STATE OF ARANKSAS
CONSTRUCTION LAW
COMPENDIUM

Prepared by
Timothy W. Grooms
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street
Suite 1900
Little Rock, AR 72201
(501) 379-1700
www.qgtb.com
This outline is intended to provide a general overview of construction law in Arkansas. The discussion on any particular topic is not necessarily an indication of the total law related to an area of Arkansas’s construction law. Most construction disputes are governed by contract law.

I. BREACH OF CONTRACT

The construction of any structure, residential or commercial, generally involves a detailed written contract. Arkansas has a five year statute of limitation for any cause of action based on a written contract, duty or right. Ark. Code Ann. § 16-56-111. In addition, Ark. Code Ann. § 16-56-112 concerns the limitation period for bringing an action arising from the deficiency in the design, planning, supervision, or observation of construction or the construction and repair of any improvement to real property or for injury to real or personal property caused by such deficiency. The statute provides that the limitation period shall commence upon substantial completion of an improvement. Accordingly, actions based on a contract to recover damages must be brought within five years after the date of substantial completion. Ark. Code Ann. § 16-5-112(a). However, the statute specifically states that "[n]othing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any cause of action, nor shall the parties to any contract for construction extend the above prescribed limitations by agreement or otherwise." Ark. Code Ann. § 16-56-112(f). The courts have construed this statute as a statute of repose. Curry v. Thornsberry, 354 Ark. 631, 638 (2003). Therefore, under Ark. Code Ann. § 16-56-112(a) there is a maximum five-year period within which an injured party can bring suit against a person who deficiently constructs or repairs an improvement to real property, which period commences after substantial completion of the improvement, but, in bringing such a suit, the injured party must still bring the action within the statute of limitations for that type of cause of action. East Poinsett County School Dist. No. 14 v. Union Std. Ins. Co., 304 Ark 32, 34 (1990). See section VII, Statutes of Repose/Statutes of Limitation, infra. “The remedies for breach of a construction contract depend upon who is the breaching party and when the breach occurs in relation to the construction.” Brill, Ark. Law of Damages (5th ed.), § 17-3. If the contractor is in breach, the owner may be entitled to rescission and restitution for any payments made on the contract. Id.; see also Economy Swimming Pool Co. v. Freeling, 236 Ark. 888, 370 S.W.2d 438 (Ark. 1963). When a purchaser is in breach, and has prevented a builder from completing the project, the builder has two options; sue on the contract or seek recovery on a theory of quantum meruit. Brill, Ark. Law of Damages (5th ed.), § 17-3. If he or she chooses to sue on the contract, the recovery is the contract price less the amount saved by not completing the project. Id. A contract for residential construction which includes an express warranty detailing standards of workmanship will exclude any implied warranty on that subject. Id.; Carter v. Quick, 263 Ark. 202, 563 S.W.2d 461 (Ark. 1978).

II. NEGLIGENCE

An action for negligence in construction may arise due to a deficiency in design, planning, or supervision of a construction project. A cause of action may allege negligent supervision, negligent hiring, or negligent construction. Daniels v. Quick, 270 Ark. 528, 606 S.W.2d 81 (Ark. App. 1980). There is a four (4) year statute of limitation on filing any such action involving personal injury or wrongful death. Ark. Code Ann. § 16-5-112(b). With regard
to general tort liability, Arkansas courts have held that the foreseeability and negligence rules applicable in products liability cases should be controlling in an owner-contractor situation, with considerations such as owner inspection and acceptance, the time between construction and injury and other intervening factors considered in evaluating the question of negligence. *Suneson v. Holloway Const. Co.*, 992 S. W. 2d 79 (1999). Professional malpractice liability for design and construction professionals is not addressed directly in the Arkansas Statutes, but rather arises under general negligence and intentional tort theories.


### III. BREACH OF WARRANTY

In construction cases, plaintiffs typically assert causes of action for breach of warranty. The breach of warranty can be based on an express warranty contained in the contract between the plaintiff and the general contractor, and/or warranties implied by law.

Arkansas first recognized an implied warranty in contract between a builder-vendor of a new house, and the first purchaser, in 1970. *Warak v. Stewart*, 247 Ark. 1093, 449 S.W.2d 922 (Ark. 1970). The court later extended the implied warranty in favor of subsequent purchasers for a reasonable length of time, where there is no substantial change in the condition of the building from the original sale. *Blagg v. Fred Hunt Co., Inc.*, 272 Ark. 185, 612 S.W.2d 321 (Ark. 1981). However, the law limits this implied warranty "to latent defects which are not discoverable by subsequent purchasers upon reasonable inspection and which become manifest only after the purchase." *Blagg*, 272 Ark. at 187, 612 S.W.2d at 322. Further, Arkansas courts have held that the implied warranty of fitness applies when a contractor uses plans furnished by the purchaser to construct a dwelling and when the contractor uses his or her own plans to construct a dwelling then offered for sale to the general public. *Daniel v. Quick*, 270 Ark. 528, 606 S.W.2d 81 (Ark. App. 1980).

The Arkansas Supreme Court has adopted the view that by operation of law, a builder-vendor gives implied warranties of habitability, sound workmanship, and proper construction. *Bullington v. Palangio*, 435 Ark. 320, 45 S.W.3d 834 (Ark. 2001). The implied warranty does not rest upon an agreement, but arises by operation of law and is intended to hold the builder-vendor to a standard of fairness. *Id.* at 328, 45 S.W.3d at 839 (citing *O’Mara v. Dykema*, 328 Ark. 310, 942 S.W.2d 854 (Ark. 1997)). However, implied warranties may be excluded when
the circumstances surrounding the transaction are in themselves sufficient to call the buyer’s attention to the fact that no implied warranties are made or that a certain implied warranty is excluded. Id.; see Carter v. Quick, 263 Ark. 202, 563 S.W.2d 461 (Ark. 1978).

In Carter v. Quick, 263 Ark. 202, 563 S.W.2d 461 (Ark. 1978), the Arkansas Supreme Court stated that "[a]lthough we have no cases involving the effect of an express warranty upon an implied warranty in building contracts, we conclude that implied warranties are not applicable when there is an express warranty . . .[on the subject of an asserted implied warranty]." Carter, 263 Ark. at 205-206, 563 S.W.2d at 463. However, the Arkansas Supreme Court later revisited Carter v. Quick in its opinion in Wingfield v. Page, 278 Ark. 276, 644 S.W.2d 940 (Ark. 1983). In Wingfield the court, noting the above-stated rule of Carter, stated that "[a]ssuming the implied warranty of habitability could be properly disclaimed, issues of the disclaimer's conspicuousness, detail, and reasonableness would merit our consideration. This area of our common law troubles us and we will welcome the opportunity to reexamine it. However, the issue is not now before us." Wingfield, 278 Ark. at 281-282, 644 S.W.2d at 944. Given the language in Wingfield v. Page, there may be risk involved in relying on the rule of Carter v. Quick.

Arkansas law also recognizes a warranty by the owner of property that plans and specifications supplied by the owner to the contractor are suitable and adequate for the purpose for which they were tendered. Texarkana Housing Authority v. Johnson Const., 264 Ark. 523, 573 S.W.2d 316 (Ark. 1978). Arkansas law states that this warranty is implied and "is not nullified by any stipulation requiring the contractor to make an on-site inspection where the repairs are to be made and a requirement that the contractor examine and check the plans and specifications." Texarkana Housing Authority, 264 Ark. at 533, 573 S.W.2d at 322. However, this implied warranty does not relieve the contractor of all responsibility under the contract. "[A] competent and experienced contractor cannot rely upon submitted specifications and plans where he [or she] is fully aware, or should have been aware, that the plans and specifications cannot produce the proposed results." Id. Finally, a breach of this implied warranty by the owner cannot be cured by "simply extending the time of the performance of a contractor's assignment." Id

IV. MISREPRESENTATION AND FRAUD

If damage occurs as a result of deficiency in construction, and the deficiency was fraudulently concealed, the statutory limitation periods are not applicable. Ark. Code Ann. § 16-56-112(d). Fraudulent concealment tolls the statute of limitations until the party having the cause of action discovers the fraud, or should have discovered it by the exercise of due diligence. Curry v. Thornsberry, 354 Ark. 631, 128 S.W.3d 438 (Ark. 2003); Shelton v. Fisor, 340 Ark. 89, 8 S.W.3d 557 (Ark. 2000).

There are five elements to the tort of fraud, misrepresentation, or deceit; 1) a false representation of material fact; 2) knowledge that the representation is false, or that there is insufficient evidence upon which to make the representation; 3) intent to induce action or inaction in reliance on the representation; 4) justified reliance on the representation; and 5) damage suffered as a result of the reliance. Rosser v. Columbia Mutual Ins. Co., 55 Ark. App. 77, 928 S.W.2d 813, 815 (Ark. App. 1996) (citing Wheeler Motor Co. v. Roth, 315 Ark. 318, 867

V. STRICT LIABILITY CLAIMS

Arkansas law allows for recovery of purely economic losses under the Arkansas strict liability statute. Ark. Code Ann. § 4-86-102. In construction cases, a cause of action for strict liability may be pled, but is seldom the basis for an award of damages. Wingfield v. Page, 278 Ark. 276, 644 S.W.2d 940 (Ark. 1983) (“[A] purchaser may seek relief under the statutory remedy of strict liability which imposes liability, as a matter of public policy, on the party best able to shoulder it.”). In Blagg v. Fred Hunt Co., Inc., the Arkansas Supreme Court held there is “no valid reason for holding that strict liability should not apply to a house sold by a builder-vendor. Accordingly, in construing the Arkansas strict liability statute, . . . the word ‘product’ is . . . applicable to a house . . . .” 272 Ark. 185, 190, 612 S.W.2d 321, 324 (Ark. 1981).

Ark. Code Ann. § 4-86-102 states that a supplier of a product is subject to liability in damages for harm to a person or property if the product supplied in a defective condition rendered it unreasonably dangerous; however the Arkansas legislature narrowed application of the strict liability statute with regard to improvements on real property by amending section 4-86-102(c)(2) of the Arkansas Code to state:

(c)(2)(A) Except as provided in subdivisions (c)(2)(B) and (C) of this section, real estate and improvements located on real estate shall not be considered a product under this section.

(B) Any tangible object or good produced that is affixed to, installed on, or incorporated into real estate or any improvement on real estate shall be considered a product under this section.

(C) If environmental contaminants exist or have occurred in an improvement on real estate, the improvement on real estate shall be considered a product under this section.


VI. INDEMNITY CLAIMS

A. Express Indemnity

Indemnity arises by virtue of a contract and holds one liable for the acts or omissions of another over whom he has no control. East-Harding, Inc. v. Horace A. Piazza & Assocs., 80 Ark. App. 143, 148, 91 S.W.3d 547, 550 (Ark. App. 2002); Chevron U.S.A., Inc. v. Murphy Exploration & Production Co., 151 S.W.3d 306, 310 (Ark. 2004). Contracts of indemnity are construed in accordance with Arkansas’ rules for the construction of contracts generally. Id. at 148, 91 S.W.3d 551. “Given the nature of indemnification, [Arkansas] courts have held that the language imposing indemnity must be clear, unequivocal, and certain . . . . While no particular
words are required, the liability of an indemnitor for the negligence of an indemnitee is an extraordinary obligation to assume, and [the court] will not impose it unless the purpose to do so is spelled out in unmistakable terms.” *Id.* (citations omitted). The agreement of indemnification must contain a clear expression of the intent of the parties to indemnify against certain losses or liabilities. *Anthony v. Louisiana & Arkansas Ry. Co.*, 316 F.2d 858, 863-64 (8th Cir. 1963). In determining the intention of the parties to an indemnification agreement, such intent must be gathered from an instrument as a whole. *Id.* at 864.

B. **Implied Indemnity**

An implied indemnity agreement will only arise when there is a special relationship carrying with it a duty to indemnify. *Cherry v. Tanda, Inc.*, 327 Ark. 600, 940 S.W.2d 457 (Ark. 1997). In *Oaklawn Jockey Club, Inc. v. Pickens-Bond Const. Co.*, an employee of Pickens-Bond was injured when construction equipment came in contact with power lines in the vicinity of the work area. 251 Ark. 1100, 477 S.W.2d 477 (Ark. 1972). The court found an implied indemnity contract existed between Oaklawn and Pickens-Bond because the injury was “caused by and occurred under the control of Pickens-Bond and . . . Oaklawn was only secondarily liable.” *Id.* at 1102, 477 S.W.2d 478. The court held implied indemnity was appropriate, in spite of the fact that the employee was covered by Worker’s Compensation. *Id.* The court will not create the implied indemnity from thin air, but may infer such indemnity from language of a written contract between the parties. *Smith v. Paragould Light & Water Commission*, 303 Ark. 109, 793 S.W.2d 341 (Ark., 1990); *Oaklawn, 251 Ark., 1100, 477 S.W.2d 477 (1972).*

C. **Indemnity Statutes**

Arkansas Code Annotated § 4-56-104 states, as amended by Act 540 of the 2009 Arkansas General Assembly reads, "A clause in a construction agreement or construction contract entered into after July 31, 2007 is unenforceable as against public policy to the extent that a party to the construction contract or construction agreement is required to indemnify, defend, or hold harmless another party against: (1) damage from death or bodily injury to a person arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier; or (2) damage to property arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier. However, ACA § 4-56-104(e) states that parties are expressly permitted to enter into an agreement in which: (1) The first party indemnifies, defends, or holds harmless the second party from the first party's negligence or fault or from the negligence or fault of the first party's agent, representative, subcontractor, or supplier; (2) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault if the construction contract or construction agreement requires the second party to obtain insurance and the construction contract or construction agreement limits the second party's obligation to the cost of the required insurance; (3) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault under a separate insurance contract with an insurance provider; or (4) The first party requires the second party to name the first party as an additional insured as a part of the construction agreement or construction contract.
D. Third Party Beneficiary

In Cherry v. Tanda, Inc., the Arkansas Supreme Court considered the issue of whether there may be a third party beneficiary to an indemnity contract. 327 Ark. 600, 610, 940 S.W.2d 457, 461 (Ark. 1997). The court reiterated the presumption that under Arkansas law, a contract will not be construed as having been made for the benefit of third parties unless it clearly appears that such was the intention of the parties. Id. at 609, 940 S.W.2d at 460. Based on the facts of Cherry, the court determined Cherry was an incidental, rather than intended beneficiary. Id. at 610, 940 S.W.2d at 461. There have been no other cases in Arkansas discussing a party’s status as a third party beneficiary to an indemnity contract.

VII. STATUTE OF REPOSE/STATUTE OF LIMITATIONS

Arkansas Code Annotated § 16-56-112 concerns the limitation period for bringing an action arising from the deficiency in the design, planning, supervision, or observation of construction or the construction and repair of any improvement to real property or for injury to real or personal property caused by a deficiency, as well as damages caused by any deficiency in surveying, establishing, or making the boundaries of real property, the preparation of maps, or the performance of any other engineering or architectural work on real property or improvements to real property. The statute provides that the limitation period shall commence upon substantial completion of an improvement. The Arkansas courts interpreted A.C.A. Section 16-56-112, as a statute of repose, Curry v. Thornsberry, 128 S.W.2d 438, 441 (Ark. 2003). If the event giving rise to a claim occurs between three and five years after substantial completion of a construction project, practitioners would be well-advised to carefully plead the applicable statute of limitations. The Arkansas code defines the limitations on action in contract at five (5) years; in tort at (4) years; and disallows any claim based on designs or plans not utilized within three (3) years. Ark. Code Ann. § 16-56-112. The section of the code covering tort claims includes an exception for claims occurring in the third year after substantial completion. Ark. Code Ann. § 16-56-112(b)(2).

However, the Arkansas Supreme Court has held that section 16-56-112(a) of the Arkansas code governing contractual disputes also includes torts, Okla Homer Smith Furniture Mfg. Co. v. Larson & Wear, Inc., 278 Ark. 467, 646 S.W.2d 696 (Ark. 1983); and that the legislature actually meant the “fourth” year rather than the “third” year, in paragraph (b)(2), covering the timing of an occurrence in tort, Dooley v. Hot Springs Family YMCA, 301 Ark. 23, 781 S.W.2d 457 (Ark. 1989). Furthermore, since section 16-56-112 contains an express provision stating that nothing in the section shall be construed as extending periods proscribed by law for bringing a cause of action, an action in contract may be limited to three years. Ark. Code Ann. §16-56-112(f); East Poinsett County School District v. Union Standard Ins. Co., 304 Ark. 32, 800 S.W.2d 415 (Ark. 1990) (noting Ark. Code Ann. § 16-56-105 imposes a three year statute of limitations on breach of contract claims, and interpreting §16-56-112(f) as limiting claims on the indemnity provision of a construction contract under §16-56-112(a) to three years rather than five).

The court has also held that because a statute of repose is not an affirmative defense, failure to plead it as an affirmative defense is not a bar to raising the issue on appeal. Ray & Sons
VIII. ECONOMIC LOSS DOCTRINE

Arkansas strict liability statutes permits recovery of purely economic losses under A.C.A. § 4-86-102, providing a supplier of a product is subject to liability in damages for harm to a person or property if the product supplied in a defective condition rendered it unreasonably dangerous. In construction cases, a cause of action for strict products liability claiming purely economic losses will not be barred by the economic loss doctrine. Blagg v. Fred Hunt Co., Inc., 272 Ark. 185, 190, 12 S.W.2d 321, 324 (Ark. 1981). The responsibility of the maker should be no different where damage to the article sold or to other property of the consumer is involved. Id at 191, 12 S.W.2d at 323. To sustain a cause of action for strict products liability, it is necessary to prove that the product, e.g., the house, was sold in a defective condition unreasonably dangerous. O’Mara v. Dykema, 328 Ark. 310, 942 S.W.2d 854 (Ark. 1997); see also Berkley Pump Company v. Reed-Joseph Land Company, 279 Ark. 384, 653 S.W.2d 128 (Ark. 1983) (holding a defect in an irrigation pump was ineffective but not unreasonably dangerous thereby barring recovery for purely economic losses). A claim of this sort is rarely the basis of recovery. Wingfield v. Page, 278 Ark. 276, 644 s.W.2d 940 (Ark. 1983).

IX. RECOVERY FOR INVESTIGATIVE COSTS

There is no published Arkansas decision on the recovery of investigative costs as an element of recoverable damage in a defective construction claim.

X. EMOTIONAL DISTRESS CLAIMS

There are currently no Arkansas cases directly on point as to whether a homeowner can recover emotional distress damages because of construction defects to their home. However, as a general rule, Arkansas does not allow recovery for emotional distress caused by damage to property. Brill, Ark. Law of Damages (5th ed.), § 4-7.

XI. STIGMA DAMAGES

There is no reported opinion from the state of Arkansas addressing the issue of stigma damages.

XII. ECONOMIC WASTE

It is Arkansas policy that calculation of damages should make economic sense and should not be practically foolish. Brill, Ark. Law of Damages, (5th ed.), § 4-9. Arkansas will measure damages in construction cases by the cost of curing defects, rather than the breach of contract remedy of “difference in value”, except where the actual curing of the defects would cause unreasonable economic waste. Carter v. Quick, 263 Ark. 202, 209, 563 S.W.2d 461 465 (Ark. 1978). “The courts’ preference for the cost of repairs measure and the economic waste exception are devices to avoid the situation where the contractor is required to tear down a structure, or
otherwise commit economic waste, to correct a defect that does not detract from the market value as much as it would cost to repair it.” *Williams v. Charles Sloan, Inc.*, 17 Ark. App. 247, 251, 706 S.W.2d 405, 407 (Ark. App. 1986). However, the courts' preference for the cost-of-repair measure and the economic waste exception does not limit the injured buyer to only one measure of damages, *Pennington v. Rhodes*, 55 Ark.App. 42, 53, 929 S.W.2d 169, 175 (Ark.App., 1996).

**XIII. DELAY DAMAGES**

Under Arkansas law, when a contractor delays completion of a building, the proper measure of damages is the rental value of the building during the time that the owner is deprived of its use. *Cinnamon Valley Resort v. EMAC Enterprises, Inc.*, 89 Ark.App. 236, 246, 202 S.W.3d 1, 7 (Ark.App. 2005), citing *Long v. Chas. T. Abeles & Co.*, 77 Ark. 150, 91 S.W. 29 (Ark. 1905).

Prejudgment interest is compensation for recoverable damages wrongfully withheld from the time of the loss until judgment. Prejudgment interest is allowable where the amount of damages is definitely ascertainable by mathematical computation, or if the evidence furnishes data that makes it possible to compute the amount without reliance on opinion or discretion. Where prejudgment interest may be collected at all, the injured party is always entitled to it as a matter of law. *Ozarks Unlimited Resources Co-op., Inc. v. Daniels*, 333 Ark. 214, 224, 969 S.W.2d 169, 174 (Ark. 1998) (citations omitted); *see also Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guaranty Co.*, 353 Ark. 201, 114 S.W.3d 189 (Ark. 2003).

**XIV. RECOVERABLE DAMAGES**

A. Direct Damages

Arkansas courts prefer a cost of repair measure of damage, which will include the expense of necessary repairs to any real property damaged, the temporary loss damages, plus compensation for any loss of its value during the time the owner was deprived of its use, the special damages, from the time of injury to the time the property could have been restored to original condition, a loss typically determined by the decreased rental value. Brill, Ark. Law of Damages (5th ed.), § 30-1; *see also Carter v. Quick*, 263 Ark. 202, 209, 563 S.W.2d 461 465 (Ark. 1978); Benton Gravel Co. v. Wright, 206 Ark. 930, 175 S.W.2d 208 (1943); AMI Civil 2007, 2224.

B. Stigma

There is no reported opinion from the state of Arkansas addressing the issue of stigma damages.

C. Loss of Use

Under Arkansas law, when a contractor delays completion of a building, the proper measure of damages is the rental value of the building during the time that the owner is deprived

D. Punitive Damages

The purpose of punitive damages is to deter and punish the wrongdoer. *Wheeler Motor Co., Inc. v. Roth*, 315 Ark. 318, 327, 867 S.W.2d 446, 450 (Ark. 1993). One cannot recover punitive damages if the sole cause of action is based in contract. *Id.* However, one should not be prevented from receiving punitive damages in a contract action where the basis of revocation or rescission is misrepresentation, fraud, or deceit. *Id.* Punitive damages are available in a deceit action even if restitution rather than compensatory damages is awarded. *Id.*

E. Emotional Distress

Emotional distress damages are not recoverable in a construction defect claim in Arkansas.

F. Attorney’s Fees

The court may assess reasonable attorney’s fees and grant an award to the prevailing party in any claim to recover in contract. Ark. Code Ann. § 16-22-308. An action alleging breach of the warranty of fitness and habitability is an action on the contract allowing for an award of attorney’s fees. *Curry v. Thornsberry*, 354 Ark. 631, 128 S.W.3d 438 (Ark. 2003). Additionally, the prevailing party in any suit in which a contractor, subcontractor, or material supplier seeks to enforce a lien, shall be allowed an award of reasonable attorney’s fees. Ark. Code Ann. § 18-44-128.

G. Expert Fees and Costs

The allowance of costs is purely statutory, and in the absence of a statute, the fees of expert witnesses cannot be charged against the losing party. *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 239, 807 S.W.2d 905, 909 (Ark. 1991) (citing *State Highway Comm. v. Union Planters Nat'l Bank*, 231 Ark. 907, 333 S.W.2d 904 (Ark. 1960)).

**INSURANCE COVERAGE FOR CONSTRUCTION CLAIMS**

Basic contract principles govern the interpretation of insurance contracts in Arkansas. An insurance contract is construed strictly against the insurer, and the legal effects of the contract are a matter of law, except when the meaning of the language depends on disputed extrinsic evidence. *U.S. Fidelity & Guaranty Co. v. Continental Casualty Co.*, 353 Ark. 834, 841, 120 S.W.3d 556, 560 (Ark. 2003). If the language of the contract is ambiguous, or there is doubt or uncertainty as to its meaning, and it is fairly susceptible of two interpretations, one favorable to the insured and the other favorable to the insurer, the former will be adopted. *Id.* (citing *Drummond Citizens Ins. v. Sergeant*, 266 Ark. 611, 588 S.W.2d 419 (Ark. 1979)).
Arkansas recognizes establishment of a lien on real property on behalf of a contractor or supplier, when an improvement is made to real property, or materials are delivered and incorporated into an improvement. A materialman's lien against property cannot exist without a valid contract with the property owner or agent, however this contract can be implied from circumstances or conduct of the parties. \textit{Katterjohn Concrete Products, Inc. v. Coffman}, 573 S.W.2d 306, 307 (Ark. 1978); \textit{Gillison Discount Bldg. Materials, Inc. v. Talbot}, 488 S.W.2d 317, 319 (Ark. 1972).

The Arkansas statutory scheme concerning mechanics' and materialmen's liens is set out in Arkansas Code Annotated §§ 18-44-101 to -135. Every contract, subcontractor or material supplier (as defined at A.C.A. § 18-44-107) who supplies labor, services, material, fixtures, engines, boilers or machinery in the construction or repair of an improvement to real estate, by virtue of a contract with the owner, proprietor, contractor, or subcontractor, or agent thereof, has a lien to secure payment upon the improvement and on the land upon which the improvement is situated. A.C.A. § 18-44-101.

No material supplier or laborer is entitled to a lien on commercial real estate unless that material supplier or laborer notifies the owner of such real estate, in writing, that such supplier or laborer is currently entitled to payment, but has not been paid. This notice shall be sent to the owner and to the contractor by registered mail, return receipt requested, before seventy-five days have elapsed from the time that the labor was supplied or the materials furnished. The notice must contain the following information:

1. A general description of the labor, service, or material furnished, and the amount due and unpaid;
2. The name and address of the person furnishing the labor, service or material;
3. The name of the person who contracted for purchase of the labor, service, or material;
4. A description of the job site sufficient for identification; and
5. The following statement set out in bold face type:

"\textbf{NOTICE TO PROPERTY OWNER}

\textbf{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.}"

2. Every person who wishes to avail himself or herself of the provisions of the above-referenced lien provisions must file a lien account with the clerk of the circuit court of the county in which the building, erection, or other improvement to be charged with the lien is situated, within one hundred twenty days after the last materials were furnished or the last work or labor was performed. A.C.A. § 18-44-117.

Every person who wishes to avail himself or herself of the provisions of the above-referenced lien provisions must file a lien account with the clerk of the circuit court of the county in which the real property is situated, within one hundred twenty days after the last materials were furnished or the last work or labor was performed, but such a lien claimant must first give ten days notice to the property owner before the filing of the lien with the clerk. This notice must be given to the owner, the owner's agent, or either of them, and must state (i) the claimant holds a claim against the building or improvement, and (ii) the amount of the claim and from whom the amount is due. A.C.A. § 18-44-114. The lien notice may be served by an officer authorized by law to serve process in a civil action, by a person who would be a competent witness, or by mail with return receipt requested and delivery restricted to the addressee or the addressee's agent. Id. A lien account filed with the clerk of the circuit court must be verified, and must contain a just and true account of the demand due and owing, after allowing all credits, and must contain a correct description of the property to be charged with the lien. A.C.A. § 18-44-117.

Actions to enforce the lien must be commenced within fifteen months after filing the lien with the circuit clerk. A.C.A. § 18-44-119. In any action brought by any person other than a contractor, the contractor has the duty to defend the action at his own expense. A.C.A. § 18-44-124.

If multiple contractors have liens on the property, they are all given equal priority, regardless of the date of filing the lien. Ark. Code Ann. § 18-4-110(a)(1). Liens, filed and perfected as provided in A.C.A. §§ 18-44-101 to -135, shall be enforced by foreclosure, and the real property ordered sold subject to the lien of the prior encumbrance on the real estate. A.C.A. § 18-44-110. The procedure for obtaining a lien judgment and foreclosure is set out in A.C.A. §§ 18-44-122 to -127. If sale of the property is ordered and the proceeds are insufficient to discharge all the materialmen’s liens, the proceeds are paid pro rata on the respective liens. Ark. Code Ann. § 18-44-110(a)(3). With respect to priority against other encumbrances, materialmen’s liens date from the time construction commences, which is “when there is a visible manifestation of activity on real estate [that] has begun or will soon begin . . . .” Ark. Code Ann. § 18-44-110(a).

If the property owner or mortgagee contests the lien, he or she may post a bond with the circuit clerk for double the amount of the lien claimed in order to have the lien discharged. Ark. Code Ann. § 18-44-118. The lien may also be contested by seeking declaratory judgment through the court. Ark. Code Ann. § 18-44-118(f). A materialmen’s lien remains in effect for fifteen months from the date of filing; if no action is taken on the lien by that time, it ceases to exist. Ark. Code Ann. § 18-44-119.
This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.