

1 Stricken language would be deleted from and underlined language would be added to the
2 law as it existed prior to this session of the General Assembly.

3 State of Arkansas

4 87th General Assembly

A Bill DRAFT DLP/DLP

5 Regular Session, 2009

HOUSE BILL

6 By: Representative <NA>

7 For An Act To Be Entitled

8

9 AN ACT TO AMEND ARKANSAS CODE § 18-44-101 ET SEQ.

10 CONCERNING THE PERFECTION, FILING, AND

11 ENFORCEMENT OF MECHANIC'S AND MATERIALMEN'S

12 LIENS; AND FOR OTHER PURPOSES.

13 Subtitle

14 TO AMEND ARKANSAS CODE § 18-44-101 ET

15 SEQ. CONCERNING THE PERFECTION, FILING,

16 AND ENFORCEMENT OF MECHANIC'S AND

17 MATERIALMEN'S LIENS.

18

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

20 SECTION 1. Arkansas Code §§ 18-44-104 — 18-44-106 are amended to read

21 as follows:

22 18-44-104. Liens for drain pipe or tile.

23 (a) ~~(1) Every manufacturer or contractor, subcontractor, or material supplier~~ who shall
24 furnish to any landowner any soil or drain pipe or tile for drainage of his or her land, or
25 who shall put in soil or drain tile for any land, shall have a lien for each tract of forty (40)
26 acres or less of the real estate upon which the soil or drain pipe or tile is placed for the
27 payment of the lien.

28 ~~(2) The lien shall extend for a period of two (2) years.~~

29 (b)(1) The lien for the soil or drain pipe or tile shall attach to the

30 real estate and all improvements thereon in preference to any subsequent

1 liens, encumbrance, or mortgage executed upon the land after the purchase of the soil or
2 drain pipe or tile.

3 (2) The lien shall be ~~enforced in the same manner as a mechanic's or contractor's liens~~ :

4 (A) Subject to the notice requirements of §§ 18-44-114 and 18-44-115;

5 (B) Filed under § 18-44-117; and

6 (C) Enforced under this subchapter.

7

8 18-44-105. ~~Engineer's or surveyor's liens~~ Lien of architect, engineer, surveyor, appraiser,
9 landscaper, abstractor, or title insurance agent.

10 (a) Every ~~engineer or surveyor~~ architect, engineer, surveyor, appraiser, landscaper,
11 abstractor, or title insurance agent who shall do or perform any ~~engineering or surveying~~
12 ~~work~~ architectural, engineering, surveying, appraisal, landscaping, or abstracting services
13 upon any land, or who shall issue a title insurance policy or provide landscaping supplies
14 upon any land, building, erection, or improvement upon land, under or by virtue of any
15 ~~contract or written~~ agreement for the performance of the work with the owner thereof, or
16 his or her agent, shall have a lien upon the land, building, erection, or improvement upon
17 land to the extent of the agreed contract price or a reasonable price for those services.

18 (b)(1) However, the lien does not attach to the land, building, erection, or
19 improvement upon land unless and until the lien is duly filed of record with the circuit
20 clerk and recorder in the county in which the land, building, erection, or improvement is
21 located.

22 (2) ~~This recorded lien will be enforced in the same manner as mechanic's or~~
23 ~~contractor's lien~~ The lien shall be:

24 (A) Subject to the notice requirements of §§ 18-44-114 and 18-44-115;

25 (B) Filed under § 18-44-117; and

26 (C) Enforced under this subchapter.

27

28 18-44-106. ~~Persons to be concluded by owner or proprietor thereof~~ " Owner" defined.

29 ~~Every~~ As used in this subchapter, the "owner" of property shall include the owner of the
30 legal title to property and any person, including all cestui que trust, for whose immediate

1 use, enjoyment, or benefit a building, erection, or other improvement is made, ~~shall be~~
2 Concluded by the words "owner or proprietor thereof", under this subchapter.

3

4 SECTION 2. Arkansas Code § 18-44-108 is amended to read as follows:

5 18-44-108. Refusal to list parties doing work or furnishing materials.

6 (a) The owner or proprietor, material supplier, subcontractor, or anyone
7 interested as mortgagee or trustee in the real estate upon which improvements are made
8 under this subchapter may apply at any time to the contractor or subcontractor for the
9 following:

10 (1) A list of all parties doing work or furnishing material for a building
11 and the amount due to each of the parties; and

12 (2) Certification that the owner or agent has received the preliminary
13 notice specified under § 18-44-115.

14 (b) Any contractor or subcontractor who, upon request, refuses or fails within
15 five (5) business days to give a correct list of the parties furnishing material or doing labor
16 on the building and the amount due to each or who falsely certifies that an owner or agent
17 has received the preliminary notice specified under § 18-44-115 shall be:

18 (1) ~~guilty~~ Guilty of a violation and upon conviction shall be punished by a fine
19 not exceeding two thousand five hundred dollars (\$2,500); ~~and~~

20 (2) (A) Subject to suit by an aggrieved party in the circuit court where the
21 property is located or where the aggrieved party resides to enforce subsection (a) of
22 this section including, without limitation, by the contempt powers of the circuit
23 court.

24 (B) The prevailing party in an action under subdivision (b)(2) of this section
25 shall receive a judgment for any damages proximately caused by the violation of
26 subsection (a) of this section, the costs of the action, and a reasonable attorney's fee.

27

28 SECTION 3. Arkansas Code §§ 18-44-113 - 18-44-118 are amended to read as follows:

29 18-44-113. Assignment of liens.

30 (a) The lien given in this subchapter shall be transferable and assignable, but it
31 shall not be enforced against the owner ~~or proprietor~~ of the ground or buildings unless the

1 owner ~~or proprietor~~ of the ground or buildings shall have actual notice of the assignment
2 so as to protect himself or herself or notice under subsection (b) of this section.

3 (b) The owner of the ground or buildings shall be considered to have actual notice if
4 within thirty (30) days of the assignment a copy of the assignment is:

5 (1) Hand-delivered to the owner of the ground or buildings;

6 (2) Mailed to the last known address of the owner of the ground or buildings and
7 verified by a:

8 (A) Return receipt signed by the addressee or the agent of the addressee; or

9 (B) Returned envelope, postal document, or affidavit by a postal employee reciting
10 or showing refusal of the notice by the addressee or that the item was unclaimed; or

11 (3) Delivered by any means that provides written, third-party verification of
12 delivery at any place that the owner of the ground or buildings maintains an office,
13 conducts business, or resides.

14 18-44-114. Notice and service generally.

15 (a) Every person who may wish to avail himself or herself of the benefit of the
16 provisions of this subchapter shall give ten (10) days' notice before the filing of the lien, as
17 required in § 18-44-117(a), to the owner ~~, owners, or agent, or either of them,~~ of a building
18 or improvement that he or she holds a claim against the building or improvement, setting
19 forth the amount and from whom it is due.

20 (b) (1) The notice may be served by any:

21 (A) Officer authorized by law to serve process in a civil action;

22 (B) Person who would be a competent witness; ~~or~~

23 (C) Form of mail addressed to the person to be served, with a return receipt
24 requested and delivery restricted to the addressee or the agent of the addressee; or

25 (D) Means that provides written, third-party verification of delivery at any place
26 where the owner of the building or improvement maintains an office, conducts business, or
27 resides.

28 (2) (A) (i) When served by an officer, his or her official return endorsed on the
29 notice shall be proof of the service.

30 (ii) When served by any other person, the fact of the service shall be verified by
31 affidavit of the person ~~sø~~ serving the notice.

1 (B)(i) When served by mail, the service shall be :

2 (a) Complete when mailed; and

3 ~~(b) verified~~ Verified by a return receipt signed by the addressee or the agent of the
4 addressee, or a returned envelope, postal document, or affidavit by a postal employee
5 reciting or showing refusal of the notice by the addressee or that the item was unclaimed.

6 (ii) If delivery of the mailed notice is refused by the addressee, or the item is
7 unclaimed:

8 ~~(a) then the person holding the claim~~ The lien claimant shall immediately ~~mail to~~
9 send the owner, ~~owners, or agent~~ of the building or improvement a copy of the notice by
10 first class mail and may proceed to file his or her lien ; and

11 (b) The unopened original of the item marked unclaimed or refused by the United
12 States Postal Service shall be accepted as proof of service as of the postmarked date of the
13 item.

14 18-44-115. Notice to owner by contractor.

15 (1) ~~(a) No lien upon residential real estate containing four (4) or fewer units~~ may be
16 acquired by virtue of this subchapter unless the ~~owner or his or her authorize~~ authorized
17 ~~agent~~ owner of the residential real estate, the owner's authorized agent, or the owner's
18 registered agent has received, by personal delivery or by certified mail, a copy of the notice
19 set out in subsection (c) of this section.

20 ~~(2) The notice required by this section shall not be require the signature of the~~
21 ~~owner or his or her authorized agent in an instance when the notice is delivered by~~
22 ~~certified mail.~~

23
24 ~~(b)(1)(A) (i) It shall be the duty of the contractor to give the owner or his or her~~
25 ~~authorized agent~~ owner, the owner's authorized agent, or the owner's registered agent the
26 notice set out in subsection (c) of this section on behalf of all potential lien claimants under
27 ~~his or her contract prior to the supplying of any materials or fixtures before the~~
28 commencement of work.

29 (ii) If a contractor fails to give the notice required under subsection (a) of this
30 section, then the contractor is barred from bringing any action either at law or in equity.

1 including without limitation, quantum meruit, to enforce any provision of a residential
2 contract.

3 (B) (i) Any potential lien claimant may also give notice.

4 (ii) If before commencing work or supplying goods a subcontractor, material
5 supplier, or laborer gives notice under this section the notice shall be effective for all
6 subcontractors, material suppliers, and laborers notwithstanding that the notice was given
7 after the project commences as defined under § 18-44-110(a)(2).

8 (2) However, no lien may be claimed by any subcontractor, laborer, or material
9 supplier of material or fixtures unless the owner or agent of the residential real estate, the
10 owner's authorized agent, or the owner's registered agent has received at least one (1)
11 copy of the notice, which need not have been given by the particular lien claimant.

12 (c) The notice set forth in this subsection may be incorporated into the contract or
13 affixed to the contract and shall be conspicuous, set out in boldface type, worded exactly as
14 stated in all capital letters, and shall read as follows:

15

16

"IMPORTANT NOTICE TO OWNER

17

18 I UNDERSTAND THAT EACH PERSON, ARCHITECT, ENGINEER, SURVEYOR,
19 APPRAISER, LANDSCAPER, ABTRACTOR, OR TITLE INSURANCE AGENT SUPPLYING
20 LABOR MATERIALS OR FIXTURES IS ENTITLED TO A LIEN AGAINST PROPERTY IF NOT
21 PAID IN FULL FOR LABOR MATERIALS OR FIXTURES USED TO IMPROVE THE PROPERTY
22 EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE
23 CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE
24 PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO
25 THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY MATERIALS OR LABOR NOT
26 PAID FOR. I KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR
27 TO FURNISH TO ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS UNDER THE
28 CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF ALL MATERIALS
29 FURNISHED FOR THE PROPERTY HAVE BEEN PAID FOR. I MAY ALSO REQUIRE THE
30 CONTRACTOR TO PRESENT LIEN WAIVERS BY ALL SUPPLIERS, STATING THAT THEY
31 HAVE BEEN PAID IN FULL FOR SUPPLIES PROVIDED UNDER THE CONTRACT, BEFORE I

1 PAY THE CONTRACTOR IN FULL. IF A SUPPLIER HAS NOT BEEN PAID, I MAY PAY THE
2 SUPPLIER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

3 SIGNED: _____

4 ADDRESS OF PROPERTY

5 DATE: _____

6 I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER OR AGENT OF
7 THE OWNER OF THE PROPERTY AT THE ADDRESS SET OUT ABOVE.

8

9 _____

10 CONTRACTOR"

11

12 (d)(1) If the contractor supplies a performance and payment bond or if the
13 transaction is a direct sale to the property owner, the notice requirement of subsection (a)
14 of this section shall not apply, and the lien rights arising under this subchapter shall not be
15 conditioned on the delivery and execution of the notice.

16 (2) A sale shall be a direct sale only if the owner orders the materials from the lien
17 claimant ~~or authorizes another person to do so.~~

18 (3) A notice required by this subsection does not require the signature of the owner
19 or his or her authorized agent if the notice is delivered by certified mail.

20 (e)(1) ~~(A)~~ The General Assembly finds that owners and developers of commercial
21 real estate are generally knowledgeable and sophisticated in construction law, are aware
22 that unpaid laborers, subcontractors, and material suppliers ~~of labor and materials~~ are
23 entitled to assert liens against the real estate if unpaid, and know how to protect
24 themselves against the imposition of mechanics' and material suppliers' liens.

25 ~~(B)~~ (2) The General Assembly further finds that consumers who construct or
26 improve residential real estate containing four (4) or fewer units generally do not possess
27 the same level of knowledge and awareness and need to be informed of their rights and
28 responsibilities.

29 ~~(C)~~ (3) Because supplying the notice specified in subsection (c) of this section
30 imposes a substantial burden on laborers, subcontractors, and material suppliers, the
31 notice requirement mandated under subsection (b) of this section as a condition precedent

1 to the imposition of a ~~material supplier's~~ lien by a laborer, subcontractor, or material
2 supplier shall apply only to construction of or improvement to residential real estate
3 containing four (4) or fewer units.

4 (4) Any contractor who fails to give the notice required by this subsection (1) shall
5 be guilty of a violation and upon conviction shall be punished by a fine not exceeding one
6 thousand dollars (\$1,000).

7
8 (2) (A) No subcontractor, material suppliers or laborer shall be entitled to a lien upon
9 commercial real estate unless the subcontractor, material suppliers or laborer notifies the
10 owner of the commercial real estate being constructed or improved, or the owner's
11 registered agent, in writing, that the subcontractor, material suppliers or laborer is
12 currently entitled to payment but has not been paid. The notice shall be sent to the owner
13 or the owner's registered agent and to the contractor before seventy-five (75) days have
14 elapsed from the time that the labor was supplied or the materials furnished. The notice
15 may be served by any:

16 (a) Officer authorized by law to serve process in civil actions; ~~or~~

17 (b) Form of mail addressed to the person to be served with a return
18 receipt requested and delivery restricted to the addressee or the agent of the
19 addressee; or

20 (c) Means that provides written, third-party verification of delivery at
21 any place where the owner maintains an office, conducts business, or resides.

22 (B) When served by mail, the notice shall be complete when mailed. If delivery of
23 the mailed notice is refused by the addressee or the item is unclaimed:

24 (1) The lien claimant shall immediately send the owner or the owner's
25 registered agent a copy of the notice by first class mail; and

26 (2) The unopened original of the item marked unclaimed or refused by the
27 United States Postal Service shall be accepted as proof of service as of the
28 postmarked date of the item.

29 (C) The notice shall contain the following information:

30 (i) A general description of the labor, service, or materials furnished, and the
31 amount due and unpaid;

- 1 (ii) The name and address of the person furnishing the labor, service, or
2 materials;
- 3 (iii) The name of the person who contracted for purchase of the labor, service, or
4 materials;
- 5 (iv) A description of the job site sufficient for identification; and
- 6 (v) The following statement set out in boldface type and all capital letters:

7 "NOTICE TO PROPERTY OWNER

8 IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT AN IMPROVEMENT
9 TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE PLACED
10 AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH FORECLOSURE
11 PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED. THIS MAY
12 OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO
13 PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED
14 PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK
15 PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY."

16
17 18-44-116. Service on nonresident or absconder.

18
19 (a)(1) Whenever property is sought to be charged with a lien under this subchapter, the
20 notice may be filed with the recorder of deeds of the county in which the property is
21 situated if the owner of the property so sought to be charged:

- 22 (A) Is not a resident of this state;
- 23 (B) Does not have an agent in the county in which the property is situated;
- 24 (C) Is a resident of this state but not of the county in which the property is situated;

25 or

26 (D) Conceals himself or herself, has absconded, or absents himself or herself from
27 his or her usual place of abode, so that the notice required by § 18-44-114 or § 18-44-115
28 cannot be served upon him or her.

29 (2) When filed, the notice shall have like effect as if served upon the owner or his or
30 her agent in the manner contemplated in § 18-44-114 or § 18-44-115.

1 (b) A copy of the notice so filed, together with the certificate of the recorder of deeds that it
2 is a correct copy of the notice so filed, shall be received in all courts of this state as evidence
3 of the service, as provided in this section, of the notice.

4 (c)(1) The recorder of deeds in each county of this state shall receive, file, and keep every
5 such notice presented to him or her for filing and shall further record it at length in a
6 separate book appropriately entitled.

7 (2) For service so performed, the recorder of deeds shall receive for each notice, the sum of
8 twenty-five cents (25c), and for each copy certified, as stated in this section, of each of the
9 notices he or she shall receive the sum of fifty cents (50c), to be paid by the party so filing
10 or procuring the certified copy, as the case may be.

11 (d) The costs of filing and of one (1) certified copy shall be taxed as costs in any lien suit to
12 which it pertains to abide the result of the suit.

13

14 18-44-117. Filing of lien ~~account~~ Abstract.

15 (a)(1) It shall be the duty of every person who wishes to avail himself or herself of the
16 provisions of this subchapter to file with the clerk of the circuit court of the county in which
17 the building, erection, or other improvement to be charged with the lien is situated and
18 within one hundred twenty (120) days after the things specified in this subchapter shall
19 have been furnished or the work or labor done or performed:

20 (A) A just and true account of the demand due or owing to him or her after allowing
21 all credits; and

22 (B) An affidavit of notice attached to the lien account.

23 (2) The lien account shall contain a correct description of the property to be charged with
24 the lien, verified by affidavit.

25 (3) The affidavit of notice shall contain:

26 (A) A sworn statement evidencing compliance with the applicable notice
27 provisions of §§ 18-44-114 — 18-44-116; and

28 (B) A copy of each applicable notice given under §§ 18-44-114 — 18-44-116.

29 (b)(1)(A) It shall be the duty of the clerk of the circuit court to endorse upon every
30 account the date of its filing and to make an abstract of the account in a book kept by
31 him or her for that purpose, properly indexed.

1 (B) This abstract shall contain:

2 (i) The date of the filing;

3 (ii) The name of the person laying or imposing the
4 lien;

5 (iii) The amount of the lien;

6 (iv) The name of the person against whose property
7 the lien is filed; and

8 (v) A description of the property to be charged with
9 the lien.

10 (2) For this service, the clerk shall receive the sum of three dollars (\$3.00) from the
11 person laying or imposing the lien, which shall be taxed and collected as other costs
12 in case there is suit on the lien.

13 (3) The clerk shall refuse to file a lien account that does not contain the affidavits
14 and attachments required by this section.

15
16 18-44-118. Filing of bond in contest of lien.

17 (a)(1) In the event any person claiming a lien for labor or materials upon any
18 property shall file such a lien within the time and in the manner required by law
19 with the circuit clerk or other officer provided by law for the filing of such a lien, and
20 if the owner of the property, any mortgagee or other person having an interest in
21 the property, or any contractor, subcontractor, or other person liable for the
22 payment of such a lien shall desire to contest the lien, then the person so desiring to
23 contest the lien may file_

24 ~~(A) with~~ With the circuit clerk or other officer with whom the lien is filed as
25 required by law a bond with surety, to be approved by the officer in ~~double~~ the
26 amount of the lien claimed; or

27 (B) An action under subsection (f) of this section to protest the filing of the
28 lien.

29 (2) The bond shall be conditioned for the payment of the amount of the lien,
30 or so much of the lien as may be established by suit, together with interest and the

1 costs of the action, if upon trial it shall be found that the property was subject to the
2 lien.

3 (b)(1)(A) Upon the filing of the bond, if the circuit clerk or other officer
4 before whom it is filed approves the surety, he or she shall give to the person
5 claiming the lien, at his or her last known address, three (3) days' notice of the filing
6 of the bond.

7 (B) The notice shall be in writing and served by any:

8 (i) Officer authorized by law to serve process in a civil action; or

9 (ii) Form of mail addressed to the person to be served with a return
10 receipt requested and delivery restricted to the addressee or the agent of the
11 addressee.

12 (2)(A) Within the three (3) days' notice, the person claiming the lien may
13 appear and question the sufficiency of the surety or form of the bond.

14 (B) At the expiration of three (3) days, if the person claiming the lien shall
15 not have questioned the sufficiency of the bond or surety or if the circuit clerk finds
16 the bond to be sufficient, the circuit clerk shall note the filing of the bond upon the
17 margin of the lien record and the lien shall then be discharged and the claimant shall
18 have recourse only against the principal and surety upon the bond.

19 (c)(1) If no action to enforce the lien shall be filed within the time prescribed
20 by law for the enforcement of a lien against the surety, the bond shall be null and
21 void.

22 (2) However, if any action shall be timely commenced, the surety shall be
23 liable in like manner as the principal.

24 (d) If the circuit clerk shall determine that the bond tendered is insufficient,
25 the person tendering the bond shall have twenty-four (24) hours within which to
26 tender a sufficient bond, and unless a sufficient bond shall be so tendered, the lien
27 shall remain in full force and effect.

28 (e)(1) Any party aggrieved by the acceptance or rejection of the bond may
29 apply to any court of competent jurisdiction by an action which is appropriate.

30 (2) Upon notice as required by law, the court shall have jurisdiction to enter
31 an interlocutory order as may be necessary for the protection of the parties by:

1 (A) Requiring additional security for the bond;
2 (B) Reinstating the lien in default of the bond, pending trial and hearing; or
3 (C) Requiring acceptance of the bond as may be necessary for the protection
4 of the parties.

5 (f)(1) A protest under subdivision (a)(1)(B) of this section shall be filed as a
6 civil action in the circuit court of the county where the lien is filed.

7 (2) The issues in the action shall be limited to whether:

8 (A) The lien was filed in the form required by § 18-44-
9 117; and

10 (B) All of the applicable requirements of §§ 18-44-114 and 18-44-115
11 were satisfied.

12 (3)(A) The summons shall be in customary form directed to the sheriff of the
13 county in which the action is filed, with directions for service of the summons on the
14 named defendants. In addition, the clerk of the circuit court shall issue and direct
15 the sheriff to serve upon the named defendants a notice in the following form:

16 "NOTICE OF INTENTION TO DISCHARGE LIEN

17 You are hereby notified that the attached complaint in the above-styled cause
18 claims that you have not satisfied the requirements for claiming a lien upon the
19 property described in the complaint and seeks to have the lien discharged by the
20 court. If, within five (5) days, excluding Sundays and legal holidays, from the date of
21 service of this notice, you have not filed in the office of the clerk of this court a
22 written objection to the claims made against you by the plaintiff, then an order
23 discharging the lien shall be issued immediately by the court. If you should file a
24 written objection to the allegations of the complaint of the plaintiff within five (5)
25 days, excluding Sundays and legal holidays, from the date of service of this notice, a
26 hearing will be scheduled by the court to determine whether or not the lien should
27 be discharged."

28 B) If within five (5) days, excluding Sundays and legal holidays, following
29 service of the summons, complaint, and notice the defendant or defendants have not
30 filed a written objection to the claim of the plaintiff, the court shall immediately
31 issue an order discharging the lien upon the property described in the complaint.

1 (C) If a written objection to the claim of the plaintiff is filed by the defendant
2 or defendants within five (5) days from the date of service of the notice, summons,
3 and complaint, the plaintiff shall obtain a date for the hearing of the plaintiff's
4 complaint and shall give notice of the date, time, and place of the hearing to all
5 defendants.

6 (4)(A) The action shall be heard as expeditiously as the business of the
7 circuit court permits.

8 (B) Evidence may be presented by affidavit, subject to Rule 56(e),(f), and (g)
9 of the Arkansas Rules of Civil Procedure.

10 (5) If the circuit court finds that the lien was not in the form required by §
11 18-44-117 or that the applicable requirements of §§ 18-44-114 and 18-44-115 were
12 not satisfied, then the circuit court shall enter an order discharging the lien.

13 (6) The prevailing party shall be entitled to a reasonable attorney's fee and
14 the costs of the protest.

15 (f) (g) Nothing in this section shall be construed to limit the right of an
16 owner, mortgagee, or any other person with an interest in the property to contest
17 the lien by declaratory judgment proceedings under § 16-111-101 et seq.

18
19 SECTION 4. Arkansas Code § 18-44-122 is amended to read as follows:

20 18-44-122. Contents of ~~petition~~ complaint.

21 The ~~petition~~ complaint, among other things, shall allege the facts necessary for securing a
22 lien under this subchapter and shall contain a description of the property to be charged
23 with the lien.

24
25 SECTION 5. Arkansas Code § 18-44-128 is amended to read as follows:

26 18-44-128. Attorney's fee.

27 (a) When any contractor, subcontractor, laborer, or material supplier who has filed a lien,
28 as provided for in this chapter, gives notice thereof to the ~~debtor~~ or owner of property
29 which has been subjected to the lien in writing sent by registered or certified mail, by any
30 method permitted under § 18-44-115(f)(3) and the claim has not been paid within twenty
31 (20) days from the date of the mailing service of the notice, and if the contractor,

1 subcontractor, laborer, or material supplier is required to sue for the enforcement of his or
2 her claim, the court shall allow the successful ~~party in the action~~ contractor, subcontractor,
3 laborer, or material supplier a reasonable attorney's fee in addition to other relief to which
4 he or she may be entitled.

5 (b) If the owner is the prevailing party in the action, the court shall allow the owner a
6 reasonable attorney's fee in addition to any other relief to which the owner may be entitled.

7

8 SECTION 6. Arkansas Code §§ 18-44-133 and 18-44-134 are repealed.

9

10 ~~18-44-133. Lien of architect, engineer, surveyor, appraiser, abstractor, or title insurance~~
11 ~~agent.~~

12

13 ~~-(a)(1) Every architect, engineer, surveyor, appraiser, abstractor, or title insurance agent~~
14 ~~who shall do or perform any architectural, engineering, surveying, appraisal, or abstracting~~
15 ~~work on, or who shall issue any title insurance policy on any land, building, erection, or~~
16 ~~improvement upon land, under or by virtue of any written agreement for performance of~~
17 ~~the work with the owner or his or her agent thereof shall have a lien upon the land,~~
18 ~~building, erection, or improvement to the extent of the agreed contract price or a~~
19 ~~reasonable price for those services.~~

20

21 ~~-(2) However, the lien does not attach to the land, building, erection, or improvement~~
22 ~~unless and until the lien is duly filed of record with the circuit clerk and recorder in the~~
23 ~~county in which the land, building, erection, or improvement is located.~~

24

25 ~~-(b) This recorded lien will be enforced in the same manner as a mechanic's or contractor's~~
26 ~~lien.~~

27

28 ~~18-44-134. Landscaping services and supplies.~~

29

30 ~~-(a)(1) Every person who shall do or perform landscaping services or provide landscaping~~
31 ~~supplies on any land, building, erection, or improvement upon land, under or by virtue of~~

1 any written agreement for performance with the owner or his or her agent thereof shall
2 have a lien upon the land, building, erection, or improvement to the extent of the agreed
3 contract price or a reasonable price for those services.

4

5 ~~(2) However, the lien does not attach to the land, building, erection, or improvement~~
6 ~~unless and until the lien is duly filed of record with the circuit clerk and recorder in the~~
7 ~~county in which the land, building, erection, or improvement is located.~~

8

9 ~~(b) This recorded lien will be enforced in the same manner as a mechanic's or contractor's~~
10 ~~lien.~~

11