

PROPERTY CODE

CHAPTER 162. CONSTRUCTION PAYMENTS, LOAN RECEIPTS, AND
MISAPPLICATION OF TRUST FUNDS

SUBCHAPTER A. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS

Sec. 162.001. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS AS TRUST FUNDS. (a) Construction payments are trust funds under this chapter if the payments are made to a contractor or subcontractor or to an officer, director, or agent of a contractor or subcontractor, under a construction contract for the improvement of specific real property in this state.

(b) Loan receipts are trust funds under this chapter if the funds are borrowed by a contractor, subcontractor, or owner or by an officer, director, or agent of a contractor, subcontractor, or owner for the purpose of improving specific real property in this state, and the loan is secured in whole or in part by a lien on the property.

(c) If a contractor and property owner have entered into a written construction contract for the improvement of specific real property in this state before the commencement of construction of the improvement and the contract provides for the payment by the owner of the costs of construction and a reasonable fee specified in the contract payable to the contractor, the fee paid to the contractor is not considered trust funds.

Acts 1983, 68th Leg., p. 3720, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 1018, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.002. CONTRACTORS AS TRUSTEES. A contractor, subcontractor, or owner or an officer, director, or agent of a contractor, subcontractor, or owner, who receives trust funds or who has control or direction of trust funds, is a trustee of the trust funds.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 162.003. BENEFICIARIES OF TRUST FUNDS. An artisan, laborer, mechanic, contractor, subcontractor, or materialman who labors or who furnishes labor or material for the construction or repair of an improvement on specific real property in this state is a beneficiary of any trust funds paid or received in connection with the improvement.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 1018, Sec. 2, eff. Sept. 1, 1997.

Sec. 162.004. APPLICATION. (a) This chapter does not apply to:

(1) a bank, savings and loan, or other lender;
(2) a title company or other closing agent; or
(3) a corporate surety who issues a payment bond covering the contract for the construction or repair of the improvement.

(b) The Texas Trust Act (Chapters 111 through 115) does not apply to any trust created under this chapter, nor does this chapter affect any provision of the Texas Trust Act.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 578, Sec. 2, eff. Aug. 31, 1987.

Sec. 162.005. DEFINITIONS. In this chapter:

(1) A trustee acts with "intent to defraud" when the trustee:

(A) retains, uses, disburses, or diverts trust funds with the intent to deprive the beneficiaries of the trust funds;

(B) retains, uses, disburses, or diverts trust funds and fails to establish or maintain a construction account as required by Section 162.006 or fails to establish or maintain an account record for the construction account as required by Section 162.007; or

(C) uses, disburses, or diverts trust funds that were paid to the trustee in reliance on an affidavit furnished by the trustee under Section 53.085 if the affidavit contains false information relating to the trustee's payment of current or past due obligations.

(2) "Current or past due obligations" are those obligations incurred or owed by the trustee for labor or materials furnished in the direct prosecution of the work under the construction contract prior to the receipt of the trust funds and which are due and payable by the trustee no later than 30 days

following receipt of the trust funds.

(3) "Direct cost" means a cost included under a construction contract that is specific to the construction of the improvement that is the subject of the contract.

(4) "Indirect cost" means a cost included under a construction contract that is not specific to the construction of the improvement that is the subject of the contract.

(5) "Financial institution" means a bank, savings association, savings bank, credit union, or savings and loan association authorized to do business in the state.

(6) "Construction account" means an account in a financial institution into which only trust funds and funds deposited by the contractor that are necessary to pay charges imposed on the account by the financial institution may be maintained.

Added by Acts 1987, 70th Leg., ch. 578, Sec. 3, eff. Aug. 31, 1987. Amended by Acts 1997, 75th Leg., ch. 1018, Sec. 3, eff. Sept. 1, 1997.

Sec. 162.006. CONSTRUCTION ACCOUNT REQUIRED IN CERTAIN CIRCUMSTANCES. (a) A contractor who enters into a written contract with a property owner to construct improvements to a residential homestead for an amount exceeding \$5,000 shall deposit the trust funds in a construction account in a financial institution.

(b) The periodic statement received from the financial institution must refer to the account as a "construction account" to satisfy the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1018, Sec. 4, eff. Sept. 1, 1997.

Sec. 162.007. MANAGEMENT OF CONSTRUCTION ACCOUNTS. (a) A contractor required to maintain a construction account under this subchapter shall maintain an account record for the construction account that provides information relating to:

(1) the source and amount of the funds in the account and the date the funds were deposited;

(2) the date and amount of each disbursement from the account and the person to whom the funds were disbursed; and

(3) the current balance of the account.

(b) The contractor shall maintain an account record for each construction project that specifies the direct costs and indirect costs charged to the owner.

(c) The contractor shall retain all invoices and other supporting documentation received relating to funds that were disbursed from the construction account.

(d) The contractor shall ensure that all deposit and disbursement documentation includes the construction account number or information that provides a direct connection between the documentation and the account.

(e) The contractor may not destroy information required to be maintained under this section before the first anniversary of the date the improvement that is the subject of the contract is completed.

Added by Acts 1997, 75th Leg., ch. 1018, Sec. 4, eff. Sept. 1, 1997.

SUBCHAPTER B. MISAPPLICATION OF TRUST FUNDS

Sec. 162.031. MISAPPLICATION OF TRUST FUNDS. (a) A trustee who, intentionally or knowingly or with intent to defraud, directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all current or past due obligations incurred by the trustee to the beneficiaries of the trust funds, has misapplied the trust funds.

(b) It is an affirmative defense to prosecution or other action brought under Subsection (a) that the trust funds not paid to the beneficiaries of the trust were used by the trustee to pay the trustee's actual expenses directly related to the construction or repair of the improvement or have been retained by the trustee, after notice to the beneficiary who has made a request for payment, as a result of the trustee's reasonable belief that the beneficiary is not entitled to such funds or have been retained as authorized or required by Chapter 53.

(c) It is also an affirmative defense to prosecution or other action brought under Subsection (a) that the trustee paid the beneficiaries all trust funds which they are entitled to receive no later than 30 days following written notice to the trustee of the filing of a criminal complaint or other notice of a pending criminal investigation.

Acts 1983, 68th Leg., p. 3721, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 578, Sec. 4, eff. Aug. 31,

1987.

Sec. 162.032. PENALTIES. (a) A trustee who misapplies trust funds amounting to \$500 or more in violation of this chapter commits a Class A misdemeanor.

(b) A trustee who misapplies trust funds amounting to \$500 or more in violation of this chapter, with intent to defraud, commits a felony of the third degree.

(c) A trustee who fails to establish or maintain a construction account in violation of Section 162.006 or fails to establish or maintain an account record for the construction account in violation of Section 162.007 commits a Class A misdemeanor.

Acts 1983, 68th Leg., p. 3722, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 578, Sec. 5, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 1018, Sec. 5, eff. Sept. 1, 1997.

Sec. 162.033. ELECTION OF OFFENSES. If the misapplication of trust funds by a trustee constitutes another offense punishable under the laws of this state, the state may elect the offense for which it will prosecute the trustee.

Acts 1983, 68th Leg., p. 3722, ch. 576, Sec. 1, eff. Jan. 1, 1984.