



Ohio Revised Code

Section 1311.14 Priority of mortgage lien.

Effective: March 30, 2007

Legislation: House Bill 487 - 126th General Assembly

(A) Except as provided in this section, the lien of a mortgage given in whole or in part to improve real estate, or to pay off prior encumbrances thereon, or both, the proceeds of which are actually used in the improvement in the manner contemplated in sections 1311.02 and 1311.03 of the Revised Code, or to pay off prior encumbrances, or both, and which mortgage contains therein the correct name and address of the mortgagee, together with a covenant between the mortgagor and mortgagee authorizing the mortgagee to do all things provided to be done by the mortgagee under this section, shall be prior to all mechanic's, material supplier's, and similar liens and all liens provided for in this chapter that are filed for record after the improvement mortgage is filed for record, to the extent that the proceeds thereof are used and applied for the purposes of and pursuant to this section. Such mortgage is a lien on the premises therein described from the time it is filed for record for the full amount that is ultimately and actually paid out under the mortgage, regardless of the time when the money secured thereby is advanced.

Any laborer or material supplier who claims or at any time can claim a right of lien on the premises for any labor or work performed or to be performed or for material furnished or to be furnished for the improvement, may serve a written notice on the mortgagee, which notice shall show the kind and nature of the labor or work performed or to be performed, or both, and of the material furnished or to be furnished, or both, and the amount claimed or to be claimed therefor, and a description of the premises upon which the labor or work has been or is to be performed or to which the material has been or is to be furnished, and the amount claimed therefor.

(B) The mortgagee need not pay out any of the mortgage fund for fifteen days after filing the mortgage. At the end of such period, the mortgagee may refuse to go forward with the loan or to pay out the fund, in which case, if no funds have been advanced, the mortgagee shall make, execute, and deliver to the mortgagor, or to the county recorder to be recorded, a proper release of the mortgage, but if the mortgagee elects to complete the loan, the mortgagee shall, in order to obtain the priority set forth in this section, distribute the mortgage fund in the following order:



- (1) The mortgagee may at any time pay off the prior encumbrance, or withhold the amount thereof for that purpose.
- (2) Out of the residue of the fund, the mortgagee may at any time retain sufficient funds to complete the improvement, according to the original plans, specifications, and contracts, and within the original contract price.
- (3) The mortgagee may from time to time pay out on the owner's order, directly to the original contractor or subcontractor, or directly to the owner if the owner is the owner's own contractor, such sums as the owner certifies to be necessary to meet and pay labor payrolls for the improvement.
- (4) The mortgagee shall pay on the order of the owner, the accounts of the material suppliers and laborers who have filed with the mortgagee a written notice as provided in this section, the amounts due for labor or work then performed and material then furnished for the improvement; and shall retain out of the mortgage fund such money to become due as is shown by the notice served and shall hold such money, and shall pay on the order of the owner, the amounts due to such persons who have served such notices, if the mortgagee has sufficient money in the mortgagee's hands to do so and also to complete the improvement; but if the mortgagee has funds in the mortgagee's hands insufficient to pay all such laborers and material suppliers in full and to complete the improvement, the mortgagee shall retain sufficient money to complete the improvement and to distribute the balance pro rata among the material suppliers and laborers who have filed such notices.
- (5) If the owner refuses to issue an order to pay the amount of the notice filed, the mortgagee shall retain the whole amount claimed until the proper amount has been agreed upon or judicially determined, provided that the mortgagee may withhold sufficient funds to complete the improvement.
- (6) The mortgagee shall pay out on the owners' order, directly to material suppliers or laborers who have performed labor or work or furnished material for the improvement.
- (7) The mortgagee shall pay the balance of the mortgage fund after the improvement is completed to the owner, or to whomsoever the owner directs.



In case the mortgagee pays out the fund otherwise than as provided in this section, then the lien of the mortgage to the extent that the funds had been otherwise paid, is subsequent to liens of original contractors, subcontractors, material suppliers, and laborers; but in no case is such a mortgagee obligated to pay or liable at law for more than the principal of the mortgage.

All payments and distributions made by the mortgagee as provided in this section shall be considered the same as if paid to the owner, part owner, lessee, or mortgagor under the mortgage, and as if paid to the original contractor, and when paid pursuant to this section there is no further liability on the part of the mortgagee. This chapter does not require the mortgagee to ascertain by affidavit or otherwise the respective claims of original contractors, subcontractors, laborers, or material suppliers, or to determine priorities among lien claimants.

The mortgagee is not responsible for a mistake of the owner in determining priorities, or for any failure of the payee properly to distribute funds paid on the written order of the owner.

(C) Any original contractor, subcontractor, material supplier, or laborer may at any time serve on any mortgagee a written request demanding to know the exact balance of the mortgage fund in the mortgagee's possession and the aggregate amount included in the notices filed with the mortgagee at the time of the receipt of such notice. The mortgagee shall correctly inform the person serving the notice of the exact balance and the aggregate amount included in the notices filed. If the mortgagee fails to inform the original contractor, subcontractor, material supplier, or laborer serving the written demand of the exact balance of the mortgage fund in the mortgagee's possession at the time of the receipt of the notice, the mortgagee is liable to the original contractor, subcontractor, material supplier, and laborer making such demand, each time the mortgagee fails to comply with such demand, in the sum of one hundred dollars.

This section, as to mortgages contemplated by this section, controls over all other sections of the Revised Code relating to mechanic's, material supplier's, contractor's, subcontractor's, laborer's, and all liens that can be had under this chapter, and shall be liberally construed in favor of such mortgagees, a substantial compliance by such mortgagees being sufficient.