



ROBBINS
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OHIO MECHANIC'S LIENS

This presentation is not intended nor shall it be used as legal advice and may not be relied upon in any situation. Mechanic's lien statutes are strictly construed and an attorney should be consulted for each factual situation.

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Who May Claim a Lien

- Every person who
 1. performs work or labor upon; or
 2. furnishes material in furtherance of
 3. any improvement undertaken by virtue of an express or implied contract
 4. with the owner, part owner or lessee of any interest in real estate, or his authorized agent,

and
- Every person who
 1. as a subcontractor, laborer or materialman
 2. performs any labor or work or furnishes any material
 3. to an original contractor or any subcontractor, in carrying forward, performing or completing any improvement.

Purpose of a Lien

- To secure payment for work or material provided by a qualified claimant upon the improvement and all interests that the owner, part owner, or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.
- A Lien is not a guaranty of payment– it is simply a tool of leverage.

When Mechanic's Liens are Appropriate

- Commercial projects
- Residential projects
- Public projects

Definition of Commercial Project

- Projects, ***other than*** one- or two-family dwellings, in connection with a residential unit of condominium property, where the property is intended to be used as a personal residence by the owner, part owner, or lessee, or public projects .

Standard Lien Process Documentation

1. Notice of Commencement
2. Notice of Furnishing
3. Affidavit for Mechanic's Lien



Standard Lien Process Documentation

1. Notice of Commencement

Owner's way of saying to the potential lien claimants:

“Hey contractors and material suppliers—tell me who you are!”



Notice of Commencement

- NOC shall contain the following information:
 1. legal description of the real property on which the improvement is to be made;
 2. brief description of the improvement to be performed containing sufficient specificity to permit lien claimants to identify the improvement;
 3. name, address and capacity of the owner, part owner or lessee of the real property contracting for the improvement;
 4. name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee;
 5. name and address of the owner's, part owner's or lessee's designee, if any;

(continued)

Notice of Commencement

- NOC contents continued:
 6. name and address of all original contractors;
 7. date the owner, part owner or lessee first executed a contract with an original contractor for the improvement;
 8. name and address of all lending institutions which provide financing for the improvements, if any;
 9. name and address of all sureties on any bond which guarantee payment of the original contractor's obligations under the contract for the improvement, if any;
 10. name and address of the person preparing the notice;
 11. affidavit of the owner, part owner or lessee or the agent of the owner, part owner or lessee which verifies the notice; and

(continued)

Notice of Commencement

- NOC contents continued:
 12. the following statement:

“To Lien Claimants and Subsequent Purchasers: Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this instrument. A person having a mechanic’s lien may preserve the lien by providing a notice of furnishing to the above-named designee and his original contractor, if any, and by timely recording an affidavit pursuant to Section 1311.06 of Revised Code. A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee or person with whom you have contracted.”

Notice of Commencement

- *When should the NOC be recorded?*

Prior to the performance of any labor, work, or the furnishing of any materials which may give rise to a mechanic's lien.

- *Where should the NOC be recorded?*

The NOC shall be recorded in the office of the county recorder where the project is located.

Standard Lien Process Documentation

2. Notice of Furnishing

Potential Lien Claimant's way of saying to the Owner:

***“Hey Owner and Original
Contractor—
I am on your project!”***



Notice of Furnishing

Warning to Owners:

If a Notice of Commencement has not been recorded, then there is no requirement for a Notice of Furnishing to be provided by potential lien claimants.

Notice of Furnishing

Warning to Potential Lien Claimants:

If a Notice of Commencement is recorded, every potential lien claimant must serve a Notice of Furnishing on the original contractor (if not in direct contact) and the owner (if not in direct contract) to preserve lien rights.

Notice of Furnishing

- A NOF shall include:
 1. name of the owner, part owner, or lessee who contracted for the project;
 2. the original contractor through whom a subcontractor is working or a supplier is supplying materials;
 3. a description of the property;
 4. name and address of the person furnishing work or materials who is submitting the Notice of Furnishing;
 5. the name and address of the contracting party to whom work or materials are furnished (which may be the original contractor or a lower-tier subcontractor or supplier);
 6. the date work or materials first will be or were furnished; and
 7. the name and address of the lien claimant, capacity of person signing for lien claimant, and address of lien claimant, with date; and

(continued)

Notice of Furnishing

- The NOF shall include the following notice:
- **WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE OHIO MECHANICS' LIEN LAW. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.**
- There is a statutory form available for the Notice of Furnishing

Notice of Furnishing

- *When should the NOF be recorded?*

The NOF does not get recorded.

- *Upon whom should the NOF be served?*

The NOF shall be served upon the original contractor and owner subject to instructions contained in the NOC.

I also advise to serve NOF upon surety, should one exist.

Notice of Furnishing

- *When should the NOF be served?*

The NOF shall be served within 21 days of first performing labor or furnishing materials.

- *What if I fail to serve the NOF within 21 days?*

Failure to serve the NOF within the first 21 days does not defeat all lien rights, merely only allows the Lien to cover the previous 21 days of work, labor, or material from when the NOF is actually served.

Standard Lien Process Documentation

3. Affidavit for Mechanic's Lien

Lien Claimant's way of saying to the Owner and Original Contractor:

“Hey Owner and Original Contractor—

I am owed money on this project!”



Affidavit for Mechanic's Lien

- An Affidavit for Mechanic's Lien shall include:
 1. an affidavit sworn to by attorney or representative of claimant with knowledge of the claim and notarized;
 2. amount due the claimant over and above all credits and setoffs;
 3. a description of the property to be liened (a legal description of the property is necessary for proper recording);
 4. first and last dates of services and materials provided;
 5. name and address of lien claimant;
 6. name and address of the person/company who the claimant had an account/contract with to provide services and materials; and
 7. name and address of the owner, part owner, or lessee.
- There is a statutory form available for the affidavit.

Affidavit for Mechanic's Lien

- To perfect a Lien, Claimant must:
 1. Record the Affidavit for Mechanic's Lien
 - a. Where: in the office of the county recorder in the county(ies) where the improved property is located;
 - b. When:
 - i. If the Lien is in connection with work done on an oil or gas well, it must be recorded within 120 days from the date on which the last labor, work, or material was furnished;
 - ii. If the Lien is for any other type of work (and not residential), it must be recorded within 75 days from the date on which the last of the labor, work, or material was furnished.

(continued)

Affidavit for Mechanic's Lien

- To perfect a Lien, Claimant must (continued):
 2. Serve a copy of the Lien
 - a. Upon whom: on the owner, part owner, or lessee of the improved property .
 - b. How: by sheriff, a method by mail, or hand delivery which includes a written evidence of receipt, by serving a company's statutory agent, or as instructed in the NOC.
 - c. When:
 - i. within 30 days after filing the affidavit.
 - ii. If the Lien cannot be served within 30 days, then the claimant shall serve a copy by posting it in some conspicuous place on the premises of the improved property within 10 days after the expiration of the 30 days.

Affidavit for Mechanic's Lien

- Extent of Lien.

Liens extend to the improvement and all interests that the owner, part owner, or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.

Affidavit for Mechanic's Lien

- Duration of Lien.
 1. Liens for labor, work performed, or materials furnished prior to the recording of the NOC are effective from the date the first visible work or labor is performed or the first materials are furnished by the original contractor, subcontractor, materialman, or laborer at the site of improvement.
 2. Liens for labor, or work performed, or materials furnished after the recording of a NOC are effective from the date of the recording of the NOC.
 3. Liens continue in force for six years after a Lien is recorded in the office of the county recorder.

(continued)

Affidavit for Mechanic's Lien

- Duration of Lien (continued).

If an action is brought to enforce the Lien six years of recording, the Lien continues in force until final adjudication thereof.

- Notice to Commence Suit

The Owner (or other party with interest in the real property) may serve a Notice to Commence Suit on the Claimant, in which case the Claimant must file suit within 60 days, or the Lien is invalid as a matter of law.

Affidavit for Mechanic's Lien

- *Priority of Lien.*
 1. Liens obtained upon the same improvement, have no priority among themselves, except as follows:
 2. Liens for which the effective date is the date the first visible work or labor is performed or the first materials are furnished (i.e., Liens prior to recording of a NOC), have priority over all other liens except those claimed by laborers.
 3. Liens filed by laborers have priority over all other Liens whether the labor or work was performed before or after the recording of NOC.

(continued)

Affidavit for Mechanic's Lien

- *Priority of Lien* (continued).
 4. Liens for work performed or materials furnished after the recording of a NOC shall be preferred to all other titles, liens, or encumbrances which may attach to or upon such improvement or to or upon the land upon which it is situated, which either are given or recorded subsequent to the recording of the NOC.
 5. The Lien of a subcontractor is superior to any already taken or to be taken by the original contractor in respect of the same labor, work or material, and the Liens of laborers, materialmen and subcontractors to an original contractor or subcontractor indebted to them in respect of such labor, work or material.

Definition of Residential Project

- Projects involving one- or two-family dwellings, or in connection with a residential unit of condominium property, or
- where the property is intended to use the dwelling as a personal residence by the owner, part owner, or lessee (Home Construction Contract), or
- where the purchaser of property intends to use the dwelling or land as the purchaser's personal residence (Home Purchase Contract).

Standard Lien Process Documentation

1. Notice of Commencement
2. Notice of Furnishing
3. Affidavit for Mechanic's Lien

Notice of Commencement

Typically a Notice of Commencement is only recorded when a lender requires such recording. Unlike commercial projects, the recording of an NOC does not require a subcontractor or supplier to serve a Notice of Furnishing, however, it can affect priority of the lien claimants as between themselves.

Notice of Furnishing

There is no requirement for potential claimants to serve a Notice of Furnishing upon the owner, and such has no affect on the mechanic's lien process.

Standard Lien Process Documentation

3. Affidavit for Mechanic's Lien

Lien Claimant's way of saying to the Owner and Original Contractor:

***“Hey Owner and GC—
I am owed money on this project!”***



Affidavit for Mechanic's Lien

- An Affidavit for Mechanic's Lien shall include:
 1. an affidavit sworn to by attorney or representative of claimant with knowledge of the claim and notarized;
 2. amount due the claimant over and above all credits and setoffs;
 3. a description of the property to be liened (a legal description of the property is necessary for proper recording);
 4. first and last dates of services and materials provided;
 5. name and address of lien claimant;
 6. name and address of the person/company who the claimant had an account/contract with to provide services and materials; and
 7. name and address of the owner, part owner, or lessee.
- There is a statutory form available for the affidavit.

Affidavit for Mechanic's Lien

- To perfect a Lien, Claimant must:
 1. Record the Affidavit for Mechanic's Lien
 - a. Where: in the office of the county recorder in the county(ies) where the improved property is located;
 - b. When: Lien must be filed within 60 days from the date on which the last labor or work was performed or material was furnished by the person claiming the Lien.

(continued)

Affidavit for Mechanic's Lien

- To perfect a Lien, Claimant must (continued):
 2. Serve a copy of the Lien
 - a. Upon whom: on the owner, part owner, or lessee of the improved property .
 - b. How: by sheriff, a method by mail, or hand delivery which includes a written evidence of receipt.
 - c. When:
 - i. within 30 days after filing the affidavit.
 - ii. If the Lien cannot be served within 30 days, then the claimant shall serve a copy by posting it in some conspicuous place on the premises of the improved property within 10 days after the expiration of the 30 days.

Affidavit for Mechanic's Lien

- Extent of Lien.

Liens extend to the improvement and all interests that the owner, part owner, or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.

Affidavit for Mechanic's Lien

- *Duration of Lien.*
 1. Liens for labor, work performed, or materials furnished are effective from the date the first visible work or labor is performed or the first materials are furnished by the original contractor, subcontractor, materialman, or laborer at the site of improvement.
 2. Liens continue in force for six years after a Lien is recorded in the office of the county recorder.
 3. If an action is brought to enforce the Lien six years of recording, the Lien continues in force until final adjudication thereof.

Affidavit for Mechanic's Lien

- *Notice to Commence Suit*

The Owner may serve a Notice to Commence Suit on the Claimant, in which case the Claimant must file suit within 60 days, or the Lien is invalid as a matter of law.

Affidavit for Mechanic's Lien

- *Priority of Lien.*
 1. Liens obtained upon the same improvement, have no priority among themselves, except Liens filed by laborers have priority over all other Liens.
 2. The Lien of a subcontractor is superior to any already taken or to be taken by the original contractor in respect of the same labor, work or material, and the Liens of laborers, materialmen and subcontractors to an original contractor or subcontractor indebted to them in respect of such labor, work or material.

Affidavit for Mechanic's Lien



- *Private Residential Projects (Effect of “Paid in Full”).*

No original contractor, subcontractor, materialman, or laborer can have a Lien in connection with a home construction contract:

1. if the owner, part owner or lessee paid the original contractor in full, or
2. if the purchaser has paid in full for the amount of the home construction or home purchase contract price, and
3. the payment was made prior to the purchaser's receipt of a copy of an affidavit of mechanic's lien.

“Paid in full” is defined as the unpaid balance under the home construction contract or the home purchase contract, minus cost to complete the contract according to its terms and conditions, including any warranty or repair work.

Definition of Public Project

- “Public improvement” means any construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and any other structure or work of any nature by a public authority.
- “Public authority” includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof.

Standard Lien Process Documentation

1. Notice of Commencement
2. Notice of Furnishing
3. Affidavit for Lien on Public Funds

Standard Lien Process Documentation

1. Notice of Commencement

Owner's way of saying to the potential lien claimants:

***“Hey contractors and
material suppliers—
tell me who you are!”***



Notice of Commencement

- NOC shall contain the following information:
 1. name, location, and a number, if any, used by the Public Authority to identify the public improvement sufficient to permit the public improvement to be identified;
 2. name and address of the Public Authority contracting for the improvement;
 3. name, address, and trade of all principal contractors;
 4. the date the Public Authority first executed a contract with the principal contractor for the public improvement;
 5. names and addresses of all sureties for all principal contractors; and
 6. name and address of the representative of the Public Authority upon whom service shall be made for the purposes of service a lien on public funds.

Notice of Commencement

- *Is the NOC be recorded?*

No. The Public Authority is required to prepare a Notice of Commencement and make it available to subcontractors, laborers, and materialmen upon request, but the NOC is not recorded.

Standard Lien Process Documentation

2. Notice of Furnishing

Potential Lien Claimant's way of saying to the Owner and Principal Contractor:

***“Hey Owner and GC—
I am on your project!”***



Notice of Furnishing

Warning to Potential Lien Claimants:

Every potential lien claimant not in direct contract with a principal contractor must serve a Notice of Furnishing on the principal original contractor to preserve his lien rights.

Notice of Furnishing

- A NOF shall include:
 1. name and address of the principal contractor (and contractor with whom claimant may have direct contract with);
 2. a description of the labor, work, or materials provided; and
 3. a description of the property or address to identify the project.

Notice of Furnishing

- *When should the NOF be recorded?*

The NOF does not get recorded.

- *Upon whom should the NOF be served?*

The NOF shall be served upon the principal contractor subject to instructions contained in the NOC.

In order to preserve a bond claim on a public project in Ohio, a NOF must also be given to the surety by those claimants who are not in direct contract with the principal contractor and who are supplying labor or materials that cost more than \$30,000.00.

Notice of Furnishing

- *When should the NOF be served?*

The NOF shall be served within 21 days of first performing labor or furnishing materials.

- *What if I fail to serve the NOF within 21 days?*

Failure to serve the NOF within the first 21 days does not defeat all lien rights, merely only allows the Lien to cover the previous 21 days of work, labor, or material from when the NOF is actually served.

Standard Lien Process Documentation

3. Affidavit for Lien on Public Funds

Lien Claimant's way of saying to the Owner and Principal Contractor:

***“Hey Owner and GC—
I am owed money on this project!”***



Affidavit for Lien on Public Funds

- An Affidavit for Lien on Public Funds shall include:
 1. the amount due and unpaid, with all credits and setoffs;
 2. when the last date labor, work, or materials were furnished; and
 3. the post-office address of the claimant.

Affidavit for Lien on Public Funds

- To perfect a Lien, Claimant must Serve a copy of the Lien (together with the NOF with sworn statement of service of the NOF):
 - a. Upon whom: the Public Authority through the representative as listed on the NOC. (If the claimant performed its labor, work, or material to a subcontractor of the principal contractor, the claimant shall, within 20 days after serving the Lien on the Public Authority, serve the subcontractor.)
 - b. How: by sheriff, a method by mail, or hand delivery which includes a written evidence of receipt, by serving a company's statutory agent, or as instructed in the NOC.
 - c. When: within 120 days from the last date of performance of labor, work or furnishing of material.

Affidavit for Lien on Public Funds

- Extent of Lien.

Liens extend to the remaining funds designated by and currently held by the Public Authority for the improvements.

Affidavit for Lien on Public Funds

- Duration of Lien (continued).

The Lien duration is dependent not upon the mechanic's lien statute, but upon a general statute of limitations, which sets the duration of the lien a 6 years “ after the cause of action accrued.” Whatever that means.

- Notice to Commence Suit

The public authority, principal contractor, or subcontractor may serve a Notice to Commence Suit on the Claimant, in which case the Claimant must file suit within 60 days, or the Lien is invalid as a matter of law, when proof of service of the NTCS is provided to the public authority by affidavit.

Affidavit for Lien on Public Funds

- Notice of Intent to Dispute.
 1. Upon receipt of a Lien the Public Authority, or the claimant in the name of the Public Authority, may serve the principal contractor with a copy of the lien, together with a notice that the principal contractor must give notice of his intention to dispute the claim within 20 days.
 2. If the principal contractor (or the subcontractor within 20 days after receipt of the Notice) fails to serve the Public Authority with the Notice of Intent to Dispute, then that contractor (or subcontractor) has assented to the correctness of the claim.
 3. If the correctness has been assented to, the Public Authority is required to release the funds to the Claimant(s) (under certain pro-rata terms).

Affidavit for Lien on Public Funds

- *Priority of Lien.*
 1. a Claimant may record its Lien with the county recorder (or recorders if the project is in more than one county) where the public improvement is situated, which gives that Lien priority over those Liens that are not recorded.
 2. Recorded Liens share pro-rata in the funds held by the Public Authority.
 3. If there are funds left over, then the unrecorded Liens share in the remaining funds on pro-rata.

What is a UCC Security Interest?

- A consensual lien where a debtor gives the creditor rights to specific property
- Governed by UCC Article 9 (Ohio Revised Code Chapter 1309)

Purpose of a UCC Security Interest?

- The main purpose of security interests is to reduce lender risk by providing a legal mechanism to seize and sell the borrower's assets should the borrower default, ensuring loan repayment

When UCC Security Interests are Appropriate

- Financing transactions
- Collateral is personal property (equipment, inventory, accounts)
- Ongoing business relationships

UCC Security Interests

UCC Security Interest Process

1. Attachment (creation of the security interest)
2. Perfection (making it effective against third parties)
3. Priority (who wins among creditors)
4. Default (borrower fails to make payment)
5. Enforcement (remedies after default)

Attachment

When the security interest becomes enforceable

- Requires:
 1. Value to be given (loan, credit, or other consideration)
 2. Debtor has rights in the collateral (ownership or sufficient interest)
 3. Authenticated security (written agreement OR debtor has control over the collateral)

UCC Security Interests

Attachment

- Written agreement must include a description of the collateral
- Example of sufficient description:

COLLATERAL INFORMATION

This financing statement covers the following collateral:

All of Dealer's inventory, accounts receivable, promissory notes, chattel paper, contract rights, general intangibles, equipment, furniture, and fixtures, now owned and/or hereafter acquired, wherever located, all additions and accessions thereto, all records relating thereto, and all products and proceeds therefore, including but not limited to insurance proceeds.

FILING TYPE

Public Finance: No

- Example of insufficient description: “All the debtor’s personal property.”

Perfection

Protecting against third parties

- Methods of perfection: 9-310(a)
 - Filing a financing statement
 - Possession
 - Control
 - Automatic perfection

UCC Security Interests

Perfection

Financing Statements

- Requires:
 - Debtor's name
 - Secured party's name
 - Indication of the collateral
- Typically filed with the Secretary of State



FS Number: [REDACTED]
Date Filed: 17 April 2023 16:20:42

UCC FINANCING STATEMENT

FOR FILING OFFICE USE ONLY

NAME OF CONTACT AT FILER: [REDACTED]
PHONE NUMBER: [REDACTED]
EMAIL CONTACT AT FILER: [REDACTED]
SEND ACKNOWLEDGEMENT TO: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DEBTOR INFORMATION

ORGANIZATION'S NAME: [REDACTED]
MAILING ADDRESS: [REDACTED]
CITY: Cincinnati STATE: OH POSTAL CODE: [REDACTED] COUNTRY: USA

SECURED PARTY INFORMATION

ORGANIZATION'S NAME: [REDACTED]
MAILING ADDRESS: [REDACTED]
CITY: Wendell STATE: NC POSTAL CODE: [REDACTED] COUNTRY: USA

COLLATERAL INFORMATION

This financing statement covers the following collateral:

All of Dealer's inventory, accounts receivable, promissory notes, chattel paper, contract rights, general intangibles, equipment, furniture, and fixtures, now owned and/or hereafter acquired, wherever located, all additions and accessions thereto, all records relating thereto, and all products and proceeds therefore, including but not limited to insurance proceeds.

FILING TYPE

Public Finance: No

UCC Security Interests

Perfection

Possession

Perfection by possession is allowed for:

- Tangible goods
 - Movable and identified items
- Instruments
 - An instrument that evidences a right to the payment of a monetary obligation
- Chattel paper
 - A record showing a monetary obligation and a security interest in specific goods

UCC Security Interests

Perfection Control

Perfection by control is allowed for:

- Deposit accounts
 - A demand, time, savings, passbook, or similar account maintained with a bank
- Investment property
 - A security, security entitlement, securities account, commodity contract, or commodity account
- Electronic chattel paper
 - Chattel paper shown by a record(s) consisting of information stored in an electronic medium

Perfection

Automatic Perfection

Some security interests are perfected automatically when they attach:

- (1) a purchase-money security interest in consumer goods , except as otherwise provided in Section 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in Section 9-311(a) ;
- (2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles ;
- (3) a sale of a payment intangible ;
- (4) a sale of a promissory note ;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under Section 2-401 , 2-505 , 2-711 (3), or 2A-508 (5), until the debtor obtains possession of the collateral;

Perfection

Automatic Perfection (continued)

- (7) a security interest of a collecting bank arising under Section 4-210 ;
- (8) a security interest of an issuer or nominated person arising under Section 5-118 ;
- (9) a security interest arising in the delivery of a financial asset under Section 9-206(c) ;
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary ;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

UCC Security Interests

Priority

Who gets paid first?

Generally, the first to file or perfect wins



UCC Security Interests

Priority

Exception

- Purchase money security interests (PMSIs) get priority if they are:
 1. Properly perfected; and
 2. Timely filed

UCC Security Interests

Default

- Default is defined by the security agreement
- Common triggers include:
 - Missed payments
 - Bankruptcy
 - Covenant breaches

Enforcement

Secured party's ability to enforce rights after default

- Repossession
- Disposition of collateral (sale)
- Application of proceeds
- Deficiency judgment
- Strict foreclosure (acceptance of collateral)

UCC Security Interests

Enforcement

Repossession

- After default, a secured party may
 1. Take possession of the collateral; and
 2. Without removal, render equipment unusable and dispose of collateral on a debtor's premises
- A secured party can repossess with or without judicial process, so long as it does so without “breaching the peace”
- A secured party may also require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party if it is reasonably convenient to both parties.

UCC Security Interests

Enforcement

Disposition

- After default, a secured party may sell, lease, license, or dispose of all the collateral so long as the disposition is commercially reasonable.
- Secured party must send notice of sale unless it is perishable/will decline speedily in value or is customarily sold on a recognized market
- Method, manner, time, place, and other terms of the sale must be commercially reasonable

UCC Security Interests

Enforcement

Application of Proceeds

- Proceeds get applied in the following order:
 1. Sale expenses
 2. Secured debt
 3. Junior lienholders
 4. Surplus to the debtor (if any)
 - If the sale does not cover the debt, the creditor can pursue deficiency from the obligor under 9-615(d)

UCC Security Interests

Enforcement

Application of Proceeds

- Proceeds get applied in the following order:
 1. Sale expenses
 2. Secured debt
 3. Junior lienholders
 4. Surplus to the debtor (if any)

UCC Security Interests

Enforcement

Strict Foreclosure

- A secured party may accept collateral in full or partial satisfaction of the obligation it secures if:
 1. The debtor consents to the acceptance under subsection (c);
 2. The secured party does not receive a timely, authenticated notice of objection;
 3. If the collateral is consumer goods, the collateral may not be in the debtor's possession when the debtor consents; and
 4. There is not a mandatory disposition of consumer goods under subsection (e) or the debtor waives that requirement

***Richard O. Hamilton, Jr.
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