

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.

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

A Bill

HOUSE BILL 2770

4
5 By: Representative Cowling
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For An Act To Be Entitled

8
9 AN ACT TO CLARIFY THE PRIORITY OF CONSTRUCTION
10 MORTGAGES AND MECHANIC'S LIENS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13
14 AN ACT TO CLARIFY THE PRIORITY OF
15 CONSTRUCTION MORTGAGES AND MECHANIC'S
16 LIENS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 18-44-110 is amended to read as follows:

22 18-44-110. Preference over prior liens - Exception.

23 (a)(1) The liens for labor performed or material or fixtures
24 furnished, as provided for in this subchapter, shall have equal priority
25 toward each other without regard to the date of filing the account or lien or
26 the date when the particular labor or material was performed or furnished.
27 All such liens shall date from the time that the construction or repair first
28 commenced.

29 (2) Construction or repair commences when there is a visible
30 manifestation of activity on real estate that would lead a reasonable person
31 to believe that construction or repair of an improvement to the real estate
32 has begun or will soon begin, including, but not limited to, the following:

33 (A) Delivery of a significant amount of lumber, bricks,
34 pipe, tile, or other building material to the site;

35 (B) Grading or excavating the site;

36 (C) Laying out lines or grade stakes; or



1 (D) Demolition in an existing structure.

2 (3) In all cases in which a sale shall be ordered and the
3 property sold, and the proceeds arising from the sale are not sufficient to
4 discharge in full all the liens against the property without reference to the
5 date of filing the account or lien, the proceeds shall be paid pro rata on
6 the respective liens.

7 (b)(1)(A) The liens for labor performed or materials or fixtures
8 furnished, as provided for in this subchapter, shall attach to the
9 improvement on which the labor was performed or the materials or fixtures
10 were furnished in preference to any encumbrance existing on the real estate
11 prior to the commencement of construction or repair of the improvement.

12 (B) In all cases in which the prior encumbrance was given
13 for the purpose of funding construction or repair of the improvement, that
14 lien shall have priority over all liens given by this subchapter.

15 (C)(i) As to the liens provided for in this subchapter,
16 the date for determining the priority of encumbrances given for the purpose
17 of funding construction or repair of the improvement shall be the date the
18 encumbrance was executed if within ten (10) days of its execution the
19 encumbrance is filed of record with the circuit clerk of the county in which
20 the property is located.

21 (ii)(a) The date and time from which the priority of
22 the liens provided for in this subchapter with respect to encumbrances given
23 for the purpose of funding construction or repair of the improvement shall be
24 determined by the date and time that the principal contractor files a Notice
25 of Commencement of Construction with the circuit clerk of the county in which
26 the property is located.

27 (b) The Notice of Commencement of Construction
28 shall include:

29 (1) The legal description and property
30 address for the location where labor and materials are supplied;

31 (2) The name of the principal
32 contractor;

33 (3) The name of the party with whom the
34 principal contractor has a contract; and

35 (4) The date and time when construction
36 actually commenced.

1 (c) The notice shall not be filed prior to the
2 actual commencement of construction.

3 (d) In the event that the notice is filed
4 prior to the execution of an encumbrance given for the purpose of funding
5 construction or repair of the improvement, only those lien claimants which
6 provided labor or material with respect to the construction or repair of the
7 improvements prior to the execution of the encumbrance given for the purpose
8 of funding construction or repair of the improvement shall have priority over
9 the encumbrance, if the encumbrance was filed within ten (10) days of its
10 execution.

11 (2) The liens, as provided for in this subchapter, shall be
12 enforced by foreclosure, as further provided for in this subchapter, and the
13 property ordered sold subject to the lien of the prior encumbrance on the
14 real estate.

15 (c) The lien for labor performed and materials or fixtures furnished,
16 as provided for in this subchapter, shall have priority over all other
17 encumbrances that attach to the real estate or improvements thereon
18 subsequent to commencement of construction or repair.

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