

CONSTRUCTION LIEN ACT (EXCERPT)
Act 497 of 1980

570.1119 Claims of lien having equal priority; priority of construction lien over garnishments and over other interests, liens, or encumbrances; attachment; effect of recording; priority of recorded mortgage, lien, encumbrance, or other interest over construction lien; advances; retainage.

Sec. 119. (1) Except as otherwise provided by subsection (4), as between parties entitled to claim construction liens under this act, their claims of lien shall be treated as having equal priority.

(2) A construction lien under this act shall take priority over all garnishments for the contract debt made after commencement of the first actual physical improvement, without regard to the date of recording of the claim of lien.

(3) A construction lien arising under this act shall take priority over all other interests, liens, or encumbrances which may attach to the building, structure, or improvement, or upon the real property on which the building, structure, or improvement is erected when the other interests, liens, or encumbrances are recorded subsequent to the first actual physical improvement.

(4) A mortgage, lien, encumbrance, or other interest recorded before the first actual physical improvement to real property shall have priority over a construction lien arising under this act. The priority of the mortgage shall exist as to all obligations secured by the mortgage except for indebtedness arising out of advances made subsequent to the first actual physical improvement. An advance made pursuant to the mortgage, but subsequent to the first actual physical improvement shall have priority over a construction lien if, for that advance, the mortgagee has received a contractor's sworn statement as provided in section 110, has made disbursements pursuant to the contractor's sworn statement, and has received waivers of lien from the contractor and all subcontractors, laborers, and suppliers who have provided notices of furnishing. The construction lien of any lien claimant not set forth on the sworn statement upon which an advance was made shall be subordinate to the lien of the mortgage, including the advance, unless prior to the advance the lien claimant has provided the designee with a notice of furnishing if required by section 109 or has recorded a claim of lien. Any advance made after a notice of furnishing has been provided or has been excused as provided in sections 108, 108a, and 109 or a claim of lien has been recorded shall be subordinate to the construction lien of that lien claimant unless prior to the advance the mortgagee has received from that lien claimant either a full unconditional waiver of lien or a partial unconditional waiver of lien for the full amount due the lien claimant as of the date through which the lien is waived as shown on the lien waiver and the date through which the lien is waived as shown on the partial unconditional waiver is within 30 days prior to the advance.

(5) For purposes of this section, retainage which is not payable under a contract until the happening of a certain event in addition to the providing of an improvement, is not due as of the date of the providing of the improvement.

History: 1980, Act 497, Eff. Jan. 1, 1982;—Am. 1981, Act 191, Eff. Jan. 1, 1982;—Am. 1982, Act 17, Eff. Mar. 1, 1982.