

Recent Indiana Mechanic Lien Cases Underscore Usual Priority for Mortgages over Mechanic Liens

When a project is short on funding, lien priority becomes a pretty big deal. Unfortunately for contractors and suppliers, the priority afforded to liens will vary from state-to-state. We've discussed lien priority issues in the past (see [Lien Priority tag](#)).

One of my favorite posts on the subject is: Mechanic Liens - Is it Like A Mortgage? Yes and No. This post does a good job of explaining the difference between a mortgage (which has a super-priority) and a mechanic lien (which usually has "junior" priority).

The general rule for privileges against property in nearly every state is that the earlier filed instrument has lien priority over the later filed instruments. As in every rule, there are exceptions, and one such [exception is in Virginia](#), where a mechanic lien can achieve a super-priority status.

So this leads us to some new court opinions in Indiana that address mechanic lien priority issues. Credit for finding these cases and first discussing them goes to Ryan Bowers of the Law Under Construction Blog. I highly recommend his post on this topic, which discusses the two court opinions in more detail. His post is titled: [Tis the season...for mechanic lien priority cases](#).

The two cases in Illinois are: Robert Neises Construction Corp. v. Grand Innovations, Inc, et al. ([opinion full text](#)) and McIntyre Brothers, Inc. v. Henderson, et al. ([opinion full text](#)), both cases decided this past December 2010.

Again, I recommend [Ryan's post](#) for a more detailed explanation of the cases and their holdings. In short, the two opinions reiterate the general rule in Indiana that mechanic liens filed *after* a mortgage or loan document will not have priority over the

previously filed mortgages/loans. In both cases, the lien claimants were trying to make equity or unique arguments in favor of achieving a super priority for their lien, but the arguments were rejected.

Read this article on the Construction Lien Blog here:

<http://constructionlienblog.com/?p=2208>

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