

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.
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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;~~;~~

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.

29
 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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