

CHAPTER 479

H.B. No. 1429

AN ACT

relating to prompt payment to contractors and subcontractors in connection with improvements to real property.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 4, Property Code, is amended by adding Chapter 28 to read as follows:

CHAPTER 28. PROMPT PAYMENT TO CONTRACTORS AND SUBCONTRACTORS

Sec. 28.001. DEFINITIONS. In this chapter:

(1) "Contractor" means a person who contracts with an owner to improve real property or perform construction services for an owner.

(2) "Improve" means to:

(A) build, construct, effect, erect, alter, repair, or demolish any improvement on, connected with, or beneath the surface of real property;

(B) excavate, clear, grade, fill, or landscape real property;

(C) construct a driveway or roadway;

(D) furnish any material, including trees or shrubbery, for the purpose of taking any action described by Paragraphs (A)–(C) of this subdivision; or

(E) perform any labor on or in connection with an improvement.

(3) "Improvement" includes all or any part of:

(A) a building, structure, erection, alteration, demolition, or excavation on, connected with, or beneath the surface of real property; and

(B) the act of clearing, grading, filling, or landscaping real property, including constructing a driveway or roadway or furnishing trees or shrubbery.

(4) "Owner" means a person or entity, other than a governmental entity, with an interest in real property that is improved, for whom an improvement is made, and who ordered the improvement to be made.

(5) "Real property" includes lands, leaseholds, tenements, hereditaments, and improvements placed on the real property.

(6) "Subcontractor" means a person who contracts to furnish labor or material to, or has performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property.

Sec. 28.002. **PROMPT PAY REQUIRED.** (a) If an owner receives a written payment request from a contractor for an amount that is allowed to the contractor for properly performed work or suitably stored materials, the owner shall pay the amount to the contractor, less any statutory offsets, not later than the 45th day after the owner receives the request.

(b) A contractor who receives a payment under Subsection (a) or otherwise from an owner in connection with a contract to improve real property shall pay each of its subcontractors the portion of the owner's payment, including interest, if any, that is attributable to work performed or materials suitably stored by that subcontractor if payment for stored materials is provided for in the contract, to the extent of that subcontractor's interest in the owner's payment. The payment required by this subsection must be made not later than the seventh day after the date the contractor receives the owner's payment.

(c) A subcontractor who receives a payment under Subsection (b) or otherwise from a contractor in connection with a contract to improve real property shall pay each of its subcontractors the portion of the payment, including interest, if any, that is attributable to work performed or materials suitably stored by that subcontractor if payment for stored materials is provided for in the contract, to the extent of that subcontractor's interest in the payment. The payment required by this subsection must be made not later than the seventh day after the date the subcontractor receives the contractor's payment.

Sec. 28.003. **EXCEPTION FOR GOOD FAITH DISPUTE; WITHHOLDING.** If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter, the owner, contractor, or subcontractor disputing its obligation to pay or the amount of payment may withhold from the payment owed not more than 110 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due. A good faith dispute includes a dispute regarding whether the work was performed in a proper manner.

Sec. 28.004. **INTEREST ON OVERDUE PAYMENT.** (a) An unpaid amount required under this chapter begins to accrue interest on the day after the date on which the payment becomes due.

(b) An unpaid amount bears interest at the rate of 1½ percent each month.

(c) Interest on an unpaid amount stops accruing under this section on the earlier of:

(1) the date of delivery;

(2) the date of mailing, if payment is mailed and delivery occurs within three days; or

(3) the date a judgment is entered in an action brought under this chapter.

Sec. 28.005. **ACTION TO ENFORCE PAYMENT.** (a) A person may bring an action to enforce the person's rights under this chapter.

(b) In an action brought under this chapter, the court may award costs and reasonable attorney's fees as the court determines equitable and just.

Sec. 28.006. NO WAIVER. (a) Except as provided by Subsection (b), an attempted waiver of a provision of this chapter is void.

(b) A written contract between an owner and a contractor for improvements to or construction of a single-family residence may provide that the payment required under Section 28.002(a) be made not later than a date that occurs before the 61st day after the date the owner receives the payment request. Notwithstanding Section 28.004(b), an unpaid amount under contract subject to this subsection that allows payment later than the date otherwise required under Section 28.002(a) bears interest at the rate of 1½ percent each month.

Sec. 28.007. LEGAL CONSTRUCTION. (a) This chapter may not be interpreted to void a contractor's or subcontractor's entitlement to payment for properly performed work or suitably stored materials.

(b) Nothing in this statute shall be interpreted to change the rights and obligations set forth in Chapter 53, Property Code.

Sec. 28.008. EXCEPTION FOR FAILURE OF LENDER TO DISBURSE FUNDS. The date of payment required of the owner pursuant to Section 28.002(a) shall change from the 45th day after the date the owner receives the payment request to the 5th day after the owner receives loan proceeds, in the event that:

(1) the owner has obtained a loan intended to pay for all or part of a contract to improve real property;

(2) the owner has timely and properly requested disbursement of proceeds from that loan; and

(3) the lender is legally obligated to disburse such proceeds to the owner, but has failed to do so within 45 days after the date the owner received the contractor's payment request.

SECTION 2. This Act applies only to a contract to improve real property entered into on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 11, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1429 on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 23, 1993, by a viva-voce vote.

Approved June 9, 1993.

Effective Sept. 1, 1993.