

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, the liens have equal priority. This subsection applies and the construction liens have equal priority regardless of whether the lien arises at the time of the first actual physical improvement or at the time a notice is recorded under section 107a or 107b.

(2) A construction lien under this act has priority over all garnishments for the contract debt made after the lien arises, without regard to the date of recording of the claim of lien.

(3) A construction lien arising under this act has priority over all other interests, liens, or encumbrances that may attach to the building, structure, or improvement, or on the real property on which the building, structure, or improvement is erected, if the other interests, liens, or encumbrances are recorded after the construction lien arises.

(4) A mortgage, lien, encumbrance, or other interest recorded before the construction lien arises has priority over a construction lien arising under this act. The priority of the mortgage exists as to all obligations secured by the mortgage except for indebtedness arising out of advances made after the construction lien arises. An advance made pursuant to the mortgage, but after the construction lien arises, has 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 a lien claimant not set forth on the sworn statement on which an advance was made is subordinate to the lien of the mortgage, including the advance, unless before the advance the lien claimant provided the designee with a notice of furnishing if required by section 109 or recorded a claim of lien. An advance made after a notice of furnishing has been provided or has been excused as provided in sections 108, 108a, and 109 or after a claim of lien has been recorded is subordinate to the construction lien of the lien claimant unless before the advance the mortgagee received from the 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 before the advance.

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

(6) For purposes of determining priorities under this section, a construction lien arises as follows:

(a) Except as provided in subdivision (b), at the time of the first actual physical improvement.

(b) As to a lien claimed by a person after the person has recorded a notice under section 107a or 107b, at the time a notice is recorded, subject to any applicable limitation under section 107a(4) or 107b(4).

History: 1980, Act 497, Eff. Jan. 1, 1982;—Am. 1981, Act 191, Eff. Jan. 1, 1982;—Am. 1982, Act 17, Eff. Mar. 1, 1982;—Am. 2018, Act 367, Imd. Eff. Dec. 12, 2018.