

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

State of Arkansas
95th General Assembly
Regular Session, 2025

As Engrossed: S3/13/25

A Bill

HOUSE BILL 1271

By: Representative Warren

By: Senator C. Penzo

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING MECHANICS' AND MATERIALMEN'S LIENS; TO CLARIFY THE PRIORITY OF LIENS IN MORTGAGE CONSTRUCTION LOANS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING MECHANICS' AND MATERIALMEN'S LIENS; AND TO CLARIFY THE PRIORITY OF LIENS IN MORTGAGE CONSTRUCTION LOANS.

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

SECTION 1. Arkansas Code § 18-44-110(b)(1), concerning lien attachment and priority, is amended to read as follows:

(b)(1)(A) The liens for labor performed or materials or fixtures furnished, as provided for in this subchapter, shall attach to the improvement on which the labor was performed or the materials or fixtures were furnished ~~in preference~~ subject to any encumbrance existing on the real estate prior to the commencement of construction or repair of the improvement.

(B)(i) In all cases in which the ~~prior~~ encumbrance was given for the purpose of funding construction or repair of the improvement, that lien shall have priority over all liens given by this subchapter.

(ii)(a) A person who acquires or intends to acquire a mortgage or other security instrument that provides a security interest for the purpose of funding construction or repair of the improvement may



conclusively rely on an affidavit made by a licensed appraiser, architect, surveyor, or engineer if the licensed appraiser, architect, surveyor, or engineer has inspected the property at a specified time and work had not been commenced or materials placed at its site at the time of the inspection, if the inspection occurs and the affidavit is filed within four (4) business days before or within four (4) business days after the filing of the mortgage or other security instrument that provides a security interest.

(b) When a mortgage or other security interest for the purpose of funding construction or repair of the improvement will encumber property on which a residential structure that is a single one-to-four family unit is located or will be constructed, the person who made the affidavit described in subdivision (b)(1)(B)(ii)(a) of this section may be an employee or designee of the lender or licensed title agent.

(iii) The facts in an affidavit filed under subdivision (b)(1)(B)(ii) of this section:

(a) Shall be considered true at the time of the inspection; and

(b) Shall remain true at the time of the filing of the mortgage or other security instrument that provides a security interest.

(iv) The correctness of the facts contained in an affidavit filed under subdivision (b)(1)(B)(ii) of this section shall not be controverted to affect the priority of the rights of the person to whom or for whom it is given, unless actual fraud by that person is proved.

(v) A person who provides a false affidavit under subdivision (b)(1)(B)(ii) of this section shall be responsible for any loss or damage suffered by a person whose rights are adversely affected.

(C) Notwithstanding subsection (a) of this section, in the event that construction commences before the recordation of the mortgage or other security instrument that provides a security interest for the purpose of funding construction or repair of the improvement, only the liens for providing labor, materials, or supplies before the recordation of the mortgage or other security instrument that provides a security interest shall have priority over the mortgage or other security instrument that provides a security interest.

/s/Warren