

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

SENATE BILL 401

5 By: Senator Burnett  
6 By: Representative Westerman  
7

## For An Act To Be Entitled

9 AN ACT TO REVISE THE REAL ESTATE LICENSEE LIEN ACT;  
10 AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO REVISE THE REAL ESTATE LICENSEE LIEN  
14 ACT.  
15  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code Title 18, Chapter 48, Subchapter 8 is amended  
21 to read as follows:  
22

23 18-48-801. Title.

24 This subchapter shall be known and may be cited as the "Principal  
25 Broker Real Estate ~~Licensee~~ Lien Act".  
26

27 18-48-802. Definitions.

28 As used in this subchapter:

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

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

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

35 (i) A fee simple, freehold, leasehold, or other  
36 title, interest, or possessory estate in real property located in the State



1 of Arkansas; and

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

4 (B) "Commercial real estate" does not mean an interest in  
5 real property that is:

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

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

12 (3) "Days" means calendar days;

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

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

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

23 (7) "Licensee" ~~has the same meaning~~ means a licensee as defined  
24 in § 17-42-103;

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

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

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

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

35 (i) Amounts necessary to pay all encumbrances and  
36 liens that have priority over the lien created by this subchapter other than

1 those permitted to remain by the buyer of the commercial real estate; and

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

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

8 (i) Held by a third party for purposes of completing  
9 an exchange of real estate which is deferred from federal income tax under  
10 Section 1031 of the Internal Revenue Code of 1986, as it existed on January  
11 1, ~~2005~~ 2011, but are not used later for that purpose; and

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

14 (11) "Principal broker" means a principal broker as defined in §  
15 17-42-103;

16 ~~(11)~~(12) "Real property" means one (1) or more parcels or tracts  
17 of land, including an appurtenance or improvement; and

18 ~~(12)~~(13) "Representation agreement" means a commercial real  
19 estate agreement between a licensee and an owner under which the owner agrees  
20 to pay a licensee a fee, commission, or other consideration upon:

21 (A) Either the disposition or lease of commercial real  
22 estate; or

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

25  
26 18-48-803. Lien upon personal property.

27 (a)(1) A ~~licensee shall have~~ principal broker has a lien in the amount  
28 that the owner has agreed to pay the ~~licensee~~ principal broker or real estate  
29 firm under a representation agreement upon:

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

32 (B) The net rental proceeds from the lease of commercial  
33 real estate.

34 (2) A lien created under subdivision (a)(1) of this section ~~is:~~

35 (A) ~~Upon~~ Encumbers only personal property; ~~i~~

36 (B) ~~not upon~~ Does not encumber real property; and

1                    (C) May:

2                    ~~(B)(i) Available only to the licensee~~ Be asserted  
3 only by the principal broker identified in the representation agreement; and

4                    (ii) may not Not be assigned voluntarily or by  
5 operation of law.

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

8                    (A) Effective on the date of the recording of a notice of  
9 claim of lien upon proceeds in accordance with subdivision (b)(2) of this  
10 section; and

11                    (B) Perfected by recording the notice of claim of lien  
12 upon proceeds with the circuit clerk in the county or counties in which the  
13 commercial real estate is located.

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

19                    (B) On or before the date the deed conveying the  
20 commercial real estate is recorded, the ~~licensee~~ principal broker shall  
21 deliver a copy of the notice of claim of lien against proceeds to the escrow  
22 closing agent closing the disposition of commercial real estate in the manner  
23 provided in ~~§ 18-48-807~~ § 18-48-806 if the identity of the escrow closing  
24 agent is ~~actually~~ known by the ~~licensee~~ principal broker.

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

27                    (A) Not effective unless it is recorded ~~before~~ within  
28 ninety (90) days after:

29                    (i) the The tenant takes possession of the leased  
30 commercial real estate; or

31                    (ii) For a renewal of a lease of commercial real  
32 estate, the commencement date of the renewal lease term; and

33                    (B) Null and void unless the ~~licensee~~ principal broker  
34 delivers a copy of the notice of claim of lien against proceeds to the owner  
35 of the commercial real estate in the manner provided in ~~§ 18-48-807~~ § 18-48-  
36 806 within ten (10) days of recording the ~~licensee's~~ principal broker's

1 notice of claim of lien against proceeds.

2

3 18-48-804. Waiver of right to a lien – Action by ~~licensee~~ principal  
4 broker.

5 (a) A ~~licensee~~ principal broker may waive his or her right to a lien  
6 under this subchapter in the representation agreement.

7 (b) If a court finds that payment is due to the ~~licensee~~ principal  
8 broker in an action to recover amounts due under a representation agreement  
9 in which the ~~licensee~~ principal broker has waived his or her right to a lien,  
10 the court shall award actual damages, a reasonable attorney’s fee, and  
11 expenses.

12

13 18-48-805. Notice of claim of lien upon proceeds.

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

15 (1) The name, address, and telephone number of the ~~licensee~~  
16 principal broker;

17 (2) The date of the representation agreement;

18 (3) The name of the owner of the commercial real estate;

19 (4) The legal description of the commercial real estate as  
20 described in the representation agreement;

21 (5) The amount of the claimed lien expressed as either a  
22 specified sum, a percentage of the sales price, or a formula;

23 (6) The real estate license number of the ~~licensee~~ principal  
24 broker;

25 (7) That the lien claimant has read the notice of claim of lien,  
26 knows its contents, and believes:

27 (A) The statements contained in the notice of claim of  
28 lien to be true and correct; and

29 (B) That the claim is made pursuant to a valid  
30 representation agreement and is not frivolous; and

31 (8) That the information contained in the notice of claim of  
32 lien is true and accurate to the knowledge of the signatory.

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

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

36

1 18-48-806. Delivery of notice of claim of lien.

2 (a) Except for service of ~~process as required in a civil action~~  
3 ~~subject to the Arkansas Rules of Civil Procedure~~ a complaint under § 18-48-  
4 807 or § 18-48-808, a notice required to be delivered to a party under this  
5 subchapter shall be delivered by:

6 (1) ~~Service~~ Any form of service of process permitted by Rule 4  
7 of the Arkansas Rules of Civil Procedure;

8 (2) Registered or certified mail, return receipt requested; or

9 (3) Personal or electronic delivery and evidence of delivery in  
10 the form of a receipt or other paper or electronic acknowledgment by or from  
11 the party to whom the notice is delivered; ~~or~~

12 ~~(4) An affidavit of service.~~

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

14 (1) Personal service;

15 (2) Personal or electronic delivery; or

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

17 (c)(1) Notice to a ~~licensee~~ principal broker or owner of commercial  
18 real estate may be sent to:

19 (A) The address of the ~~licensee~~ principal broker or owner  
20 that is provided in the representation agreement; or

21 (B) Any other address contained in a written notice from  
22 the ~~licensee~~ principal broker or owner to the party giving the notice.

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

25 (A) The ~~licensee~~ principal broker at his or her most  
26 recent address of record with the Arkansas Real Estate Commission; and

27 (B) The owner at the address of the owner's commercial  
28 real estate.

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30 18-48-807. Release of notice of claim of lien.

31 (a) If a ~~licensee~~ principal broker records a notice of claim of lien  
32 against proceeds and knows or learns that he or she is not entitled to  
33 receive compensation under the terms of the representation agreement, the  
34 ~~licensee~~ principal broker shall record a written release of the notice of  
35 claim of lien against proceeds within five (5) days after:

36 (1) ~~demand~~ Demand by the owner of the commercial real estate; or

1           (2) Learning that the principal broker is not entitled to  
 2 receive compensation under the terms of the representation agreement.

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

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

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

15           (d)(1)(A) A notice of claim of lien against proceeds recorded under  
 16 this subchapter shall be released upon the recording of a receipt by the  
 17 office in which the notice of claim of lien was recorded that shows a deposit  
 18 of an amount equal to the lien claimed.

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

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

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

25           (B) Award the owner the costs of the action, including a  
 26 reasonable attorney's fee.

27  
 28           18-48-808. Disputed claim – Order to show cause.

29           (a)(1) An owner of commercial real estate ~~or a licensee who has a lien~~  
 30 ~~on net proceeds under § 18-48-803, has recorded a notice of claim of lien~~  
 31 ~~against proceeds, and has complied with the requirements of this subchapter~~  
 32 may dispute a recorded notice of claim of lien against proceeds filed under  
 33 this subchapter by filing a complaint in the circuit court of the county  
 34 where the commercial real estate or a portion of the commercial real estate  
 35 is located for an order directing the ~~licensee~~ principal broker to appear  
 36 before the court and show cause why a release of the notice of claim of lien

1 against proceeds should not be granted.

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

3 (A) Not obligated to pay the ~~licensee~~ principal broker a  
4 commission under the terms of a representation agreement, it shall issue an  
5 order:

6 (i) Releasing the notice of claim of lien against  
7 proceeds; and

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

10 (B) Obligated to pay the ~~licensee~~ principal broker a  
11 commission under the terms of a representation agreement, the court shall  
12 issue an order awarding costs and a reasonable attorney's fee to the  
13 licensee.

14 (b)(1) A ~~licensee~~ principal broker who has a lien on net rental  
15 proceeds under § 18-48-803, has recorded a notice of claim of lien against  
16 proceeds, and has complied with the requirements of this subchapter may file  
17 a complaint in the circuit court of the county where the commercial real  
18 estate or a portion of the commercial real estate is located for an order  
19 directing the owner to appear before the court and show cause why the relief  
20 requested in the complaint should not be granted.

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

22 (A) Obligated to pay the ~~licensee~~ principal broker a  
23 commission under the terms of a representation agreement, the court shall:

24 (i) Issue an order enjoining the owner from paying  
25 the net rental proceeds from the lease to any party other than the ~~licensee~~  
26 principal broker;

27 (ii) Order the owner to pay the net rental proceeds  
28 to the ~~licensee~~ principal broker; and

29 (iii) Award a reasonable attorney's fee and expenses  
30 to the ~~licensee~~ principal broker; or

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

34 (c)(1) A complaint authorized by subsection (a) or subsection (b) of  
35 this section ~~shall be~~ is barred if not filed within twelve (12) months of the  
36 date that the notice of claim of lien against proceeds was recorded.



1           (2) A proceeding under this section shall not affect other  
2 rights and remedies available to the parties under this subchapter or  
3 otherwise.

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