

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 454 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1594

5 By: Representatives Maloch, Harrelson
6 By: Senator Luker
7

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE § 18-44-101 ET SEQ.
11 CONCERNING THE PERFECTION, FILING, AND
12 ENFORCEMENT OF MECHANIC'S AND MATERIALMEN'S
13 LIENS; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO AMEND ARKANSAS CODE § 18-44-101 ET
16 SEQ. CONCERNING THE PERFECTION, FILING,
17 AND ENFORCEMENT OF MECHANIC'S AND
18 MATERIALMEN'S LIENS.
19
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code §§ 18-44-104 – 18-44-106 are amended to read
25 as follows:

26 18-44-104. Liens for drain pipe or tile.

27 (a)~~(1)~~ Every ~~manufacturer or contractor, subcontractor, or material~~
28 supplier who shall furnish to any landowner any soil or drain pipe or tile
29 for drainage of his or her land, or who shall put in soil or drain pipe or
30 tile for any land, shall have a lien for each tract of forty (40) acres or
31 less of the real estate upon which the soil or drain pipe or tile is placed
32 for the payment of the lien.

33 ~~(2) The lien shall extend for a period of two (2) years.~~

34 (b)(1) The lien for the soil or drain pipe or tile shall attach to the
35 real estate and all improvements thereon in preference to any subsequent



1 liens, encumbrance, or mortgage executed upon the land after the purchase of
2 the soil or drain pipe or tile.

3 (2) The lien shall be ~~enforced in the same manner as a~~
4 ~~mechanic's or contractor's liens;~~

5 (A) Subject to the notice requirements of §§ 18-44-114 and
6 18-44-115;

7 (B) Filed under § 18-44-117; and

8 (C) Enforced under this subchapter.

9
10 18-44-105. ~~Engineer's or surveyor's liens~~ Lien of architect, engineer,
11 surveyor, appraiser, landscaper, abstractor, or title insurance agent.

12 (a) ~~Every engineer or surveyor~~ architect, engineer, surveyor,
13 appraiser, landscaper, abstractor, or title insurance agent who shall do or
14 perform any ~~engineering or surveying work~~ architectural, engineering,
15 surveying, appraisal, landscaping, or abstracting services upon any land, or
16 who shall issue a title insurance policy or provide landscaping supplies upon
17 any land, building, erection, or improvement upon land, under or by virtue of
18 any ~~contract or~~ written agreement for the performance of the work with the
19 owner thereof, or his or her agent, shall have a lien upon the land,
20 building, erection, or improvement upon land to the extent of the agreed
21 contract price or a reasonable price for those services.

22 (b)(1) However, the lien does not attach to the land, building,
23 erection, or improvement upon land unless and until the lien is duly filed of
24 record with the circuit clerk and recorder in the county in which the land,
25 building, erection, or improvement is located.

26 (2) ~~This recorded lien will be enforced in the same manner as a~~
27 ~~mechanic's or contractor's lien~~ The lien shall be:

28 (A) Subject to the notice requirements of §§ 18-44-114 and
29 18-44-115;

30 (B) Filed under § 18-44-117; and

31 (C) Enforced under this subchapter.

32
33 18-44-106. ~~Persons to be concluded by "owner or proprietor thereof"~~
34 "Owner" defined.

35 Every As used in this subchapter, the "owner" of property shall include
36 the owner of the legal title to property and any person, including all cestui

1 que trust, for whose immediate use, enjoyment, or benefit a building,
2 erection, or other improvement is made, ~~shall be concluded by the words~~
3 ~~“owner or proprietor thereof”, under this subchapter.~~

4
5 SECTION 2. Arkansas Code § 18-44-108 is amended to read as follows:

6 18-44-108. Refusal to list parties doing work or furnishing materials.

7 (a) The owner or proprietor, material supplier, subcontractor, or
8 anyone interested as mortgagee or trustee in the real estate upon which
9 improvements are made under this subchapter may apply at any time to the
10 contractor or subcontractor for the following:

11 (1) A list of all parties doing work or furnishing material for
12 a building and the amount due to each of the parties; and

13 (2) Certification that the owner or agent has received the
14 preliminary notice specified under ~~§ 18-44-115~~ § 18-44-115(a), if applicable.

15 (b) Any contractor or subcontractor who, upon request, refuses or
16 fails within five (5) business days to give a correct list of the parties
17 furnishing material or doing labor on the building and the amount due to each
18 or who falsely certifies that an owner or agent has received the preliminary
19 notice specified under § 18-44-115 shall be:

20 (1) ~~guilty~~ Guilty of a violation and upon conviction shall be
21 punished by a fine not exceeding two thousand five hundred dollars (\$2,500);
22 and

23 (2)(A) Subject to suit by an aggrieved party in the circuit
24 court where the property is located to enforce subsection (a) of this section
25 including, without limitation, by the contempt powers of the circuit court.

26 (B) The prevailing party in an action under subdivision
27 (b)(2) of this section shall receive a judgment for any damages proximately
28 caused by the violation of subsection (a) of this section, the costs of the
29 action, and a reasonable attorney’s fee.

30
31 SECTION 3. Arkansas Code §§ 18-44-113 – 18-44-118 are amended to read
32 as follows:

33 18-44-113. Assignment of liens.

34 (a) The lien given in this subchapter shall be transferable and
35 assignable, but it shall not be enforced against the owner ~~or proprietor~~ of
36 the ground or buildings unless the owner ~~or proprietor~~ of the ground or

1 buildings shall have actual notice of the assignment ~~so as to protect himself~~
2 ~~or herself~~ or notice under subsection (b) of this section.

3 (b) The owner of the ground or buildings shall be considered to have
4 actual notice if within thirty (30) days of the assignment a copy of the
5 assignment is:

6 (1) Hand-delivered to the owner of the ground or buildings;

7 (2) Mailed to the last known address of the owner of the ground
8 or buildings and verified by a:

9 (A) Return receipt signed by the addressee or the agent of
10 the addressee; or

11 (B) Returned envelope, postal document, or affidavit by a
12 postal employee reciting or showing refusal of the notice by the addressee or
13 that the item was unclaimed; or

14 (3) Delivered by any means that provides written, third-party
15 verification of delivery at any place that the owner of the ground or
16 buildings maintains an office, conducts business, or resides.

17
18 18-44-114. Notice and service generally.

19 (a) Every person who may wish to avail himself or herself of the
20 benefit of the provisions of this subchapter shall give ten (10) days' notice
21 before the filing of the lien, as required in § 18-44-117(a), to the owner,
22 ~~owners, or agent, or either of them,~~ of a building or improvement that he or
23 she holds a claim against the building or improvement, setting forth the
24 amount and from whom it is due.

25 (b)(1) The notice may be served by any:

26 (A) Officer authorized by law to serve process in a civil
27 action;

28 (B) Person who would be a competent witness; ~~or~~

29 (C) Form of mail addressed to the person to be served,
30 with a return receipt requested and delivery restricted to the addressee or
31 the agent of the addressee; or

32 (D) Means that provides written, third-party verification
33 of delivery at any place where the owner of the building or improvement
34 maintains an office, conducts business, or resides.

35 (2)(A)(i) When served by an officer, his or her official return
36 endorsed on the notice shall be proof of the service.

1 (ii) When served by any other person, the fact of
2 the service shall be verified by affidavit of the person ~~so~~ serving the
3 notice.

4 (B)(i) When served by mail, the service shall be:

5 (a) Complete when mailed; and

6 (b) ~~verified~~ Verified by a return receipt
7 signed by the addressee or the agent of the addressee, or a returned
8 envelope, postal document, or affidavit by a postal employee reciting or
9 showing refusal of the notice by the addressee or that the item was
10 unclaimed.

11 (ii) If delivery of the mailed notice is refused by
12 the addressee, or the item is unclaimed:

13 (a) ~~then the person holding the claim~~ The lien
14 claimant shall immediately ~~mail to~~ send the owner, ~~owners, or agent of the~~
15 building or improvement a copy of the notice by first class mail and may
16 proceed to file his or her lien; and

17 (b) The unopened original of the item marked
18 unclaimed or refused by the United States Postal Service shall be accepted as
19 proof of service as of the postmarked date of the item.

20
21 18-44-115. Notice to owner by contractor.

22 (a)(1) No lien upon residential real estate containing four (4) or
23 fewer units may be acquired by virtue of this subchapter unless the ~~owner or~~
24 ~~his or her authorized agent~~ owner of the residential real estate, the owner's
25 authorized agent, or the owner's registered agent has received, by personal
26 delivery or by certified mail, a copy of the notice set out in this
27 ~~subsection (c) of this section.~~

28 (2) The notice required by this ~~section~~ subsection shall not
29 require the signature of the ~~owner or his or her authorized agent~~ owner of
30 the residential real estate, the owner's authorized agent, or the owner's
31 registered agent in an instance when the notice is delivered by certified
32 mail.

33 ~~(b)(1)(A)(3)~~ It shall be the duty of the residential contractor
34 to give the ~~owner or his or her authorized agent~~ owner, the owner's
35 authorized agent, or the owner's registered agent the notice set out in this
36 ~~subsection (c) of this section~~ on behalf of all potential lien claimants

1 ~~under his or her contract prior to the supplying of any materials or fixtures~~
2 ~~before the commencement of work.~~

3 (4) If a residential contractor fails to give the notice
4 required under this subsection, then the residential contractor is barred
5 from bringing an action either at law or in equity, including without
6 limitation quantum meruit, to enforce any provision of a residential
7 contract.

8 ~~(B)(5)(A)~~ Any potential lien claimant may also give notice.

9 (B)(i) If before commencing work or supplying goods a
10 subcontractor, material supplier, laborer, or other lien claimant gives
11 notice under this section, the notice shall be effective for all
12 subcontractors, material supplies, laborers, and other lien claimants
13 notwithstanding that the notice was given after the project commences as
14 defined under § 18-44-110(a)(2).

15 (ii) If the notice relied upon by a lien claimant to
16 establish a lien under this subchapter is given by another lien claimant
17 under subdivision (a)(5)(B)(i) of this section after the project commences,
18 the lien of the lien claimant shall secure only the labor, material, and
19 services supplied after the effective date of the notice under subdivision
20 (a)(5)(B)(i) of this section.

21 ~~(2)(C)~~ However, no lien may be claimed by any
22 subcontractor, laborer, material supplier of materials or fixtures, or other
23 lien claimant unless the owner or agent of the residential real estate, the
24 owner's authorized agent, or the owner's registered agent has received at
25 least one (1) copy of the notice, which need not have been given by the
26 particular lien claimant.

27 (6) A residential contractor who fails to give the notice
28 required by this subsection is guilty of a violation pursuant to § 5-1-108
29 and upon pleading guilty or nolo contendere to or being found guilty of
30 failing to give the notice required by this subsection shall be punished by a
31 fine not exceeding one thousand dollars (\$1,000).

32 ~~(e)(7)~~ The notice set forth in this subsection may be
33 incorporated into the contract or affixed to the contract and shall be
34 conspicuous, set out in boldface type, worded exactly as stated in all
35 capital letters, and shall read as follows:

36 "IMPORTANT NOTICE TO OWNER

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I UNDERSTAND THAT EACH ~~PERSON~~ CONTRACTOR, SUBCONTRACTOR, LABORER, SUPPLIER, ARCHITECT, ENGINEER, SURVEYOR, APPRAISER, LANDSCAPER, ABTRACTOR, OR TITLE INSURANCE AGENT SUPPLYING LABOR, SERVICES, MATERIAL, OR FIXTURES IS ENTITLED TO A LIEN AGAINST THE PROPERTY IF NOT PAID IN FULL FOR THE LABOR, SERVICES, MATERIALS, OR FIXTURES USED TO IMPROVE, CONSTRUCT, OR INSURE OR EXAMINE TITLE TO THE PROPERTY EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY SERVICES, FIXTURES, MATERIALS, OR LABOR NOT PAID FOR. I KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR TO FURNISH TO ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS AND SERVICE PROVIDERS UNDER THE CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF ALL MATERIALS, LABOR, FIXTURES, AND SERVICES FURNISHED FOR THE PROPERTY HAVE BEEN PAID FOR. I MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT LIEN WAIVERS BY ALL SUPPLIERS AND SERVICE PROVIDERS, STATING THAT THEY HAVE BEEN PAID IN FULL FOR SUPPLIES AND SERVICES PROVIDED UNDER THE CONTRACT, BEFORE I PAY THE CONTRACTOR IN FULL. IF A SUPPLIER OR OTHER SERVICE PROVIDER HAS NOT BEEN PAID, I MAY PAY THE SUPPLIER OR OTHER SERVICE PROVIDER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

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SIGNED: _____

ADDRESS OF PROPERTY

DATE: _____

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I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER, REGISTERED AGENT OF THE OWNER, OR AUTHORIZED AGENT OF THE OWNER OF THE PROPERTY AT THE ADDRESS SET OUT ABOVE.

30
31

CONTRACTOR”

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~~(d)-(1)-(8)(A)~~ If the residential contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner, the notice requirement of ~~subsection (a) of this section~~ subsection shall not apply, and the lien rights arising under this subchapter

1 shall not be conditioned on the delivery and execution of the notice.

2 ~~(2)(B)~~ A sale shall be a direct sale only if the owner
 3 orders ~~the materials or services~~ from the lien claimant ~~or authorizes another~~
 4 ~~person to do so.~~

5 ~~(e)(1)(A)(b)(1)(A)~~ The General Assembly finds that owners and
 6 developers of commercial real estate are generally knowledgeable and
 7 sophisticated in construction law, are aware that unpaid laborers,
 8 subcontractors, and material suppliers ~~of labor and materials~~ are entitled to
 9 assert liens against the real estate if unpaid, and know how to protect
 10 themselves against the imposition of mechanics' and material suppliers'
 11 liens.

12 (B) The General Assembly further finds that consumers who
 13 construct or improve residential real estate containing four (4) or fewer
 14 units generally do not possess the same level of knowledge and awareness and
 15 need to be informed of their rights and responsibilities.

16 (2) As used in subsection (b) of this section:

17 (A) "Commercial real estate" means:

18 (i) Nonresidential real estate; and

19 (ii) Residential real estate containing five (5) or
 20 more units; and

21 (B) "Service provider" means an architect, an engineer, a
 22 surveyor, an appraiser, a landscaper, an abstractor, or a title insurance
 23 agent.

24 ~~(C)(3)~~ Because supplying the notice specified in subsection ~~(e)~~
 25 (a) of this section imposes a substantial burden on laborers, subcontractors,
 26 service providers, and material suppliers, the notice requirement mandated
 27 under subsection ~~(b)~~ (a) of this section as a condition precedent to the
 28 imposition of a ~~material supplier's~~ lien by a laborer, subcontractor, service
 29 provider, or material supplier shall apply only to construction of or
 30 improvement to residential real estate containing four (4) or fewer units.

31 ~~(2)(A)(4)~~ No subcontractor, service provider, material supplier,
 32 or laborer shall be entitled to a lien upon commercial real estate unless the
 33 subcontractor, service provider, material supplier, or laborer notifies the
 34 owner of the commercial real estate being constructed or improved, the
 35 owner's authorized agent, or the owner's registered agent in writing, that
 36 the subcontractor, service provider, material supplier, or laborer is

1 currently entitled to payment but has not been paid.

2 ~~(B)-(i)~~(5)(A) The notice shall be sent to the owner, the owner's
3 authorized agent, or the owner's registered agent and to the contractor
4 before seventy-five (75) days have elapsed from the time that the labor was
5 supplied or the materials furnished.

6 ~~(ii)~~(B) The notice may be served by any:

7 ~~(a)~~(i) Officer authorized by law to serve process in
8 civil actions; ~~or~~

9 ~~(b)~~(ii) Form of mail addressed to the person to be
10 served with a return receipt requested and delivery restricted to the
11 addressee or the agent of the addressee; or

12 (iii) Means that provides written, third-party
13 verification of delivery at any place where the owner, the owner's registered
14 agent, or the owner's authorized agent maintains an office, conducts
15 business, or resides.

16 (C) When served by mail, the notice shall be complete when
17 mailed.

18 (D) If delivery of the mailed notice is refused by the
19 addressee or the item is unclaimed:

20 (i) The lien claimant shall immediately send the
21 owner, the owner's authorized agent, or the owner's registered agent a copy
22 of the notice by first class mail; and

23 (ii) The unopened original of the item marked
24 unclaimed or refused by the United States Postal Service shall be accepted as
25 proof of service as of the postmarked date of the item.

26 ~~(C)~~(6) The notice shall contain the following information:

27 ~~(i)~~(A) A general description of the labor, service, or
28 materials furnished, and the amount due and unpaid;

29 ~~(ii)~~(B) The name and address of the person furnishing the
30 labor, service, or materials;

31 ~~(iii)~~(C) The name of the person who contracted for
32 purchase of the labor, service, or materials;

33 ~~(iv)~~(D) A description of the job site sufficient for
34 identification; and

35 ~~(v)~~(E) The following statement set out in boldface type
36 and all capital letters:

“NOTICE TO PROPERTY OWNER

IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT OR PROVIDE SERVICES FOR AN IMPROVEMENT TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE PLACED AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED. THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY.”

~~(3) Any contractor who fails to give the notice required by this subsection shall be guilty of a violation and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000).~~

18-44-116. Service on nonresident or absconder.

(a)(1) Whenever property is sought to be charged with a lien under this subchapter, the notice may be filed with the recorder of deeds of the county in which the property is situated if the owner of the property so sought to be charged:

(A) Is not a resident of this state;

(B) Does not have an agent in the county in which the property is situated;

(C) Is a resident of this state but not of the county in which the property is situated; or

(D) Conceals himself or herself, has absconded, or absents himself or herself from his or her usual place of abode, so that the notice required by § 18-44-114 or § 18-44-115 cannot be served upon him or her.

(2) When filed, the notice shall have like effect as if served upon the owner or his or her agent in the manner contemplated in § 18-44-114 or § 18-44-115.

(b) A copy of the notice so filed, together with the certificate of the recorder of deeds that it is a correct copy of the notice so filed, shall be received in all courts of this state as evidence of the service, as provided in this section, of the notice.

(c)(1) The recorder of deeds in each county of this state shall

1 receive, file, and keep every such notice presented to him or her for filing
 2 and shall further record it at length in a separate book appropriately
 3 entitled.

4 (2) For service so performed, the recorder of deeds shall
 5 receive for each notice, the sum of twenty-five cents (25¢), and for each
 6 copy certified, as stated in this section, of each of the notices he or she
 7 shall receive the sum of fifty cents (50¢), to be paid by the party so filing
 8 or procuring the certified copy, as the case may be.

9 (d) The costs of filing and of one (1) certified copy shall be taxed
 10 as costs in any lien suit to which it pertains to abide the result of the
 11 suit.

12
 13 18-44-117. Filing of ~~lien account~~ — ~~Abstract~~.

14 (a)(1) It shall be the duty of every person who wishes to avail
 15 himself or herself of the provisions of this subchapter to file with the
 16 clerk of the circuit court of the county in which the building, erection, or
 17 other improvement to be charged with the lien is situated and within one
 18 hundred twenty (120) days after the things specified in this subchapter shall
 19 have been furnished or the work or labor done or performed:

20 (A) A just and true account of the demand due or owing to
 21 him or her after allowing all credits; and

22 (B) An affidavit of notice attached to the lien account.

23 (2) The lien account shall contain a correct description of the
 24 property to be charged with the lien, verified by affidavit.

25 (3) The affidavit of notice shall contain:

26 (A) A sworn statement evidencing compliance with the
 27 applicable notice provisions of §§ 18-44-114 – 18-44-116; and

28 (B) A copy of each applicable notice given under §§ 18-44-
 29 114 – 18-44-116.

30 (b)(1)(A) It shall be the duty of the clerk of the circuit court to
 31 endorse upon every account the date of its filing and to make an abstract of
 32 the account in a book kept by him or her for that purpose, properly indexed.

33 (B) This abstract shall contain:

34 (i) The date of the filing;

35 (ii) The name of the person laying or imposing the
 36 lien;

- 1 (iii) The amount of the lien;
- 2 (iv) The name of the person against whose property
- 3 the lien is filed; and
- 4 (v) A description of the property to be charged with
- 5 the lien.

6 (2) For this service, the clerk shall receive the sum of three
 7 dollars (\$3.00) from the person laying or imposing the lien, which shall be
 8 taxed and collected as other costs in case there is suit on the lien.

9 (3) The clerk shall refuse to file a lien account that does not
 10 contain the affidavits and attachments required by this section.

11

12 18-44-118. Filing of bond in contest of lien.

13 (a)(1) In the event any person claiming a lien for labor or materials
 14 upon any property shall file such a lien within the time and in the manner
 15 required by law with the circuit clerk or other officer provided by law for
 16 the filing of such a lien, and if the owner of the property, any mortgagee or
 17 other person having an interest in the property, or any contractor,
 18 subcontractor, or other person liable for the payment of such a lien shall
 19 desire to contest the lien, then the person so desiring to contest the lien
 20 may file:

21 (A) ~~with~~ With the circuit clerk or other officer with whom
 22 the lien is filed as required by law a bond with surety, to be approved by
 23 the officer in ~~double~~ the amount of the lien claimed; or

24 (B) An action under subsection (f) of this section to
 25 protest the filing of the lien.

26 (2) The bond shall be conditioned for the payment of the amount
 27 of the lien, or so much of the lien as may be established by suit, together
 28 with interest and the costs of the action, if upon trial it shall be found
 29 that the property was subject to the lien.

30 (b)(1)(A) Upon the filing of the bond, if the circuit clerk or other
 31 officer before whom it is filed approves the surety, he or she shall give to
 32 the person claiming the lien, at his or her last known address, three (3)
 33 days' notice of the filing of the bond.

34 (B) The notice shall be in writing and served by any:

- 35 (i) Officer authorized by law to serve process in a
- 36 civil action; or

1 (ii) Form of mail addressed to the person to be
 2 served with a return receipt requested and delivery restricted to the
 3 addressee or the agent of the addressee.

4 (2)(A) Within the three (3) days' notice, the person claiming
 5 the lien may appear and question the sufficiency of the surety or form of the
 6 bond.

7 (B) At the expiration of three (3) days, if the person
 8 claiming the lien shall not have questioned the sufficiency of the bond or
 9 surety or if the circuit clerk finds the bond to be sufficient, the circuit
 10 clerk shall note the filing of the bond upon the margin of the lien record
 11 and the lien shall then be discharged and the claimant shall have recourse
 12 only against the principal and surety upon the bond.

13 (c)(1) If no action to enforce the lien shall be filed within the time
 14 prescribed by law for the enforcement of a lien against the surety, the bond
 15 shall be null and void.

16 (2) However, if any action shall be timely commenced, the surety
 17 shall be liable in like manner as the principal.

18 (d) If the circuit clerk shall determine that the bond tendered is
 19 insufficient, the person tendering the bond shall have twenty-four (24) hours
 20 within which to tender a sufficient bond, and unless a sufficient bond shall
 21 be so tendered, the lien shall remain in full force and effect.

22 (e)(1) Any party aggrieved by the acceptance or rejection of the bond
 23 may apply to any court of competent jurisdiction by an action which is
 24 appropriate.

25 (2) Upon notice as required by law, the court shall have
 26 jurisdiction to enter an interlocutory order as may be necessary for the
 27 protection of the parties by:

28 (A) Requiring additional security for the bond;

29 (B) Reinstating the lien in default of the bond, pending
 30 trial and hearing; or

31 (C) Requiring acceptance of the bond as may be necessary
 32 for the protection of the parties.

33 (f)(1) A protest under subdivision (a)(1)(B) of this section shall be
 34 filed as a civil action in the circuit court of the county where the lien is
 35 filed.

36 (2) The issues in the action shall be limited to whether:

1 (A) The lien was filed in the form required by § 18-44-
 2 117; and

3 (B) All of the applicable requirements of §§ 18-44-114 and
 4 18-44-115 were satisfied.

5 (3)(A) The summons shall be in customary form directed to the
 6 sheriff of the county in which the action is filed, with directions for
 7 service of the summons on the named defendants. In addition, the clerk of
 8 the circuit court shall issue and direct the sheriff to serve upon the named
 9 defendants a notice in the following form:

10
 11 “NOTICE OF INTENTION TO DISCHARGE LIEN

12
 13 You are hereby notified that the attached complaint in the above-styled cause
 14 claims that you have not satisfied the requirements for claiming a lien upon
 15 the property described in the complaint and seeks to have the lien discharged
 16 by the court. If, within five (5) days, excluding Sundays and legal
 17 holidays, from the date of service of this notice, you have not filed in the
 18 office of the clerk of this court a written objection to the claims made
 19 against you by the plaintiff, then an order discharging the lien shall be
 20 issued immediately by the court. If you should file a written objection to
 21 the allegations of the complaint of the plaintiff within five (5) days,
 22 excluding Sundays and legal holidays, from the date of service of this
 23 notice, a hearing will be scheduled by the court to determine whether or not
 24 the lien should be discharged.”

25
 26 (B) If within five (5) days, excluding Sundays and legal
 27 holidays, following service of the summons, complaint, and notice the
 28 defendant or defendants have not filed a written objection to the claim of
 29 the plaintiff, the court shall immediately issue an order discharging the
 30 lien upon the property described in the complaint.

31 (C) If a written objection to the claim of the plaintiff
 32 is filed by the defendant or defendants within five (5) days from the date of
 33 service of the notice, summons, and complaint, the plaintiff shall obtain a
 34 date for the hearing of the plaintiff’s complaint and shall give notice of
 35 the date, time, and place of the hearing to all defendants.

36 (4)(A) The action shall be heard as expeditiously as the

1 business of the circuit court permits.

2 (B) Evidence may be presented by affidavit, subject to
 3 Rule 56(e),(f), and (g) of the Arkansas Rules of Civil Procedure.

4 (5) If the circuit court finds that the lien was not in the form
 5 required by § 18-44-117 or that the applicable requirements of §§ 18-44-114
 6 and 18-44-115 were not satisfied, then the circuit court shall enter an order
 7 discharging the lien.

8 (6) The prevailing party shall be entitled to a reasonable
 9 attorney's fee and the costs of the protest.

10 ~~(f)~~(g) Nothing in this section shall be construed to limit the right
 11 of an owner, mortgagee, or any other person with an interest in the property
 12 to contest the lien by declaratory judgment proceedings under § 16-111-101 et
 13 seq.

14
 15 SECTION 4. Arkansas Code § 18-44-122 is amended to read as follows:
 16 18-44-122. Contents of ~~petition~~ complaint.

17 The ~~petition~~ complaint, among other things, shall allege the facts
 18 necessary for securing a lien under this subchapter and shall contain a
 19 description of the property to be charged with the lien.

20
 21 SECTION 5. Arkansas Code § 18-44-128 is amended to read as follows:
 22 18-44-128. Attorney's fee.

23 (a) When any contractor, subcontractor, laborer, or material supplier
 24 who has filed a lien, as provided for in this chapter, gives notice thereof
 25 to the debtor or owner of property which has been subjected to the lien in
 26 writing sent by registered or certified mail, by any method permitted under §
 27 18-44-115(f)(3) and the claim has not been paid within twenty (20) days from
 28 the date of the mailing service of the notice, and if the contractor,
 29 subcontractor, laborer, or material supplier is required to sue for the
 30 enforcement of his or her claim, the court shall allow the successful party
 31 in the action contractor, subcontractor, laborer, or material supplier a
 32 reasonable attorney's fee in addition to other relief to which he or she may
 33 be entitled.

34 (b) If the owner is the prevailing party in the action, the court
 35 shall allow the owner a reasonable attorney's fee in addition to any other
 36 relief to which the owner may be entitled.

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SECTION 6. Arkansas Code §§ 18-44-133 and 18-44-134 are repealed.

~~18-44-133. Lien of architect, engineer, surveyor, appraiser, abstractor, or title insurance agent.~~

~~(a)(1) Every architect, engineer, surveyor, appraiser, abstractor, or title insurance agent who shall do or perform any architectural, engineering, surveying, appraisal, or abstracting work on, or who shall issue any title insurance policy on any land, building, erection, or improvement upon land, under or by virtue of any written agreement for performance of the work with the owner or his or her agent thereof shall have a lien upon the land, building, erection, or improvement to the extent of the agreed contract price or a reasonable price for those services.~~

~~(2) However, the lien does not attach to the land, building, erection, or improvement unless and until the lien is duly filed of record with the circuit clerk and recorder in the county in which the land, building, erection, or improvement is located.~~

~~(b) This recorded lien will be enforced in the same manner as a mechanic's or contractor's lien.~~

~~18-44-134. Landscaping services and supplies.~~

~~(a)(1) Every person who shall do or perform landscaping services or provide landscaping supplies on any land, building, erection, or improvement upon land, under or by virtue of any written agreement for performance with the owner or his or her agent thereof shall have a lien upon the land, building, erection, or improvement to the extent of the agreed contract price or a reasonable price for those services.~~

~~(2) However, the lien does not attach to the land, building, erection, or improvement unless and until the lien is duly filed of record with the circuit clerk and recorder in the county in which the land, building, erection, or improvement is located.~~

~~(b) This recorded lien will be enforced in the same manner as a mechanic's or contractor's lien.~~

APPROVED: 3/18/2009