

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1028

By: Representative Woods

For An Act To Be Entitled

AN ACT TO MODIFY THE POWER OF A MUNICIPALITY TO
REGULATE UNSANITARY CONDITIONS; AND FOR OTHER
PURPOSES.

Subtitle

TO MODIFY THE POWER OF A MUNICIPALITY TO
REGULATE UNSANITARY CONDITIONS.

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

SECTION 1. Arkansas Code § 14-54-903 is amended to read as follows:
14-54-903. Refusal of owner to comply.

(a) As used in this section:

(1)(A) "Clean-up lien" means a lien securing the cost of work
undertaken by a town or city to remove, abate, or eliminate a condition in
violation of local codes or ordinances.

(B) A clean-up lien may have priority against other
lienholders as provided in this section;

(2) "Court lien" means a lien securing the fines or penalties
imposed by a court of competent jurisdiction against the owner of an unsafe
and vacant structure or weed lot for failure to comply with applicable
building codes that have been secured by a court lien by action of the local
governing body;

(3) "Priority clean-up lien" means a clean-up lien for work
undertaken by a city or town on an unsafe and vacant structure or weed lot
that is given priority status over other lienholders following notice and
hearing;



(4) "Unsafe and vacant structure" means a structure located on previously platted and subdivided property that is not fit for human habitation and has been declared unsafe and vacant by the city or town in which it is located in violation of an applicable ordinance; and

(5) "Weed lot" means a previously platted and subdivided lot that is vacant or upon which an unsafe and vacant structure is located and that contains debris, rubbish, or grass which is higher than that permitted by local ordinance.

(b) If the owner or lienholder of any lot or other real property within an incorporated town or city ~~shall neglect or refuse~~ neglects or refuses to remove, abate, or eliminate any condition ~~as may be provided for~~ under an ordinance passed by the city or town as provided ~~for~~ in § 14-54-901, after having been given seven (7) days' notice in writing to do so, then the town or city ~~is authorized to~~ may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(c)(1) The town or city is given a lien against the property for the costs, including all administrative and collection costs.

(2) The town or city shall file the lien with the circuit clerk no later than one hundred twenty (120) days after the town or city completes the clean-up work on the property.

(3) The town or city may perfect its clean-up lien as a lien against the property if the property:

(A) Contains an unsafe and vacant structure; or

(B) Has been cited as a weed lot.

(4) The clean-up lien amount shall equal costs, including administrative costs, that the city or town incurs to help bring the property into compliance with local ordinances because the owner or lienholder failed to remove or repair an unsafe and vacant structure or failed to correct the conditions that caused the property to become a weed lot within the time required by the notice.

(5)(A) If a court of competent jurisdiction levies fines or penalties against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes, then the local governing body, by majority vote, from time to time and subject to notice and hearing provided by this section, may secure any outstanding court fines or penalties

1 resulting from the owner's failure to clean up an unsafe and vacant structure
 2 or weed lot with a court lien against the property for the full value of all
 3 the outstanding fines and penalties.

4 (B) A court lien does not have first priority status over
 5 prior recorded liens and may be imposed in addition to clean-up liens.

6 (6)(A) Notices shall be sent by regular mail and by certified
 7 mail, return receipt requested.

8 (B) Notice to an owner ~~shall be~~ is sufficient if sent to
 9 the owner's address of record with the applicable county treasurer or
 10 collector.

11 (7)(A) If the city or town wishes to secure a priority clean-up
 12 lien, it shall provide seven (7) business days' notice to lienholders before
 13 undertaking any work at the property.

14 (B) Notice is sufficient if the notice is sent to the
 15 lienholder's address shown in the relevant land records.

16 (C) Cities and towns are not required to give notices to
 17 holders of unrecorded liens or to unrecorded assignees of lienholders.

18 (D) Any lienholder receiving notice under this section
 19 shall send, within seven (7) business days from receipt of the notice, a
 20 written response to the city or town indicating whether the owner of the
 21 property is in default under the terms of the note or mortgage.

22 (d) Any notice required under this section may be issued by a:

23 (1) Police officer employed by the city or town;

24 (2) City or town attorney; or

25 (3) Code enforcement officer employed by the city or town.

26 (e)(1)(A) After the work has been completed, the city or town shall
 27 provide second notice to the owner ~~and lienholders of record~~ of the total
 28 amount of the clean-up lien, including administrative and filing costs.

29 (B) If the city or town wishes to secure a priority clean-
 30 up lien after the work has been completed, it shall provide second notice to
 31 the lienholders of record of the total amount of the clean-up lien.

32 (2) Cities and towns are not required to give notice of court
 33 liens to prior lienholders.

34 (3) Notice of the amount of a clean-up lien or a court lien may
 35 be combined with the notice of the hearing before the governing body to
 36 create and impose the clean-up lien or court lien.

(f) The amount of any clean-up lien or court lien provided in this section may be determined at a public hearing before the governing body of the city or town held after thirty (30) days' written notice by mail, return receipt requested, to the owner of the property if the name and address of the owner are known and to the lienholders of record.

(g) If the name of the owner cannot be determined, then the amount of the clean-up lien or court lien shall be determined at a public hearing before the governing body of the city or town only after publication of notice of the hearing in a newspaper having a bona fide circulation in the county where the property is located for one (1) insertion per week for four (4) consecutive weeks.

(h)(1) The determination of the governing body confirming the amount of any clean-up lien or court lien and creating and imposing any clean-up lien or court lien under this section is subject to appeal by the property owner or by any lienholder of record in the circuit court, filed within forty-five (45) days after the determination is made.

(2) If the owner or lienholder fails to appeal in this time, the lien amount ~~shall be deemed~~ is fully perfected and not subject to further contest or appeal.

(i) The city or town shall file its lien with the circuit clerk no later than sixty (60) days after the governing body of the city or town confirms the lien amount, or if the lien is appealed, within sixty (60) days after the city or town wins on appeal.

(j)(1) If the city or town wishes to secure a first-priority status for any priority clean-up lien created and imposed ~~in accordance with~~ under this section, it shall file an action with the circuit court within which the property is located seeking a declaration that the clean-up lien is entitled to priority over previously recorded liens and naming the holders of the recorded liens as defendants.

(2) Priority status shall be awarded to the priority clean-up lien with respect to any previously recorded lien if the court determines that such lienholder has failed to exercise its rights to foreclose its lien when the obligation it secures becomes in default or has failed to pay the costs of work undertaken by a city or town that ~~comprise~~ compose the clean-up lien. However, the amount as to which the clean-up lien shall have priority shall be ~~such an amount as the court deems to be reasonable~~ the amount the

1 court finds reasonable and, ~~in any event, shall be~~ is limited to:

2 (A) No more than one thousand dollars (\$1,000) for grass
3 or weed cutting;

4 (B) No more than five thousand dollars (\$5,000) to board
5 and secure the property;

6 (C) No more than seven thousand five hundred dollars
7 (\$7,500) to demolish any structures on the property; or

8 (D) No more than fifteen thousand dollars (\$15,000) for
9 environmental remediation.