified under Subsection (c) not later  
4 than the second business day after the date on which the lender  
5 sends to the borrower one of the following notices in connection  
6 with a particular default under the loan or financing agreement:

7 (1) a notice of acceleration;

8 (2) a notice of set-off; or

9 (3) a notice of foreclosure.

10 (h) A lender and a contractor may devise and agree on an  
11 effective, efficient, and economical method for delivering any  
12 notice required under Subsection (g). If the lender and the  
13 contractor do not devise or agree on the method by which the notice  
14 will be delivered, the notice must be delivered by certified mail,  
15 return receipt requested.

16 (i) Not later than the second business day after the date a  
17 contractor receives notice under Subsection (g), the contractor  
18 shall notify each of the contractor's subcontractors of the  
19 contractor's receipt of the notice and of the subcontractor's right  
20 under this section as a result of the notice to suspend  
21 contractually required performance without penalty or liability  
22 for damages for suspending contractually required performance.

23 (j) A lender is not required to notify a contractor under  
24 Subsection (g) and the contractor and the contractor's  
25 subcontractors are not entitled to suspend performance under this  
26 section if, before the lender sends a notice described by  
27 Subsection (g) to the borrower, a written agreement exists between

1 the lender and the contractor that provides for the continued  
2 performance by the contractor and for payment to the contractor in  
3 the event of an acceleration, set-off, or foreclosure under the  
4 loan or financing agreement.

5 (k) A lender that provides timely notice to a contractor  
6 under Subsection (g) is not liable for damages to the contractor or  
7 any of the contractor's subcontractors for any costs incurred to  
8 provide labor, materials, equipment, or services contemplated  
9 under the loan or financing agreement, except for those costs for  
10 which the lender has expressly agreed to be obligated to pay.

11 (l) A notice provided by a lender to a contractor under this  
12 section does not create a cause of action by the borrower or  
13 property owner against the lender.

14 SECTION 2. The change in law made by this Act applies only  
15 to a construction loan or financing agreement entered into on or  
16 after the effective date of this Act.

17 SECTION 3. This Act takes effect September 1, 2015.