Put the Arkansas Construction Lien Notice Statute Out of Its Misery

Carl J. Circo
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Associate Professor

When I arrived at the School of Law a few years ago, I had a revealing conversation with the first practicing lawyer to whom I mentioned my Construction Law class. "Well, then," said my new acquaintance, "you must be the fellow who can explain our mechanics' lien statutes." At that point, I had barely glanced at the Arkansas statutes governing construction liens, but I knew that I needed no special insights on Arkansas law to give the proper response: "I'm sure that I cannot make any sense of them at all."

What is it about construction lien statutes that begets internal inconsistency, ambiguity, logical gaps, and legislative flip-flops? To be sure, because statutory liens are in derogation of the common law, the courts may construe them narrowly and may require lien claimants to comply strictly with the letter of the law.¹ But more than that, in most states, including Arkansas, the construction lien statutes² are targets of constant lobbying by industry interests, and they are frequently amended in a piecemeal fashion over many years.³

This article examines one Arkansas statute that illustrates this frustrating phenomenon, and it offers a first draft of a revised statute that articulates what I perceive the legislature probably intended. I leave for another day three more important questions. First, did the legislature really mean what I think this statute tries to say? Second, if I am right about what the legislature meant, does the statute represent sound policy? Third, given that this statute is one among several that suffer the common affliction of construction lien statutes, what would it take to reconstitute the entire statutory scheme as a coherent body of law?

3. A review of the codified Arkansas construction lien statutes shows that the statutory scheme was adopted in several stages during more than a hundred-year period and that scattered sections have been the subject of well over a dozen legislative bills during that time.
ANALYZING A STATUTORY DISASTER

MEET THE ENEMY.

The Arkansas construction lien notice statute at issue is not inherently bad; it merely needs a patient editor. The fundamental legislative philosophy involved is to assure that a landowner receives fair notice of a potential construction lien right held by a claimant who does not have a direct relationship with the landowner. This is a common concern under construction lien statutes. The complication arises from the legislature’s poorly expressed distinctions between categories of potential lien claimants and landowners.

The statute was amended many times to add or refine distinctions and nuances. It seems that the various revisions were never edited in a coordinated manner for: (1) consistency (especially in the use of defined terms and undefined related concepts); (2) conceptual organization; or (3) logical completeness. As a result, we have a statute that conditions all construction lien claims on a notice that every contractor must give to every landowner, but that also provides a logically incomplete and analytically confusing alternative notice requirement for some potential lien claims against residential property.

Someone reading this statute for the first time will begin to feel confused at about the midway point in the statute. After careful (and probably repeated) review, the thoughtful reader might logically conclude that the legislature probably intended to impose one notice requirement on subcontractors and suppliers who might assert construction liens against commercial projects and an entirely distinct notice requirement for at least some liens against residential projects. While I cannot make complete sense out of the statute as written, the balance of this article illustrates how I might edit the statute to reflect an experienced construction lawyer’s sense of how to implement the probable legislative policy.

Take my word for it—you do not want to read this statute in its current form.

Here is the statute in its current form, although you may safely skip reading it and rely on the preceding overview for purposes of understanding my proposed solution:

5. The legislative note in the annotations shows that this statute was added in 1979 and changed five times since then.
Analyzing a statutory disaster

Meet the enemy.

The Arkansas construction lien notice statute at issue is not inherently bad; it merely needs a patient editor. The fundamental legislative philosophy involved is to assure that a landowner receives fair notice of a potential construction lien right held by a claimant who does not have a direct relationship with the landowner. This is a common concern under construction lien statutes. The complication arises from the legislature’s poorly expressed distinctions between categories of potential lien claimants and landowners.

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Take my word for it—you do not want to read this statute in its current form.

Here is the statute in its current form, although you may safely skip reading it and rely on the preceding overview for purposes of understanding my proposed solution:

§ 115. Notice to owner by contractor

(a)(1) 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.

(b)(1)(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.

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

(2) However, no lien may be claimed by any supplier of materials 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.

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

"IMPORTANT NOTICE TO OWNER

I UNDERSTAND THAT EACH PERSON SUPPLYING MATERIAL OR FIXTURES IS ENTITLED TO A LIEN AGAINST PROPERTY IF NOT PAID IN FULL FOR MATERIALS USED TO IMPROVE THE PROPERTY EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY MATERIALS OR LABOR NOT PAID FOR. I KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR TO FURNISH TO ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS UNDER THE CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF ALL MATERIALS FURNISHED FOR THE PROPERTY HAVE BEEN PAID FOR. I MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT LIEN WAIVERS BY ALL SUPPLIERS, STATING THAT THEY HAVE BEEN PAID IN FULL FOR SUPPLIES PROVIDED UNDER THE CONTRACT, BEFORE I PAY THE CONTRACTOR IN FULL. IF A SUPPLIER HAS NOT BEEN PAID, I MAY PAY THE SUPPLIER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

SIGNED: ____________________________

ADDRESS OF PROPERTY

DATE: ____________________________

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

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

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

(d)(3)(A) The General Assembly finds that owners and developers of commercial real estate are generally knowledgeable and sophisticated in construction law, are aware that unpaid suppliers of labor and materials are entitled to assert liens against the real estate if unpaid, and know how to protect themselves against the imposition of mechanics’ and material suppliers’ liens.

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

(C) 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 apply only to construction of or improvement to residential real estate containing four (4) or fewer units.

(2) No material supplier or laborer shall be entitled to a lien unless the material supplier or laborer notifies the owner of the commercial real estate being improved, in writing, that the material supplier or laborer is currently entitled to payment but has not been paid.

(B)(i) The notice shall be sent to the owner and to the contractor before seventy-five (75) days have elapsed from the time that the labor was supplied or the materials furnished.

(ii) The notice may be served by any:

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

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

(C) The notice shall contain the following information:

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

(ii) The name and address of the person furnishing the labor, service, or materials;

(iii) The name of the person who contracted for purchase of the labor, service, or materials;

(iv) A description of the job site sufficient for identification; and

(v) The following statement set out in boldface type:

“NOTICE TO PROPERTY OWNER

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

(3) Any contractor who fails to give the notice required by this subsection shall be guilty of a violation and upon conviction shall be punished by a fine not exceeding one thousand dollars ($1,000).
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Putting the statute in context

The definitions set out below are in a separate statutory section. You will need to refer to these definitions to understand my analysis of the construction lien notice statute. Pay particular attention to the differences between the terms “material supplier” and “subcontractor.”

As used in this subchapter:
(1) “Contractor” means any person who contracts orally or in writing directly with a person holding an interest in real estate, or such person’s agent, for the construction of any improvement to or repair of real estate;
(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;
(3) “Person” includes an individual, a partnership, a corporation, a limited liability organization, a trust, or any other business entity recognized by law; and
(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.

Reverse Outline Version

What follows in Table 1 is an annotated outline of the current version of the statute, which I created in two editing stages. I call this a reverse outline because it is not an outline created as a direct aid for revising the statute as much as it is a device intended to reduce the actual, problematic statute to a more manageable summary. In other words, this outline is a tool to diagnose the problem, not a roadmap to find the solution. The first stage in the reverse outlining process was to add comments and questions that solicit ideas for editing solutions. Those comments and questions appear in the balloons in the right-hand margin of Table 1. The second stage was to reduce the full statutory version to outline form. The purpose of this second stage was to restate the current statute, with all its fundamental defects, in a shorthand way that makes it easier to understand the essential problems and issues. Although the outline in Table 1 anticipates some purely stylistic changes that will emerge more fully in the revised statute, Table 1 is mainly concerned with identifying organizational, logical, and analytical problems (matters of substance rather than style). Table 1 includes the full text of the notices the statute requires because the complete language that the statute specifies for the notices is integrally related to the legislative drafting problem.

Table 1

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**IMPORTANT NOTICE TO OWNER**
I understand that each person supplying material or fixtures is entitled to a lien against property if not paid in full for materials used to improve the property even though the full contract price may have been paid to the contractor. I realize that this lien can be enforced by the sale of the property if necessary. I am also aware that payment may be withheld to the contractor in the amount of the cost of any materials or labor not paid for, I know that it is advisable to, and I may, require the contractor to furnish to me a true and correct full list of all suppliers under the contract, and I may check with them to determine if all suppliers furnished for the property have been paid for. I may also require the contractor to present lien waivers by all suppliers. Stating that they have been paid in full. I will forward the notices to the owner. I may pay the supplier and contractor with a check made payable to them jointly.

SIGNED: __________

ADDRESS OF PROPERTY

DATE: __________

I hereby certify that the signature above is that of the owner or agent of the owner of the property at the address set out above.
The definitions set out below are in a separate statutory section. You will need to refer to these definitions to understand my analysis of the construction lien notice statute. Pay particular attention to the differences between the terms "material supplier" and "subcontractor."

As used in this subchapter:

(1) "Contractor" means any person who contracts orally or in writing directly with a person holding an interest in real estate, or such person's agent, for the construction of any improvement to or repair of real estate;

(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 person;

(3) "Person" includes an individual, a partnership, a corporation, a limited liability organization, a trust, or any other business entity recognized by law; and

(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.

What follows in Table 1 is an annotated outline of the current version of the statute, which I created in two editing stages. I call this a reverse outline because it is not an outline created as a direct aid for revising the statute as much as it is a device intended to reduce the actual, problematic statute to a more manageable summary. In other words, this outline is a tool to diagnose the problem, not a roadmap to find the solution. The first stage in the reverse outlining process was to add comments and questions that solicit ideas for editing solutions. Those comments and questions appear in the balloons in the right-hand margin of Table 1. The second stage was to reduce the full statutory version to outline form. The purpose of the second stage was to restate the current statute, with all its fundamental defects, in a shorthand way that makes it easier to understand the essential problems and issues. Although the outline in Table 1 anticipates some purely stylistic changes that will emerge more fully in the revised statute, Table 1 is mainly concerned with identifying organizational, logical, and analytical problems (matters of substance rather than style). Table 1 includes the full text of the notices the statute requires because the complete language that the statute specifies for the notices is integrally related to the legislative drafting problem.

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<td>(c) Any potential lien claimant may also give notice.</td>
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<td>(d) No supplier may claim a lien unless the owner has received a subsection (c) notice from the contractor.</td>
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<td>(e) The notice may be in the contract and must be conspicuous and worded exactly as follows:</td>
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<td>Ian R. Toppan, 2008</td>
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**Important Notice to Owner**

I understand that each person supplying material or fixtures is entitled to a lien against property if not paid in full for materials used to improve the property even though the full contract price may have been paid to the contractor. I realize that this lien can be enforced by the sale of the property if necessary. I am also aware that payment may be withheld to the contractor in the amount of the cost of any materials or labor not paid for. I know that it is advisable to, and I may, require the contractor to furnish to me a true and correct full list of all suppliers under the contract, and I may check with them to determine if all materials furnished for the property have been paid for. I may also require the contractor to present lien waivers by all suppliers stating that they have been paid in full for supplies provided under the contract. Before I pay the contractor in full, if a supplier has not been paid, I may pay the supplier and contractor with a check made payable to them jointly.

Signature:____________________

Date:______________________

Address of Property

I hereby certify that the signature above is that of the owner or agent of the owner of the property at the address set out above.

(6)(1) The subsection (c) notice is not required if the contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner.

(2) Direct sale means that the owner ordered the materials from the lien claimant.

(6)(1)(A) Legislative finding: owners of commercial real estate generally know how to protect against lien claims by suppliers of labor and materials.

(6)(6) Residential owners do not know about construction lien risks.

(C) Because giving the subsection (c) notice substantially burdens material suppliers, that notice is a condition precedent to a material supplier’s lien only for residential projects.

Comment (2)(A): The owner’s signature is not required in some instances, yet the notice must obviously refer to exactly this point, which seems to be a misstatement or an error.

Comment (2)(B): The subsection (c) notice is actually called the subsection (a) notice on this print to the system. That’s an unusual inconsistency even though the only notice encumbered in subsection (a) is the subsection (c) notice.

Comment (2)(C): That’s right—now we keep suppliers and subcontractors together (even) sub-subcontractors and suppliers of labor?. Inventive drafting rather than thoughtful public policy certainly created this confusing inconsistency.

Comment (2)(D): For the first time, we learn that the notice that subsection (a) establishes as an unqualified condition precedent to every lien claim is not a condition precedent to some lien claims. If you are not present at one zero percent, you are not going anywhere. So how should you handle this excessive notice? If you don’t want your suppliers to have liens against your property, you must provide the notice to the suppliers. It seems that subcontractors must give the subsection (a) notice for commercial projects as well as residential ones. But under the very next subsection, 15-27-104(k), every lienee gives that one individual notice only to all subcontractors who supply labor? Does that mean you have to provide that subsection (a) notice to every subcontractor under every contract with a subcontractor? Perhaps, but it is not clear what the purpose of that subsection (a) notice is. Does it give the subcontractor a notice for commercial projects while subcontractors must give a subsection (a) notice for all projects?

Comment (2)(E): Does this mean that the ten (10) days from the lien labor or materials were last furnished or last transported are the lien labor or materials were last furnished or last transported? Does this three-day period apply equally to each supplier and subcontractor?

Comment (2)(F): The lien date is to be determined either from the notice to the owner or the notice to the property owner. If the notice to the owner or the notice to the property owner is not given, then the lien date is the date of actual knowledge or inquiry.

Comment (2)(G): The actual language in the statute at this point, including the notice requirements in this notice, refers to labor, services, or materials. This seems to confirm that the legislators did not mean to treat suppliers differently from subcontractors.

Comment (2)(H): Including services along with labor and materials in the required language strongly suggests that the notice subsection (a) notice should apply to subcontractors and not only to suppliers and individual workers.

Comment (2)(I): The subsection must be amended. Only subcontractors and suppliers give the subsection (a) notice. Contractors have no obligation to give the subcontractors the subsection (a) notice. That is simply poor organization.
Table 1 (Continued)

(6) The subcontractor is not required to give the notice unless the notice is given to the contractor or the owner. If the notice is given to the contractor, the subcontractor is not required to give a notice to the owner unless the subcontractor is a direct contractor. If the notice is given to the owner, the subcontractor is not required to give a notice to the contractor unless the subcontractor is a direct contractor.

(7) A subcontractor may be held liable for failure to give the notice in subsection (6) if the subcontractor knew or had reason to know that the notice was required to be given and failed to give the notice.

(8) The notice must be in writing and must contain the following information:

(1) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(2) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(3) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(4) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(5) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

Comment (4)(a)(i): The notice must be given in writing and must contain the following information:

(1) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(2) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(3) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(4) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(5) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

Comment (4)(b)(i): The notice must be given in writing and must contain the following information:

(1) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(2) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

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(4) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

(5) A statement that the subcontractor is required to give the notice under subsection (6) of this section.

*NOTICE TO PROPERTY OWNER*

If bills for labor, services, or materials used to construct an improvement to real estate are not paid in full, a construction lien may be placed against the property. This could result in the loss, through foreclosure proceedings, of all or part of your real estate being improved. This may occur even though you have paid your contractor in full. You may wish to protect yourself against this consequence by paying the above named provider of labor, services, or materials directly, or making your check payable to the above named provider and contractor jointly.

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

With Table 1 as a summary and critique of the current version of the statute, I am ready to turn to another alternative outlining process in Table 2. This is a kind of nonlinear outline in the sense that it summarizes the substance of the revision to be proposed but not its organization.7 The purpose of Table 2 is to put all the distinct concepts and related terms on paper in shorthand form without any preconceived ideas about how to present them in statutory form. Let the essential ideas of the current (confusing) statute give birth to an improved organization. Table 2 uses one column for each of the major ideas that appear in the current version of the statute and adds supporting and subordinate ideas to the same column.

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| **Subsection e notice (Commercial projects)** |
| Sub or supplier may not claim a lien unless it gives a notice within 75 days after labor or material supplied. |
| Misc. forms and procedures for subs. e notice. |

Creating the new outline

With the benefit of this exercise, I note a surprisingly simple and manifestly logical outline for the edited version:

I. Legislative findings

A. Commercial owners know how to protect against construction lien claims by suppliers and subcontractors. They do not need notice before construction begins, but should receive notice from potential lien claimants soon afterward. [You might wonder, however, why these sophisticated owners need any notice at all about a risk they already understand, but my purpose here is to work with what I perceive to be the legislative intent, not to change it.]

B. Residential owners do not know how to protect against construction liens by suppliers and subcontractors. For their protection, the law must require a warning before any lienable activity begins.

II. Subcontractor and supplier liens against residential projects conditioned on advance notice.

III. Subcontractor and supplier liens against commercial projects conditioned on timely notice after lienable activity occurs.

A first draft of a proposed revision

I call this revision a first draft because it primarily addresses organization, consistency, and substantive coherence. It could benefit from further stylistic editing. Furthermore, my final edit would also make conforming changes to the existing statutory definitions, and it would add definitions for at least the following terms: residential project; commercial project; owner; and owner's authorized agent. It might also craft a defined term to refer to lienable items and activities.

I have left my revision at this incomplete stage because I am not prepared to suggest that I can truly know what the legislature intended, nor I am convinced that what I perceive to be the legislative policy is the policy I would want to promote if I were proposing a model statute for this subject matter. In particular, this draft incorporates several policy assumptions that may or may not accurately reflect the true legislative intent that the statute so effectively obfuscates in its current form. In addition, this draft makes no attempt to resolve competing policies that one interest group or another might wish to raise. This first draft may or may not express all that the legislature intended, but the reader should be able to understand the edited version, apply its requirements to common circumstances, and lobby the legislature for further changes to serve his or her bias. My purpose here is not to propose the substance of an optimal notice statute, but to restate what I think the current statute says in a more intelligible form that might invite a substantive reconsideration.
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Table 2

Creating the new outline

With the benefit of this exercise, I note a surprisingly simple and manifestly logical outline for the edited version:

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A. Commercial owners know how to protect against construction lien claims by suppliers and subcontractors. They do not need notice before construction begins, but should receive notice from potential lien claimants soon afterward. [You might wonder, however, why these sophisticated owners need any notice at all about a risk they already understand, but my purpose here is to work with what I perceive to be the legislative intent, not to change it.] B. Residential owners do not know how to protect against construction liens by suppliers and subcontractors. For their protection, the law must require a warning before any lienable activity begins.

II. Subcontractor and supplier liens against residential projects conditioned on advance notice.

III. Subcontractor and supplier liens against commercial projects conditioned on timely notice after lienable activity occurs.

A first draft of a proposed revision

I call this revision a first draft because it primarily addresses organization, consistency, and substantive coherence. It could benefit from further stylistic editing. Furthermore, my final edit would also make confirming changes to the existing statutory definitions, and it would add definitions for at least the following terms: residential project; commercial project; owner; and owner's authorized agent. It might also craft a defined term to refer to lienable items and activities.

I have left my revision at this incomplete stage because I am not prepared to suggest that I can truly know what the legislature intended, nor I am convinced that what I perceive to be the legislative policy is the policy I would want to promote if I were proposing a model statute for this subject matter. In particular, this draft incorporates several policy assumptions that may or may not accurately reflect the true legislative intent that the statute so effectively obfuscates in its current form. In addition, this draft makes no attempt to resolve competing policies that one interest group or another might wish to raise. This first draft may or may not express all that the legislature intended, but the reader should be able to understand the edited version, apply its requirements to common circumstances, and lobby the legislature for further changes to serve his or her bias. My purpose here is not to propose the substance of an optimal notice statute, but to restate what I think the current statute says in a more intelligible form that might invite a substantive reconsideration.

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7. I have adapted the idea of a nonlinear outline from a popular book on legal writing. See Bryan A. Garner, Legal Writing in Plain English 5-9 (2001).
§ 115 Special Notice Conditions to Construction Lien Rights of Material Suppliers and Subcontractors

(a) Legislative findings

(1) The General Assembly finds that owners and developers of commercial real estate generally understand construction law, know that unpaid material suppliers and subcontractors may assert liens against the real estate, and know how to protect themselves against lien claims.

(2) The General Assembly further finds that consumers who construct or improve residential real estate containing four (4) or fewer units generally do not have the same level of knowledge of construction law, and they need advance notice of certain risks involved and their related rights and responsibilities.

(b) Residential projects; notice required before any labor, services, materials, goods, fixtures, or any other tangible item supplied

(1) No contractor, subcontractor, or material supplier may claim a lien against a residential project under this subsection unless the owner or the owner's authorized agent has received, by personal delivery or by certified mail, a copy of the notice required under this subsection.

(2) The contractor must give the notice to the owner or the owner's authorized agent on behalf of all material suppliers and subcontractors under the contractor's contract. Any contractor who fails to give the notice required by this subsection is guilty of a violation and upon conviction may be punished by a fine not exceeding one thousand dollars ($1,000).

(3) Any potential lien claimant may also give the notice, but notice by a potential lien claimant other than the contractor will not relieve the contractor of liability for failing to give the notice, nor will it entitle the contractor to claim a lien under this subchapter.

(4) A notice properly given by the contractor or by any material supplier or subcontractor satisfies the notice requirement on behalf of all material suppliers and subcontractors under the contractor's contract.

(5) The notice must be given to the owner or the owner's authorized agent before any material supplier or subcontractor furnishes any labor, services, materials, goods, fixtures, or any other tangible item for the residential project.

(6) The contract between the contractor and the owner or the owner's authorized agent may incorporate the notice.

(7) The notice must be conspicuous, must appear in all capital letters, and must be worded as follows:

"IMPORTANT NOTICE TO OWNER
I UNDERSTAND THAT EACH PERSON SUPPLYING LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, OR ANY OTHER TANGIBLE ITEM TO IMPROVE THE PROPERTY MAY OBTAIN A LIEN AGAINST THE PROPERTY IF NOT PAID IN FULL EVEN THOUGH I MAY HAVE PAID THE FULL CONTRACT PRICE TO THE CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT I MAY WITHHOLD PAYMENT TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, OR ANY OTHER TANGIBLE ITEM FOR WHICH THE CONTRACTOR HAS NOT PAID. I KNOW THAT IT IS ADVISABLE TO REQUEST, AND I MAY REQUIRE THE CONTRACTOR TO FURNISH TO ME, A LIST OF ALL SUBCONTRACTORS AND MATERIAL SUPPLIERS UNDER THE CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF THE CONTRACTOR HAS PAID FOR ALL LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, AND ANY OTHER TANGIBLE ITEM FURNISHED FOR THE PROPERTY. BEFORE I PAY THE CONTRACTOR IN FULL, I"

ARKANSAS CONSTRUCTION LIEN NOTICE STATUTE

MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT TO ME LIEN WAIVERS BY ALL SUBCONTRACTORS AND MATERIAL SUPPLIERS, STATING THAT THEY HAVE BEEN PAID IN FULL. IF A SUBCONTRACTOR OR MATERIAL SUPPLIER HAS NOT BEEN PAID, I MAY PAY THE SUBCONTRACTOR OR MATERIAL SUPPLIER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

DATE: ____________________

ADDRESS OF PROPERTY:

(8) Unless the notice is delivered by certified mail, the notice must also include the signature of the owner or the owner's authorized agent and the following certification by the contractor:

"I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER OR AUTHORIZED AGENT OF THE OWNER OF THE PROPERTY AT THE ADDRESS SHOWN.

CONTRACTOR"

(9) If the contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner, no notice under this subsection is required. A direct sale is a sale of labor, services, materials, goods, fixtures, or any other tangible item that the owner or the owner's authorized agent (other than the contractor) orders from the lien claimant.

(c) Commercial projects; notice required within 75 days after activity commences

(1) No subcontractor or material supplier may claim a lien against a commercial project under this subsection unless the subcontractor or material supplier gives the notice required under this subsection.

(2) The subcontractor or material supplier must provide the notice to the owner and to the contractor before seventy-five (75) days have elapsed from the time that the subcontractor or material supplier first provided labor, services, materials, goods, fixtures, or any other tangible item provided for under the contract between the owner and the contractor.

(3) The notice may be served by any:

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

(b) Person of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee.

(4) The notice must include the following information:

(i) A general description of the labor, services, materials, goods, fixtures, or any other tangible items furnished, and the amount due and unpaid;

(ii) The name and address of the person furnishing the labor, services, materials, goods, fixtures, or other tangible items;

(iii) The name of the person who contracted for purchase of the labor, services, materials, goods, fixtures, or other tangible items;

(iv) A description of the job site sufficient for identification; and

(v) The following statement set out in all capital letters:

"NOTICE TO PROPERTY OWNER
IF BILLS FOR LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, OR ANY OTHER TANGIBLE ITEM USED TO CONSTRUCT AN IMPROVEMENT TO REAL ESTATE ARE NOT
§ 15 Special Notice Conditions to Construction Lien Rights of Material Suppliers and Subcontractors

(a) Legislative findings

(1) The General Assembly finds that owners and developers of commercial real estate generally understand construction law, that unpaid material suppliers and subcontractors may assert liens against the real estate, and know how to protect themselves against lien claims.

(2) The General Assembly further finds that consumers who construct or improve residential real estate containing four (4) or fewer units generally do not share the same level of knowledge of construction law, and they need advance notice of certain risks involved and their related rights and responsibilities.

(b) Residential projects; notice required before any labor, services, materials, goods, fixtures, or any other tangible item supplied

(1) No contractor, subcontractor, or material supplier may claim a lien against a residential project under this subsection unless the owner or the owner's authorized agent has received, by personal delivery or by certified mail, a copy of the notice required under this subsection.

(2) The contractor must give the notice to the owner or the owner's authorized agent on behalf of all material suppliers and subcontractors under the contractor's contract. Any contractor who fails to give the notice required by this subsection is guilty of a violation and may be punished by a fine not exceeding one thousand dollars ($1,000).

(3) Any potential lien claimant may also give the notice, but notice by a potential lien claimant other than the contractor will not relieve the contractor of liability for failing to give the notice, nor will it entitle the contractor to claim a lien under this subsection.

(4) A notice properly given by the contractor or by any other material supplier or subcontractor satisfies the notice requirement on behalf of all material suppliers and subcontractors under the contractor's contract.

(5) The notice must be given to the owner or the owner's authorized agent before any material supplier or subcontractor furnishes any labor, services, materials, goods, fixtures, or any other tangible item for the residential project.

(6) The contract between the contractor and the owner or the owner's authorized agent may incorporate the notice.

(7) The notice must be conspicuous, must appear in all capital letters, and must be worded as follows:

"IMPORTANT NOTICE TO OWNER

I UNDERSTAND THAT EACH PERSON SUPPLYING LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, OR ANY OTHER TANGIBLE ITEM TO IMPROVE THE PROPERTY MAY OBTAIN A LIEN AGAINST THE PROPERTY IF NOT PAID IN FULL EVEN THOUGH I MAY HAVE PAID THE FULL CONTRACT PRICE TO THE CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT I MAY HOLD WITHHOLD PAYMENT TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, OR ANY OTHER TANGIBLE ITEM FOR WHICH THE CONTRACTOR HAS NOT PAID. I KNOW THAT IT IS ADVISABLE TO REQUEST, AND I MAY REQUIRE THE CONTRACTOR TO FURNISH TO ME A LIST OF ALL SUBCONTRACTORS AND MATERIAL SUPPLIERS UNDER THE CONTRACT AND I MAY CHECK WITH THEM TO DETERMINE IF THE CONTRACTOR HAS PAID FOR ALL LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, AND ANY OTHER TANGIBLE ITEM FURNISHED FOR THE PROPERTY. BEFORE I PAY THE CONTRACTOR IN FULL,"

(c) Commercial projects; notice required within 75 days after activity commences

(1) No subcontractor or material supplier may claim a lien against a commercial project under this subsection unless the subcontractor or material supplier gives the notice required under this subsection.

(2) The subcontractor or material supplier must provide the notice to the owner and to the contractor before seventy-five (75) days have elapsed from the time that the subcontractor or material supplier first provided labor, services, materials, goods, fixtures, or any other tangible item provided for under the contract between the contractor and the owner.

(3) The notice may be served by any:

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

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

(4) The notice must include the following information:

(i) A general description of the labor, services, materials, goods, fixtures, or other tangible items furnished, and the amount due and unpaid;

(ii) The name and address of the person furnishing the labor, services, materials, goods, fixtures, or other tangible items;

(iii) The name of the person who contracted for purchase of the labor, services, materials, goods, fixtures, or other tangible items;

(iv) A description of the job site sufficient for identification; and

(v) The following statement set out in all capital letters:

"NOTICE TO PROPERTY OWNER

IF BILLS FOR LABOR, SERVICES, MATERIALS, GOODS, FIXTURES, OR ANY OTHER TANGIBLE ITEM USED TO CONSTRUCT AN IMPROVEMENT TO REAL ESTATE ARE NOT

ADDRESS OF PROPERTY:

DATE: ____________________

"I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER OR AUTHORIZED AGENT OF THE OWNER OF THE PROPERTY AT THE ADDRESS SHOWN.

CONTRACTOR"

ARKANSAS CONSTRUCTION LIEN NOTICE STATUTE

MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT TO ME LIEN WAIVERS BY ALL SUBCONTRACTORS AND MATERIAL SUPPLIERS, STATING THAT THEY HAVE BEEN PAID IN FULL. IF A SUBCONTRACTOR OR MATERIAL SUPPLIER HAS NOT BEEN PAID, I MAY PAY THE SUBCONTRACTOR OR MATERIAL SUPPLIER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

("\) Unless the notice is delivered by certified mail, the notice must also include the signature of the owner or the owner's authorized agent and the following certification by the contractor:

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Final Caution

For reasons already stated, the revised statute is not offered as a model or a final proposal for correcting the defects in the current statute. Additionally, because the current statute raises so many questions for interpretation, the revised version may not even correctly reflect the true legislative intent. Lawyers should certainly not view the revised version as a guide for understanding the statute. The careful lawyer representing a lien claimant must struggle to understand the actual words the legislature chose and must attempt to comply with every inconsistency and ambiguity. The lawyer representing a party opposed to a lien filing should consider each of those inconsistencies and ambiguities as suggesting a possible defensive tactic. Moreover, not even the ideal revision to this statute could overcome the problems attributable to the fractionated legislative history of the construction lien statutes. That task must await a suitably ambitious legislative study committee.

Post Divorce Fighting – Can It Be Predicted?
Divorce and Children at Risk

Few psychologists or psychiatrists would question the fact that many children of divorce suffer the effects of the loss of a parent. In the 2003 Law Notes, I wrote on this topic in more detail. The first four pages here are just a summary of that discussion. Anything society can do to reduce the stresses of divorce should be undertaken. This article discusses research I have done suggesting two factors that can be found in the divorce file that predict over seventy percent of the parents who are going to fight after the divorce. The beauty of these two factors is that they can be found in the file within the first thirty days. We have in this state Section 9-12-322 where the judge can order parents into mediation or parenting classes. It is submitted here that this is all too late.

The lack of financial resources of the single parent creates its own problems. It may cause the disruptions that result from moving from home, changing schools, and changing friends. Even if home and school do not change, lack of financial resources can be stressful in itself. The custodial parent may have been at home with the children prior to the divorce. With the divorce, that parent will have to join the work force or get an education in preparation of working. In many states alimony is no longer available in most cases. Add to this mix the fact that both parents are not at their best as parents during the divorce. Children can feel abandoned. This short-term suffering can be seen in the worry, anger, guilt, lack of self esteem and loneliness often evidenced by the children within the first eighteen months after a divorce. Boys between the ages of six to twelve often seem to be the most affected. Girls in this age group seem to get back to normal more quickly. While going through this process, children can be inattentive and disruptive at school, filled with angry outbursts,

1. Judith S. Wallerstein & Joan B. Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce 48-51 (1980). This is one of the earliest and perhaps the most well known of the longitudinal studies examining the impact of divorce on children. It began in 1971. Her most recent discussion of this sample that she has followed for 25 years is in Judith Wallerstein, Julia Lewis & Sandy Blakeslee, The Unexpected Legacy of Divorce: A 25 Year Land-

2. Id. at 48.

3. Id. at 165.