

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  
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.  
17  
18  
19

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:

36 (i) A fee simple, freehold, leasehold, or other



1 title, interest, or possessory estate in real property located in the State  
2 of Arkansas; and

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

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

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

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

13 (3) "Days" means calendar days;

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

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

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

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

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 liens  
27 which have 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 which 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 which 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 which 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, 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) "Real property" means one (1) or more parcels or tracts of  
15 land, including appurtenances or improvements; and

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

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

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

23  
24 18-48-803. Lien upon personal property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28  
29           18-48-804. Waiver of right to a lien – Action by licensee.

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

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

36

1 18-48-805. Notice of claim of lien on proceeds.

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

3 (A) The name, address, and telephone number of the  
4 licensee;

5 (B) The date of the representation agreement;

6 (C) The name of the owner of the commercial real estate;

7 (D) The legal description of the commercial real estate as  
8 described in the representation agreement;

9 (E) The amount of the claimed lien expressed as either a  
10 specified sum, a percentage of the sales price, or a formula;

11 (F) The real estate license number of the licensee;

12 (G) That the lien claimant has read the notice of claim,  
13 knows its contents, and believes:

14 (i) That thhe statements contained in the notice of  
15 claim to be true and correct; and

16 (ii) That the claim is made pursuant to a valid  
17 representation agreement and is not frivolous; and

18 (H) That thhe information contained in the notice of claim  
19 is true and accurate to the knowledge of the signatory.

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

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

24  
25 18-48-806. Delivery of notice of claim of lien.

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

29 (1) Service of process;

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

31 (3) Personal or electronic delivery and evidence of delivery in  
32 the form of a receipt or other paper or electronic acknowledgment by the  
33 party to whom the notice is delivered; or

34 (4) An affidavit of service.

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

36 (1) Personal service;

1           (2) Personal or electronic delivery; or

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

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

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

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

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

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

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

15  
16           18-48-807. Release of notice of claim of lien.

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

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

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

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

34           (d)(1)(A) A notice of claim of lien against proceeds recorded under  
35 this subchapter shall be released upon the recording of a receipt by the  
36 office in which the notice of claim was recorded that shows a deposit of an

1 amount equal to the lien claimed.

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

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

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

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

10  
11 18-48-808. Disputed claim - Order to show cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19  
20           18-48-809. Priority of lien claims.

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

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

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

29  
30  
31  
32   */s/ Lamoureux*