

By: Romero, Jr.

H.B. No. 1679

A BILL TO BE ENTITLED

AN ACT

relating to the survival of a mechanic's retainage lien after the foreclosure of a lien securing a construction loan.

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

SECTION 1. Section 53.052, Property Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) Except as provided by Subsection (b) or (b-1), the person claiming the lien must file an affidavit with the county clerk of the county in which the property is located or into which the railroad extends not later than the 15th day of the fourth calendar month after the day on which the indebtedness accrues.

(b-1) If a person claiming a lien for retainage receives a notice of a foreclosure sale as provided by Section 53.125, the person must file the affidavit not later than:

(1) the fifth day before the date of the foreclosure sale; or

(2) if the foreclosure sale does not occur on the date stated in the notice:

(A) for a lien for retainage under Subchapter E, the date provided by Section 53.057(f); or

(B) for a lien for retainage described by Section 53.125(a)(2), the date provided under Subsection (a).

SECTION 2. Subchapter F, Chapter 53, Property Code, is

1 amended by adding Section 53.125 to read as follows:

2 Sec. 53.125. SURVIVAL OF RETAINAGE LIEN AFTER CERTAIN
3 FORECLOSURES. (a) In this section, "retainage" means:

- 4 (1) retainage under Subchapter E; or
5 (2) an amount or agreed percentage of money in a
6 construction contract or subcontract that is withheld from a
7 payment and not due to be paid until completion of the contract or
8 an agreed date.

9 (b) A person who purchases property that is sold due to the
10 foreclosure of a lien that secures a financing agreement or loan to
11 pay for the construction or repair of an improvement to real
12 property takes the property subject to the amount of retainage
13 included in an unreleased lien for which an affidavit is filed under
14 Section 53.052(b-1).

15 (c) A lender under a financing agreement or loan described
16 by Subsection (b) shall, not later than the 35th day before the date
17 of the foreclosure sale, provide written notice to the original
18 contractor that states:

- 19 (1) the lender's intent to foreclose;
20 (2) the date of the foreclosure sale;
21 (3) the name of the owner of the property being sold;
22 (4) a legal description of the property being sold;

23 and

24 (5) at the top of the notice, printed in bold capital
25 letter type at least as large as the largest type used in the
26 notice, but not smaller than 10-point type: "NOTICE: IN ORDER FOR
27 THE RETAINAGE PORTION OF A MECHANIC'S LIEN CLAIM TO SURVIVE

1 FORECLOSURE, YOU MUST FILE A LIEN AFFIDAVIT UNDER SECTION 53.052,
2 TEXAS PROPERTY CODE, NOT LATER THAN THE FIFTH DAY BEFORE THE DATE OF
3 THE FORECLOSURE SALE."

4 (d) An original contractor who receives a notice under this
5 section must, not later than the fifth day after the date the
6 contractor receives the notice, provide a copy of the notice to each
7 subcontractor of the contractor.

8 (e) A subcontractor who receives a notice under Subsection
9 (d) must, not later than the fifth day after the date the
10 subcontractor receives the notice, provide a copy of the notice to
11 each subcontractor of the subcontractor.

12 SECTION 3. The changes in law made by this Act apply only to
13 a lien related to an original contract entered into on or after the
14 effective date of this Act. A lien related to an original contract
15 entered into before the effective date of this Act is governed by
16 the law applicable to the lien immediately before the effective
17 date of this Act, and that law is continued in effect for that
18 purpose.

19 SECTION 4. This Act takes effect September 1, 2021.