

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1454

By: Representative L. Fite

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING PROCEDURES FOR
ACCESS TO CERTAIN REAL PROPERTY; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING PROCEDURES
FOR ACCESS TO CERTAIN REAL PROPERTY.

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

SECTION 1. Arkansas Code § 14-15-702 is amended to read as follows:

14-15-702. Duties generally.

~~It shall be the duty of the~~ The county surveyor ~~to execute all~~ shall:

(1) Execute orders directed to him or her by ~~any~~ a court of record for surveying or resurveying ~~any~~ a tract of land, the title of which is in dispute or in litigation before the court, ~~and to obey all;~~

(2) Obey orders of survey for the partition of real estate, ~~and also to accompany;~~

(3) Perform duties as directed by the court under §§ 27-66-401 – 27-66-404; and

(4) Accompany viewers and reviewers of roads for the purpose of running and measuring any proposed road, whenever required by the viewers or reviewers.

SECTION 2. Arkansas Code § 14-15-703 is amended to read as follows:

14-15-703. ~~Chainmen~~ Chain carriers.

The necessary ~~chainmen~~ chain carriers shall be employed by the person



wanting surveying done, but they shall be good and disinterested persons, to be approved by the surveyor, and shall be sworn by the surveyor to measure justly and exactly, according to the best of their abilities.

SECTION 3. Arkansas Code § 14-15-704 is amended to read as follows:
14-15-704. Appointment of another surveyor.

(a)(1) In all cases where in which the county surveyor may be is interested in any a survey which is required to be made by any a court, the court shall direct the survey to be made by some appoint a competent person replacement surveyor.

(2) The person so appointed shall have power to administer replacement surveyor shall:

(A) Administer the necessary oaths to the chainmen, and shall return chain carriers;

(B) Return the survey under oath, and shall be entitled to; and

(C) Collect the same fees for his or her services as the county surveyor would be entitled to receive for similar services.

(b)(1) In landlocked cases, the court may appoint a competent replacement surveyor for the county surveyor for any reason and upon proper motion to perform the duties and receive compensation under §§ 27-66-401 - 27-66-404.

(2) The replacement surveyor appointed under subdivision (b)(1) of this section is not required to be a resident of the county.

SECTION 4. Arkansas Code § 27-66-401 is amended to read as follows:
27-66-401. Establishment.

(a)(1) When the lands, dwelling house, or plantation of any If the real property or home of an owner of real property is so situated as to render it necessary to have a road from such lands, dwelling house, or plantation to any the real property or home to a public road or navigable watercourse waterway over the lands real property of any other person another person and the other person refuses to allow that owner access to the public road or navigable waterway, the owner of real property may petition the county court to appoint viewers a surveyor to lay off the road, provided the owner of real property gives written notice to the person twenty (20) days

before application to the court and attaches the written notice to the petition.

(2) The written notice shall include the amount of payment the owner of real property offers for the road.

(b) The petition for an easement for ingress and egress to and from the petitioner's ~~lands~~ real property over, through, and across the respondent's ~~lands~~ real property to ~~any~~ a public road or navigable ~~watercourse~~ waterway shall be filed with the clerk of the county court and ~~shall~~ allege with particularity facts demonstrating that:

(1) The written notice was provided by the petitioner to the respondent twenty (20) days before application to the court;

(2) The respondent refused to convey to the petitioner the requested access easement; and

(3) The petitioner lacked the legal right of ingress and egress to and from his or her ~~lands~~ real property across the respondent's ~~lands~~ real property or otherwise to a public road.

(c) Copies of abstracts, deeds, or plats referenced in the petition shall be attached to the petition to affirmatively assert and demonstrate with particularity the requisite lack of legal ingress and egress to the court.

(d) After the petition is filed, the county court shall issue a notice setting the time, date, and location of a ~~preliminary~~ hearing, and the hearing shall not be any earlier than sixty (60) days from the date of the petition's filing.

(e)(1) In accordance with the Arkansas Rules of Civil Procedure, the petitioner shall serve the resident or nonresident respondent with a:

(A) Summons;

(B) Copy of the petition and any exhibits; and

(C) Copy of the court notice of the ~~preliminary~~ hearing.

(2)(A) If service is not obtained, the notice shall be published one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the county at the petitioner's expense.

(B) If there is no newspaper of general circulation in the county, the notice shall be posted at the county courthouse.

(f)(1) The court may dismiss the case without prejudice and allow the petition to be refiled within one (1) year from dismissal if the court

determines ~~at the preliminary hearing~~ that:

(A) Required notices and service have not been provided to the respondent; or

(B) The petition fails to sufficiently demonstrate the requirements of ~~subsection~~ subsections (b) and (c) of this section.

(2)(A)~~(i)~~ If the court determines ~~at the preliminary hearing~~ that required notices and service have been provided to the adjoining owner who has refused the landlocked petitioner an access easement or to any other adjoining owner that has been included in the petition and the petition sufficiently demonstrates the requirements of ~~subsection~~ subsections (b) and (c) of this section, the court shall ~~appoint viewers as provided:~~

(i) Appoint a surveyor under this section; and

~~(ii) The court shall give each party at least ten (10) business days to submit up to three (3) potential viewers.~~

~~(iii) The court shall give due consideration to all potential viewers that were submitted by the parties and shall select one (1) of the potential viewers submitted from each party and one (1) or more viewers selected by the court for a total of three (3) viewers.~~

~~(B) If viewers are appointed by the court, the court shall:~~

~~(i)~~(ii) Issue a preliminary order directing the landlocked petitioner to deposit into the registry of the court an estimated sum sufficient for payment of:

(a) Viewers' The surveyor's anticipated fees and expenses, unless the court directs the county surveyor to serve on the case;

(b) The anticipated survey cost, unless the court directs the county surveyor to serve on the case;

(c) The court-appointed viewer's anticipated fees and expenses, if a court-appointed viewer is appointed by the court under subdivision (f)(2)(B) of this section;

~~(e)~~(d) Damages related to the adjoining owner's property, including without limitation an estimate of:

(1) The loss of property value for the area of acquisition;

(2) The loss of exclusive use the

adjoining owner will realize; and

(3) Damages to the owner's remaining

property; and

~~(d)~~(e) Notice and publication costs, if any;

~~(ii)~~(iii) Set the time, date, and location of the evidentiary hearing; and

~~(iii)~~(iv) Require the funds deposited to be used exclusively for the purposes stated under this subsection.

(B)(i) In addition, the court may direct the county assessor to provide copies of the real property assessments of the subject real properties and surrounding area and appoint a court-appointed viewer to assist the court in the calculation of damages, the valuation of the subject real properties, and the sum of just compensation.

(ii) The court-appointed viewer shall be a resident of the county and will be given preference by the court if he or she is a real estate appraiser, a real estate agent, or a real estate broker licensed in the state.

SECTION 5. Arkansas Code § 27-66-402 is amended to read as follows:
27-66-402. Duty of ~~viewers~~ surveyor and court-appointed viewer.

(a) ~~Viewers~~ The surveyor and court-appointed viewer shall take the same oath and ~~shall be governed in all respects as viewers appointed to public roads are governed under this act.~~

(b) ~~They~~ The surveyor shall examine the route proposed for the road and any other route ~~which they may deem~~ deemed proper.

(c) ~~If a majority of the viewers state~~ the surveyor determines and states under oath that an access easement is necessary and proper as prayed in the petition, the ~~viewers~~ surveyor shall lay out and describe the access easement in a manner that produces the least inconvenience, damage, and devaluation of the property to the adjoining owners.

(d)(1)(A)(i) ~~The viewers~~ surveyor shall make a written report under oath to the county court, describing the route of the road and the land through which it shall pass to allow location and identification of the access easement by land records, naming the owner, if known, ~~and by decision of a majority of the viewers.~~

(ii)(a) The surveyor and court-appointed viewer

shall each make a written report of the damages sustained by each owner of lands through which the road passes.

(b) The damages shall include the value of each owner's land sought to be appropriated.

(B)(i) The parties shall stipulate to or dispute the ~~report of the viewers~~ reports.

(ii) Each party shall be given at least ten (10) business days to respond in writing to ~~the viewers'~~ each report.

(2) The measure of damages shall be the difference in the fair market value of the lands immediately before the access easement is ordered and the fair market value of the lands after the access easement is ordered.

(e) ~~The~~ Each report shall be filed with the county clerk for the records of the county court.

(f)(1) A person who renders services under this subchapter as a court-appointed viewer ~~or reviewer~~, chain carrier, or marker, ~~or surveyor~~ shall be paid is entitled to reasonable costs and expenses from the petitioner based upon the current market rate for each day necessarily employed.

(2) Payments are to be charged as costs and expenses against the funds deposited by the petitioner.

(3) The amount due each person and the number of days employed shall be certified under oath ~~by the viewers~~.

(4) The court by order may direct the county clerk to ~~receipt~~ receive payment by the petitioner of the directed sum into the registry of the court and to issue payment.

SECTION 6. Arkansas Code § 27-66-403 is amended to read as follows:

27-66-403. Court order.

(a)(1) If the petitioner has not complied with the court's order under § 27-66-401 and paid into the registry of the county court the estimated sum, the court may dismiss the case without prejudice and provide that the matter may be refiled within one (1) year from dismissal ~~in accordance with~~ under the Arkansas Rules of Civil Procedure.

(2) If during the pendency of the proceedings the county court determines that the circuit court has jurisdiction over the matter, the county court may stay the proceedings or dismiss the case without prejudice and provide that the matter may be refiled within one (1) year from dismissal

~~in accordance with~~ under the Arkansas Rules of Civil Procedure.

(3)(A)(i) The evidentiary hearing may be held if:

(a) At least sixty (60) days have passed since the initial petition was filed;

(b) The landlocked petitioner has complied with the court's order under § 27-66-401; and

(c) The landlocked petitioner has deposited the estimated sum under § 27-66-401.

(ii) At the evidentiary hearing, all parties shall have the opportunity to present evidence and cross-examine witnesses.

(B)(i) If after considering the ~~report~~ reports of the ~~viewers~~ surveyor and the court-appointed viewer, the evidence, the law, and all other proper and sufficient matters the court is of the opinion that it is necessary for the petitioner to have the road from his or her ~~lands, dwelling house, or plantation~~ real property or home to the public road or navigable ~~watercourse~~ waterway, an order is to be made establishing the road not to exceed fifty feet (50') in width and determining the damages the court finds have been sustained by each owner of ~~lands~~ real property through which the access easement passes.

(ii)(a) The access easement of ingress and egress to and from the petitioner's ~~lands~~ real property to, through, over, and across the respondent's ~~lands~~ real property shall be described in the final order or judgment of the court and ~~shall be~~ are appurtenant to the petitioner's ~~lands~~ real property.

(b)(1) The order shall direct return of any excess funds, ~~if any~~, to the petitioner and any further deposits necessary to be made by the petitioners for the payment of all costs and expenses, including reasonable attorney's fees and costs, accruing and remaining unpaid on account of the petition for the road, ~~and all things relating thereto and following therefrom~~, including without limitation the view and survey of the road and damages sustained by each owner of the ~~lands~~ real property over which the road passes.

(2)(A) If the respondent substantially prevails on the disputed issues in the case, the court shall award reasonable attorney's fees and costs to the respondent.

(B) In determining whether the

respondent substantially prevails on the disputed issues, the court shall consider the respondent's success on the merits regarding the:

- (i) Necessity of the road;
- (ii) Route of the road;
- (iii) Width of the road; and
- (iv) Damages to the lands

over which the road passes.

(c) The order shall state that:

(1) The respondent retains title to the ~~lands~~ real property over which the road passes; and

(2) The road is for an access easement only and is not an easement for any other purpose, including a public utility.

(iii) The petitioner shall be solely responsible for the maintenance of the road established under this subchapter.

(iv) The respondent shall have no responsibility for the maintenance of the road established under this subchapter.

(v) A user of the road does so at his or her own risk and peril and does not have the right to file a cause of action against the petitioner or respondent for any injury to the user or the user's property.

(b)(1) Either party may appeal to the circuit court from the final order or judgment of the county court within thirty (30) days from the entry of the order and not thereafter.

(2) The review by the circuit court shall be de novo and for strict compliance with this subchapter and any additional violations of the due process rights of the parties.