

CONSTRUCTION LIEN LAW IN ARKANSAS

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Overview – Right to a Lien

A lien allows a person to bring a claim against residential or commercial real estate if:

- (1) he or she has contributed to improvements built on the real estate and
- (2) has not received payment for the improvements.

Overview – Theory of Unjust Enrichment

- Prevents an individual from gaining a benefit without paying for it.

Overview – Theory of Unjust Enrichment

- Allows contractors to recover from landowners who have not paid even if the original contract between the contractor and landowner is invalid.

Overview – Theory of Unjust Enrichment

- The theory cannot be used by a subcontractor to recover from a landowner if the landowner has already paid the general contractor.

Subcontractor will have to:

(1) seek recovery from the General Contractor
or

(2) prove that the work that it performed for the Landowner was pursuant to a separate agreement between it and the Landowner.

Overview – Theory of Unjust Enrichment

- A contractor cannot use the theory against a landowner if the landowner did not know that the contractor was performing work on its land.
- Recovery based on unjust enrichment is limited to the value of the work performed, which is **not** necessarily the cost of the work or the amount to which the parties previously agreed.

Overview – Deadlines and Procedures Construed Strictly

- Each prescribed step for filing a lien must be followed in order for the lien to be perfected against the owner.
- Failure to perfect the lien in substantial compliance with the lien statute renders the lien unenforceable.

Steps to Perfect a Lien

Residential Projects

Residential Projects

Step 1

- Prior to the supplying of any material or fixtures, the contractor (or the potential lien claimant) must give the owner or authorized agent the required Pre-Construction Notice to Owner.

Attachment 1

Residential Projects

- Ark. Code Ann. § 18-44-115(a)(1) provides:

No lien may be acquired by virtue of this subchapter unless the owner or his or her authorized agent has received, by personal delivery or by certified mail, a copy of the notice set out in subsection (c) of this section.

[Attachment 2](#)

Residential Projects

- Ark. Code Ann. § 18-44-115(b)(1)(A) and (B) provide:

(A) It shall be the duty of the contractor to give the owner or his or her authorized agent the notice set out in subsection (c) of this section on behalf of all potential lien claimants under his or her contract prior to the supplying of any materials or fixtures.

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

Residential Projects

- Ark. Code Ann. § 18-44-115(b)(2) provides:

However, no lien may be claimed by any supplier of material or fixtures unless the owner or agent has received at least one (1) copy of the notice, which need not have been given by the particular lien claimant.

Residential Projects

Step 2

- At least 10 days before filing a lien, a written Notice of Intent to File a Lien must be given to the owner.

Residential Projects

Step 2

- This written notice must contain a description of the property, the identity of the lien claimant, the identity of the person who has failed to pay the lien claimant, and the total amount due.

Residential Projects

Step 2

- This notice must be given to the property owner by personal service or by any form of mail addressed to the person to be served with the mail, return receipt requested, restricted delivery, to addressee or agent of addressee.

Attachment 3

Residential Projects

- Recent case law has greatly increased concern over the notice requirements
- It is crucial that the notice is given before and materials are supplied
- Otherwise, there is no way to obtain a valid lien

Residential Projects

Step 3

- Within 120 days of the last date that labor was performed or materials were supplied, and after at least 10 days from furnishing Notice of Intent to File a Lien to owner (and contractor, if applicable), file the lien.

Residential Projects

Step 3

- A lien claimant must file a Verified Statement of Account and Claim of Lien with the circuit clerk of the county where the project is located.

Residential Projects

Step 3

- The Verified Statement of Account and Claim of Lien must be notarized and must contain:
 - Description of the property
 - Amount due
 - Identity of the property owner
 - Identity of the lien claimant

[Attachment 4](#)

Residential Projects

Step 3

- An Affidavit of Notice must be attached to the Verified Statement of Account and Claim of Lien

Residential Projects

Step 3

- The Affidavit of Notice must contain a statement under oath stating that the claimant complied with the notice provisions and a copy of each notice the claimant provided

Attachment 5

Residential Projects

Step 3

- The circuit clerk should refuse to file a Verified Statement of Account and Claim of Lien that does not contain the Affidavit of Notice and required attachments

Residential Projects

Step 4

- After filing the Verified Statement of Account and Claim of Lien, notice of the lien should be mailed to the owner of the property by registered mail.

[Attachment 6](#)

[Attachment 7](#)

Residential Projects

Step 4

- If the lien claimant has not been fully paid within twenty (20) days of the date of mailing of this notice, and then successfully brings suit to enforce the lien, the lien claimant may have his attorney's fees awarded by the court.

Steps to Perfect a Lien

Commercial Projects

Commercial Projects

- Ark. Code Ann. § 18-44-115(e)(1)(C) provides:
Because supplying the notice specified in subsection (c) of this section imposes a substantial burden on material suppliers, the notice requirement mandated under subsection (b) of this section as a condition precedent to the imposition of a material supplier's lien shall only apply to construction of or improvement to residential real estate containing four (4) or fewer units.

Commercial Projects

- Ark. Code Ann. § 18-44-107 provides:

As used in this subchapter:

(2) “Material supplier” means any person who supplies materials, goods, fixtures, or any other tangible item to the contractor or a subcontractor, or an individual having direct contractual privity with such persons;

(4) “Subcontractor” means any person who supplies labor or services pursuant to a contract with the contractor, or to a person in direct privity of contract with such person.

Commercial Projects

Step 1

- Within 75 days of the last date that labor was performed or materials were supplied to the project, a Notice to Owner and Contractor must be sent to the property owner and the general contractor.

Commercial Projects

Step 1

- The notice may be served by registered mail, return receipt requested.

Attachment 8

Commercial Projects

Step 1

- The Notice must duplicate statutory notice language.

Commercial Projects

Step 2

- At least 10 days before filing a lien, a written Notice to Intent to File a Lien must be given to the property owner.

Attachment 3

Commercial Projects

Step 2

- This written Notice must contain a description of the property, the identity of the lien claimant, the identity of the person who has filed to pay the lien claimant, and the total amount due.

Commercial Projects

Step 2

- This Notice must be given to the property owner by personal service or by any form of mail addressed to the person to be served with the mail, return receipt requested, restricted delivery, to addressee or agent of addressee.

Commercial Projects

Step 3

- After at least 10 days from furnishing the Notice of Intent to File a Lien, a lien claimant must file a Verified Statement of Account and Claim of Lien within 120 days of the last date that labor was performed.

Commercial Projects

Step 3

- This Verified Statement of Account and Claim of Lien must be notarized and
- Must contain a description of the property, the amount due, the identity of the property owner, and the identity of the lien claimant.

Commercial Projects

Step 3

- Copies of invoices or statements should be attached to the document as well
- This is the actual lien document

Attachment 4

Commercial Projects

Step 3

- An Affidavit of Notice must be attached to the Verified Statement of Account and Claim of Lien

Commercial Projects

Step 3

- The Affidavit of Notice must contain a statement under oath stating that the claimant complied with the notice provisions and a copy of each notice the claimant provided.

Attachment 5

Commercial Projects

Step 3

- The circuit clerk should refuse to file a Verified Statement of Account and Claim of Lien that does not contain the Affidavit of Notice and required attachments

Commercial Projects

Step 4

- Notice of the lien should be mailed to the owner of the property by registered mail.

[Attachment 6](#)

[Attachment 7](#)

Commercial Projects

Step 4

- If the lien claimant has not been fully paid within 20 days of the date of mailing of this notice and then successfully brings suit to enforce the lien, the lien claimant may have his attorney's fees awarded by the court.

Overview – Notice Requirements

- Residential Real Estate
 - A lien for construction of residential real estate may not be acquired unless the Pre-Construction Notice to Owner on Residential Project described in the statute is given to the owner prior to supplying **any** materials or supplies.

Overview – Notice Requirements

- Notice pursuant to § 18-44-115(a) is not required if (i) the contractor supplies a performance and a payment bond or (ii) the transaction is a direct sale to the property owner.

Overview – Notice Requirements

- Residential Real Estate
 - Note that § 18-44-115(d) only applies to direct sales of “materials”.

Overview – Notice Requirements

- Residential and Commercial:
 - All lien claimants must provide the property owner 10 days' notice before filing a Verified Statement of Account and Claim of Lien.
- Common law exception

Overview – Notice Requirements

- Churches, religious organizations, and charitable institutions - § 18-44-504
 - Claimants should adhere to the notice and timing requirements contained in the materialman lien statutes. § 18-44-101 et seq.

Overview – Filing Requirements

- Under a separate Arkansas statute, the Verified Statement of Account must also contain the name of the person authorized to release the lien

Overview – Affidavits and Certifications

- An affidavit must be filed along with the filing of the lien account.
- The making and filing of the affidavit are essential to the validity of a lien.

Private Works vs. Public Works

- Public property is not subject to a lien.
- Exception:
 - When a municipality leases real estate to a private company and that private company contracts for the construction of improvements, the leasehold may be subjected to a mechanics' lien.

State/Local Agency Jobs— Payment Bonds

- A contractor must furnish a payment bond equal in amount to the contract price on all public works contracts for \$20,000 or more.
- Protects only those that are in privity with the prime contractor.

Residential and Commercial Foreclosure

- An action to foreclose the lien must be brought within 15 months of filing a lien.

Property Subject to Lien

- The lien attaches not only to the improvement but also to the land on which it rests, up to one acre or to the extent of any number of acres upon which work has been done.
- When prior liens exist, the property subject to the lien may include only the improvement.

Property Subject to Lien

- Liens may be filed on any boat or vessel of any kind.
- A lien also can attach to a leasehold interest, but not to the underlying real property.

Parties Entitled to Protection

- Every Contractor, Subcontractor, or Material Supplier who supplies labor, services, material, fixtures, engines, boilers, or machinery for construction or repair is entitled to protection.

Parties Entitled to Protection

- Every architect, engineer, surveyor, appraiser, abstractor, title insurance agent, or person providing landscaping services or supplies who is under written contract with the owner's agent is entitled to protection.

Parties Entitled to Protection

Who does the law not cover?

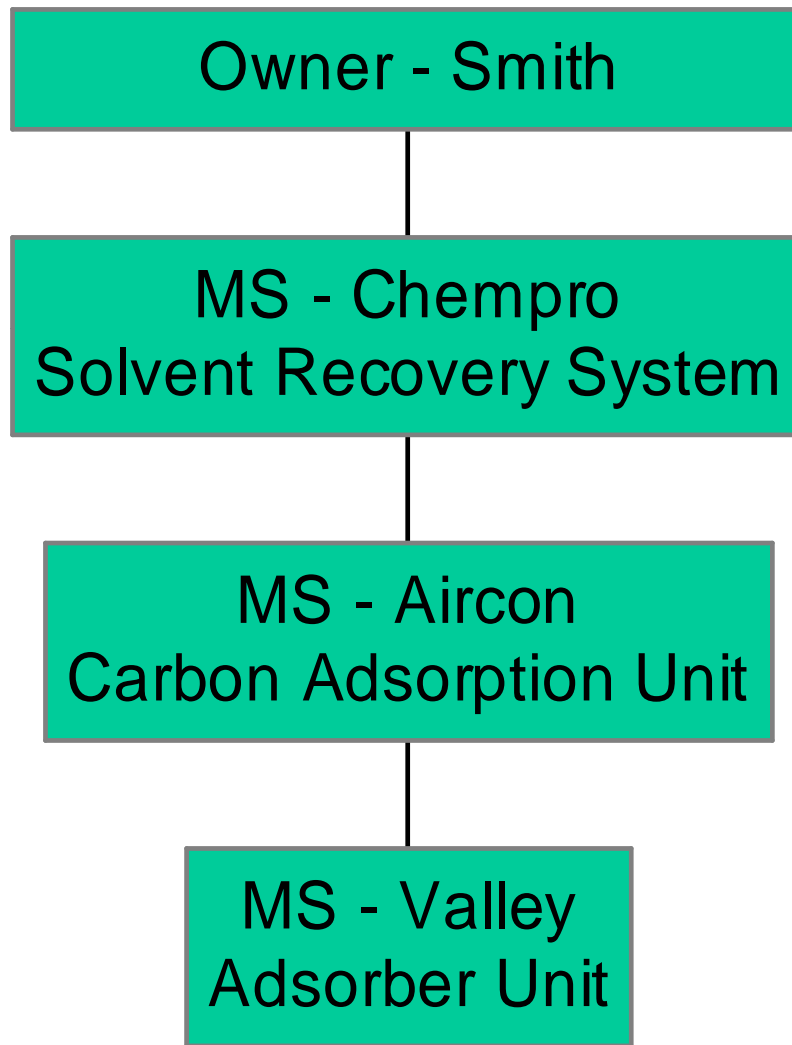
- does not specifically cover providers of equipment
- remote subcontractors and suppliers may not be protected

Parties Entitled to Protections

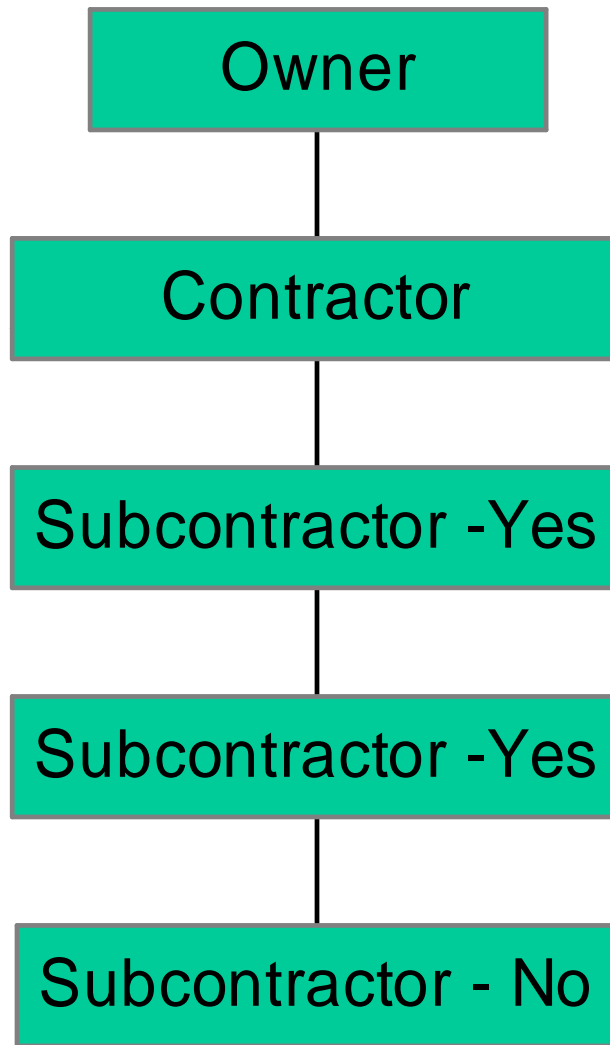
- Second-tier contractor is entitled to a lien.
- A third-tier subcontractor may not be entitled to a lien.

- Arkansas courts have held that a remote material supplier is not entitled to a lien. *Valley Metal Works, Inc. v. A.O. Smith-Inland, Inc.*, 264 Ark. 341, 572 S.W.2d 138 (1978). In other words, under prior law, with respect to materialmen, only a provider of materials to a contractor or subcontractor was entitled to a lien under Arkansas law.

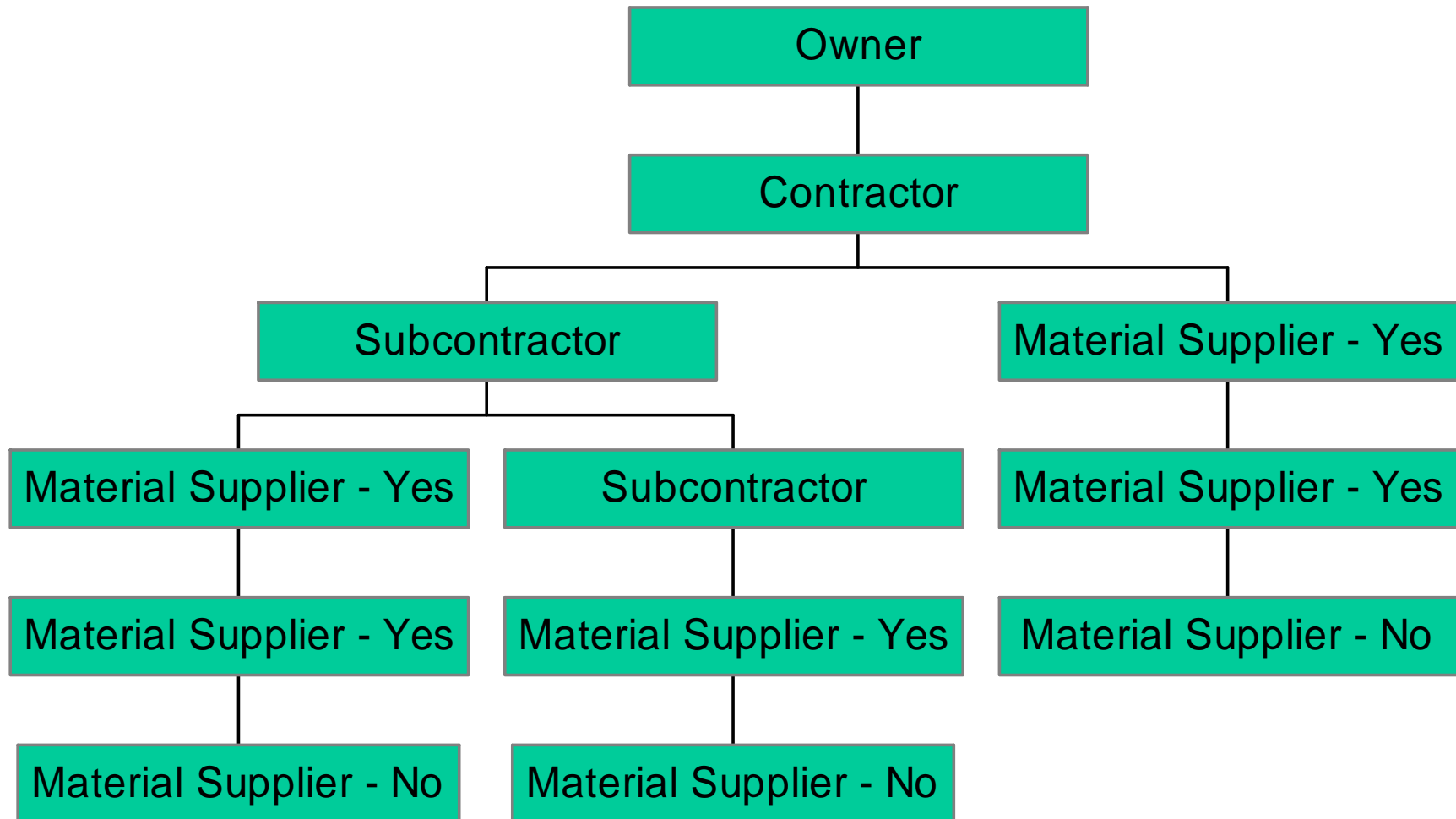
VALLEY METAL WORKS V. A.O SMITH-INLAND



Subcontractors Entitled To Lien



Material Suppliers Entitled to Lien



Amount Protected

- Arkansas allows for the collection of interest on the unpaid bill.
- The successful party in a lien suit is allowed reasonable attorney's fees.
- Lienor may collect the \$3 filing fee.

Owner's Defenses

Where a lien is filed by anyone other than the contractor, it is the contractor's duty to defend, at the contractor's expense, any lien enforcement actions.

Priorities

- All mechanic's and materialmen's liens, once perfected by filing, relate back to the date of commencement of work or repair to the improvement.
- All properly filed mechanic's and materialmen's liens are on equal footing.

Priorities

- If a sale of the property is ordered and the proceeds are insufficient to pay off all existing liens, then the proceeds are distributed on a pro rata basis on the respective liens without regard to the dates the liens were filed.

Priorities

- Mechanics' and materialmen's liens have priority over other encumbrances existing on the real estate prior to the commencement of construction or repair of the improvement except prior encumbrances for the funding of the construction or improvement.

Priorities

- If the priority dispute is between a materialman's lien and a subsequent mortgage, regardless of the type of mortgage, the materialman's lienholder takes priority.

Priorities

- If the priority dispute is between a materialman's lien and a prior construction money mortgage used to finance the improvement, the construction money mortgagee takes priority.

Priorities

- In Arkansas, courts apply the “commencement of the work” rule to determine when a mechanic’s lien attaches.

Civil or Criminal Penalties

- It is a criminal offense to file, or attempt to file, a lien on property if the purpose is other than a bona fide attempt to establish a lien.

Civil or Criminal Penalties

- Once the lienholder's claim has been satisfied, he is under a duty to enter the to file a Release of Lien.
- If not done within 10 days after payment made then the lienholder may be held liable for any injury and the cost of the suit that may result from his failure to update the county's record.

Attachment 9

Civil or Criminal Penalties

- It is illegal for a contractor or subcontractor to fail to discharge a lien once payment has been received.