

PROPERTY CODE

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.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.002. PROMPT PAY REQUIRED. (a) If an owner or a person authorized to act on behalf of the owner receives a written payment request from a contractor for an amount that is allowed to the contractor under the contract for properly performed work or suitably stored or specially fabricated materials, the owner shall pay the amount to the contractor, less any amount withheld as authorized by statute, not later than the 35th day after the date 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 properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, 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 properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, 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.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1999.

Sec. 28.003. EXCEPTION FOR GOOD FAITH DISPUTE; WITHHOLDING. (a) If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract for construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex, the owner, contractor, or subcontractor that is 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.

(b) If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract for construction of or improvements to real property, excluding a detached single-family residence, duplex, triplex, or quadruplex, the owner, contractor, or subcontractor that is disputing its obligation to pay or the amount of payment may withhold from the payment owed not more than 100 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.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1999.

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 1-1/2 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.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

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.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

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 1-1/2 percent each month.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

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.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

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 35th day after the date the owner receives the payment request to the fifth day after the date 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 35 days after the date the owner received the contractor's payment request.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 805, Sec. 3, eff. Sept. 1, 1999.

Sec. 28.009. RIGHT TO SUSPEND WORK. (a) If an owner fails to pay the contractor the undisputed amount within the time limits provided by this chapter, the contractor or any subcontractor may

suspend contractually required performance the 10th day after the date the contractor or subcontractor gives the owner and the owner's lender written notice:

(1) informing the owner and lender that payment has not been received; and

(2) stating the intent of the contractor or subcontractor to suspend performance for nonpayment.

(b) For purposes of Subsection (a), the contractor or subcontractor must give the owner's lender the written notice only if:

(1) the owner has obtained a loan intended to pay for all or part of the construction project;

(2) the lender has remitted funds, including acquisition funds, for construction purposes;

(3) the loan obtained:

(A) is evidenced by a promissory note secured by a deed of trust recorded in the real property records of the county in which the real property that is the subject of the contract is located; and

(B) is not only for the acquisition of personal property or secured only by a security instrument;

(4) the owner or lender, at the lender's option:

(A) securely posts not later than the 10th day after the date construction commences a sign on the project site in a prominent place accessible to each contractor, subcontractor, and supplier that states the lender's name, address, and the person to whom any notice should be sent; and

(B) maintains the sign during the pendency of the construction project;

(5) not later than the 10th day after the date construction commences, the owner or lender, at the lender's option, provides a written copy of the notice prescribed by Subdivision (4) to the contractor and any subcontractor or supplier identified by the contractor by depositing the notice properly addressed in the United States mail, first class, postage paid; and

(6) not later than the 10th day after the date a subcontractor or supplier performs labor or furnishes materials or equipment for the construction project, the owner, contractor, or subcontractor provides a written copy of the notice prescribed by Subdivision (4) to the subcontractor or supplier.

(c) A contractor or subcontractor who suspends performance as provided by this section is not:

(1) required to supply further labor, services, or materials until the person is paid the amount provided by this chapter, plus costs for demobilization and remobilization; or

(2) responsible for damages resulting from suspending work if the contractor or subcontractor has not been notified in writing before suspending performance that payment has been made or that a good faith dispute for payment exists.

(d) A notification that a good faith dispute for payment exists provided under Subsection (c) must include a list of specific reasons for nonpayment. If a reason specified includes labor, services, or materials provided by a subcontractor that are not provided in compliance with the contract, the subcontractor is entitled to a reasonable opportunity to:

(1) cure the listed items; or

(2) offer a reasonable amount to compensate for listed items that cannot be promptly cured.

(e) This section does not apply to:

(1) a contract for the construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex; or

(2) a contract to improve real property for a governmental entity.

(f) The rights and remedies provided by this section are in addition to rights and remedies provided by this chapter or other law.

Added by Acts 1999, 76th Leg., ch. 805, Sec. 4, eff. Sept. 1, 1999.

Sec. 28.010. EXEMPTION FOR MINERAL DEVELOPMENT AND OILFIELD SERVICES. (a) This chapter does not apply to any agreement:

(1) to explore, produce, or develop oil, natural gas, natural gas liquids, synthetic gas, sulphur, ore, or other mineral substances, including any lease or royalty agreement, joint interest agreement, production or production-related agreement, operating agreement, farmout agreement, area of mutual interest

agreement, or other related agreement;

(2) for any well or mine services; or

(3) to purchase, sell, gather, store, or transport oil, natural gas, natural gas liquids, synthetic gas, or other hydrocarbon substances by pipeline or by a fixed, associated facility.

(b) In this section:

(1) "Agreement" includes a written or oral agreement or understanding:

(A) to provide work or services, including any construction, operating, repair, or maintenance services; or

(B) to perform a part of the services covered by Paragraph (A) or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with those services.

(2) "Well or mine services" includes:

(A) drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, purchasing, gathering, storing, or transporting oil or natural gas, brine water, fresh water, produced water, condensate, petroleum products, or other liquid commodities, or otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, or other minerals or water; and

(B) designing, excavating, constructing, improving, or otherwise rendering services in connection with an oil, gas, or other mineral production platform or facility, mine shaft, drift, or other structure intended directly for use in exploring for or producing a mineral.

Added by Acts 1999, 76th Leg., ch. 805, Sec. 4, eff. Sept. 1, 1999.