

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1944 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/31/05

A Bill

HOUSE BILL 2803

5 By: Representative Lamoureux
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE REAL ESTATE LICENSEE LIEN
10 ACT TO ASSIST REAL ESTATE LICENSEES IN COMMERCIAL
11 REAL ESTATE TRANSACTIONS WITH COLLECTION OF FEES;
12 AND FOR OTHER PURPOSES.
13
14

Subtitle

15 AN ACT TO CREATE THE REAL ESTATE LIEN
16 LICENSEE ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Effective July 1, 2005, Arkansas Code Title 18, Chapter 48,
23 is amended to add an additional subchapter 8 to read as follows:

24 18-48-801. Title.

25 This subchapter shall be known and may be cited as the "Real Estate
26 Licensee Lien Act".
27

28 18-48-802. Definitions.

29 As used in this subchapter:

30 (1)(A) "Base rent" means the rent designated in a lease as base
31 rent, or a similar term, for the possession and use of commercial real
32 estate.

33 (B) "Base rent" does not include separate payments made by
34 tenants for insurance, taxes, utilities, or other expenses;

35 (2)(A) "Commercial real estate" means:



1 (i) A fee simple, freehold, leasehold, or other
2 title, interest, or possessory estate in real property located in the State
3 of Arkansas; and

4 (ii) Real property if the property is identified as
5 commercial real estate in the representation agreement.

6 (B) "Commercial real estate" does not mean an interest in
7 real property which is:

8 (i) Improved with one (1) single-family residential
9 unit or one (1) multifamily structure with four (4) or fewer residential
10 units; or

11 (ii) Improved with single-family residential units
12 such as condominiums, townhouses, timeshares, or houses in a subdivision that
13 may be sold, leased, or otherwise disposed of on a unit-by-unit basis;

14 (3) "Days" means calendar days;

15 (4) "Disposition" means a voluntary transfer or conveyance of
16 commercial real estate;

17 (5) "Escrow closing agent" means the person or entity who
18 receives documents and funds for recording and disbursement in the completion
19 of a transaction for the disposition of commercial real estate;

20 (6) "Lease" means a written agreement affecting commercial real
21 estate that creates a landlord and tenant relationship under which the holder
22 of a fee simple interest or possessory estate in commercial real estate
23 permits another to possess the commercial real estate for the period of time
24 contained in the lease;

25 (7) "Licensee" has the same meaning as in §17-42-103(10)(A);

26 (8)(A) "Net rental proceeds" means the base rent paid by the
27 tenant under a lease, less any amounts currently due under the terms of liens
28 which have priority over a lien created under this subchapter.

29 (B) Net rental proceeds are personal property to which a
30 lien created by this subchapter attaches;

31 (9) "Owner" means a person or entity which is vested in record
32 fee title or a possessory estate in commercial real estate;

33 (10)(A) "Owner's net proceeds" means the gross sales proceeds
34 from the disposition of commercial real estate described in a notice of claim
35 of lien against proceeds under this subchapter less:

36 (i) Amounts necessary to pay all encumbrances and

1 liens which have priority over the lien created by this subchapter other than
2 those permitted to remain by the buyer of the commercial real estate; and

3 (ii) Owner's closing costs, such as real estate
4 excise tax, title insurance premiums, real estate tax and assessment
5 prorations, and escrow fees required to be paid by the owner under an
6 agreement with the buyer of the commercial real estate.

7 (B) "Owner's net proceeds" includes any gross sales
8 proceeds which are:

9 (i) Held by a third party for purposes of completing
10 an exchange of real estate which is deferred from federal income tax under
11 section 1031 of the Internal Revenue Code of 1986, as it existed on January
12 1, 2005, but are not used later for that purpose; and

13 (ii) Personal property to which a lien created by
14 this subchapter attaches;

15 (11) "Real property" means one (1) or more parcels or tracts of
16 land, including appurtenances or improvements; and

17 (12) "Representation agreement" means a commercial real estate
18 agreement between a licensee and an owner under which the owner agrees to pay
19 a licensee a fee, commission, or other consideration upon:

20 (A) Either the disposition or lease of commercial real
21 estate, or

22 (B) Entering into an agreement for the disposition or
23 lease of commercial real estate.

24
25 18-48-803. Lien upon personal property.

26 (a)(1) A licensee shall have a lien in the amount which the owner has
27 agreed to pay the licensee under a representation agreement upon:

28 (A) The owner's net proceeds from the disposition of
29 commercial real estate; and

30 (B) The net rental proceeds from the lease of commercial
31 real estate.

32 (2) The liens created under subdivision (a)(1) of this section
33 are:

34 (A) Upon personal property, not upon real property; and

35 (B) Available only to the licensee identified in the
36 representation agreement and may not be assigned voluntarily or by operation

1 of law.

2 (b)(1) Subject to the requirements of subdivisions (b)(2) and (3) of
3 this subsection, a lien created under subdivision (a)(1) of this section is:

4 (A) Effective on the date of the recording of a notice of
5 claim of lien upon proceeds in accordance with subdivision (b)(2) of this
6 subsection; and

7 (B) Perfected by recording the notice of claim of lien
8 upon proceeds with the circuit court clerk in the county or counties in which
9 the commercial real estate is located.

10 (2)(A) A lien created as the result of a disposition of
11 commercial real estate is not effective unless it is recorded before the deed
12 conveying the commercial real estate is recorded in the office of the circuit
13 county clerk in the county or counties in which the commercial real estate is
14 located.

15 (B) On or before the date the deed conveying the
16 commercial real estate is recorded, the licensee shall deliver a copy of the
17 notice of claim of lien against proceeds to the escrow closing agent closing
18 the disposition of commercial real estate in the manner provided in §18-48-
19 807 if the identity of the escrow closing agent is actually known by the
20 licensee.

21 (3) A lien created as the result of a lease of commercial real
22 estate is:

23 (A) Not effective unless it is recorded before the tenant
24 takes possession of the leased commercial real estate; and

25 (B) Null and void unless the licensee delivers a copy of
26 the notice of claim of lien against proceeds to the owner of the commercial
27 real estate in the manner provided in § 18-48-807 within ten (10) days of
28 recording the licensee's notice of claim of lien against proceeds.

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30 18-48-804. Waiver of right to a lien – Action by licensee.

31 (a) A licensee may waive his or her right to a lien under this
32 subchapter in the representation agreement.

33 (b) If the court finds that payment is due to the licensee in an action
34 to recover amounts due under a representation agreement in which the licensee
35 has waived his or her right to a lien, the court shall award actual damages,
36 a reasonable attorney's fee, and expenses.

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18-48-805. Notice of claim of lien on proceeds.

(a)(1) A notice of claim of lien against proceeds shall state:

- (A) The name, address, and telephone number of the licensee;
- (B) The date of the representation agreement;
- (C) The name of the owner of the commercial real estate;
- (D) The legal description of the commercial real estate as described in the representation agreement;
- (E) The amount of the claimed lien expressed as either a specified sum, a percentage of the sales price, or a formula;
- (F) The real estate license number of the licensee;
- (G) That the lien claimant has read the notice of claim, knows its contents, and believes:
 - (i) That thhe statements contained in the notice of claim to be true and correct; and
 - (ii) That the claim is made pursuant to a valid representation agreement and is not frivolous; and
- (H) That thhe information contained in the notice of claim is true and accurate to the knowledge of the signatory.

(2) The notice of claim of lien against proceeds shall be notarized.

(3) A copy of the representation agreement shall be attached to the notice of claim of lien against proceeds.

18-48-806. Delivery of notice of claim of lien.

(a) Except for service of process as required in civil actions subject to the Arkansas Rules of Civil Procedure, notices to be delivered to a party under this subchapter shall be by:

- (1) Service of process;
- (2) Registered or certified mail, return receipt requested;
- (3) Personal or electronic delivery and evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered; or
- (4) An affidavit of service.

(b) Delivery of the notice is effective at the time of:

1 (1) Personal service;

2 (2) Personal or electronic delivery; or

3 (3) Three (3) days after deposit in the mail.

4 (c)(1) Notice to a licensee or owner of commercial real estate may be
5 sent to:

6 (A) The address of the licensee or owner that is provided
7 in the representation agreement; or

8 (B) Any other address contained in a written notice from
9 the licensee or owner to the party giving the notice.

10 (2) If no address can be found under the provisions of
11 subdivision (c)(1) of this section, the notice may be given to:

12 (A) The licensee at his or her most recent address of
13 record with the Arkansas Real Estate Commission; and

14 (B) The owner at the address of the owner's commercial real
15 estate.

16
17 18-48-807. Release of notice of claim of lien.

18 (a) If a licensee records a notice of claim of lien against proceeds
19 and knows that he or she is not entitled to receive compensation under the
20 terms of the representation agreement, the licensee shall record a written
21 release of the notice of claim of lien against proceeds within five (5) days
22 after demand by the owner of the commercial real estate.

23 (b) If the amount claimed in the notice of claim has been paid, a lien
24 claimant shall promptly record a satisfaction or release of the notice of
25 claim of lien within five (5) days after receipt of payment of the amount
26 claimed in the notice of claim.

27 (c)(1) In a disposition of commercial real estate, the escrow closing
28 agent shall pay to the lien claimant the owner's net proceeds up to the
29 amount claimed in the notice of claim of lien against proceeds.

30 (2) If the amount claimed in the notice of claim is to be fully
31 or partially paid to the lien claimant by the escrow closing agent upon
32 disposition, the lien claimant shall submit a release of his or her notice of
33 claim of lien against proceeds to the escrow closing agent who shall hold the
34 release in escrow pending disposition and payment.

35 (d)(1)(A) A notice of claim of lien against proceeds recorded under
36 this subchapter shall be released upon the recording of a receipt by the

1 office in which the notice of claim was recorded that shows a deposit of an
2 amount equal to the lien claimed.

3 (B) The deposit shall be held pending a resolution of
4 amounts due to the licensee and the owner.

5 (2) If the court determines in an action by the owner to compel
6 delivery of the release by the lien claimant that the delay in providing the
7 release was unjustified, the court shall:

8 (A) Order the release of the notice of claim of lien; and

9 (B) Award the costs of the action including a reasonable
10 attorney's fee.

11
12 18-48-808. Disputed claim - Order to show cause.

13 (a)(1) A licensee who has a lien on net proceeds under § 18-48-802(b),
14 has recorded a notice of claim of lien against proceeds, and complied with
15 the requirements of this subchapter or an owner of commercial real estate may
16 dispute a recorded notice of claim of lien against proceeds filed under this
17 subchapter by filing a complaint in the circuit court of the county where the
18 commercial real estate or a portion of the real estate is located for an
19 order directing the licensee to appear before the court and show cause why a
20 release of the notice of claim against proceeds should not be granted.

21 (2) If after a hearing a court determines that the owner is:

22 (A) Not obligated to pay the licensee a commission under
23 the terms of a representation agreement, it shall issue an order:

24 (i) Releasing the notice of claim of lien against
25 proceeds; and

26 (ii) Awarding costs and a reasonable attorney's fee
27 to the owner; or

28 (B) Obligated to pay the licensee a commission under the
29 terms of a representation agreement, the court shall issue an order awarding
30 costs and a reasonable attorney's fee to the licensee.

31 (b)(1) A licensee who has a lien on net rental proceeds under § 18-48-
32 802(b), has recorded a notice of claim of lien against proceeds, and complied
33 with the requirements of this subchapter may file a complaint in the circuit
34 court for the county where the commercial real estate or a portion of the
35 real estate is located for an order directing the owner to appear before the
36 court and show cause why the relief requested in the complaint should not be

1 granted.

2 (2) If after a hearing the court determines that the owner is:

3 (A) Obligated to pay the licensee a commission under the
4 terms of a representation agreement, the court shall:

5 (i) Issue an order enjoining the owner from paying
6 the net rental proceeds from the lease to any party other than the licensee;

7 (ii) Order the owner to pay the net rental proceeds
8 to the licensee; and

9 (iii) Award a reasonable attorney's fee and expenses
10 to the licensee; or

11 (B) Not obligated to pay the licensee a commission under
12 the terms of a representation agreement, the court shall issue an order
13 awarding a reasonable attorney's fee and expenses to the owner.

14 (c)(1) A complaint authorized by subsection (a) or subsection (b) of
15 this section shall be filed within twelve (12) months of the date that the
16 notice of lien against proceeds was recorded.

17 (2) Proceedings under this subsection shall not affect other
18 rights and remedies available to the parties under this subchapter or
19 otherwise.

20
21 18-48-809. Priority of lien claims.

22 If perfected prior to the recording of a notice of claim of lien
23 against proceeds, the following liens have priority over a lien created under
24 this subchapter:

25 (1) Statutory liens, mortgages, deeds of trust, assignments of
26 rents, and other encumbrances, including all advances or charges made or
27 accruing thereunder, whether voluntary or obligatory; and

28 (2) Modifications, extensions, renewals, and replacements to any
29 of the liens listed in subdivision (1) of this section.

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33 */s/ Lamoureux*

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36 **APPROVED: 04/11/2005**

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