

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 1
LIENS IN GENERAL

45-101. LIENS DEFINED. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

[(45-101) R.S., sec. 3325; reen. R.C. & C.L., sec. 3373; C.S., sec. 6340; I.C.A., sec. 44-101.]

45-102. GENERAL AND SPECIAL LIENS. Liens are either general or special.

[(45-102) R.S., sec. 3326; reen. R.C. & C.L., sec. 3374; C.S., sec. 6341; I.C.A., sec. 44-102.]

45-103. GENERAL LIEN DEFINED. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

[(45-103) R.S., sec. 3327; reen. R.C. & C.L., sec. 3375; C.S., sec. 6342; I.C.A., sec. 44-103.]

45-104. SPECIAL LIEN DEFINED. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

[(45-104) R.S., sec. 3328; reen. R.C. & C.L., sec. 3376; C.S., sec. 6343; I.C.A., sec. 44-104.]

45-105. SATISFACTION OF PRIOR LIEN. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

[(45-105) R.S., sec. 3329; reen. R.C. & C.L., sec. 3377; C.S., sec. 6344; I.C.A., sec. 44-105.]

45-106. CONTRACTS SUBJECT TO THIS CHAPTER. Contracts of mortgage of real property are subject to all the provisions of this chapter.

[(45-106) R.S., sec. 3330; reen. R.C. & C.L., sec. 3378; C.S., sec. 6345; I.C.A., sec. 44-106; am. 1967, ch. 272, sec. 9, p. 745.]

45-107. LIEN ON FUTURE INTEREST. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of said interest.

[(45-107) R.S., sec. 3331; reen. R.C. & C.L., sec. 3379; C.S., sec. 6346; I.C.A., sec. 44-107.]

45-108. LIEN FOR PERFORMANCE OF FUTURE OBLIGATIONS -- VALIDITY -- PRIORITY. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence, which lien, if not invalid on other grounds, shall be valid as against all persons.

The validity of such contracts and liens as security for any obligation is not affected as against any person by the fact that the contract does not specify, describe or limit the obligations to be secured as to purpose, nature, time, or amount of the obligations to be secured.

All such liens, if otherwise valid, are valid against and prior and superior to all rights, liens and claims acquired by other persons in the property subject thereto after the contract creating such liens was made, except in cases where the person in whose favor the obligation secured by such lien was created, had actual notice of the existence of such subsequent right, lien or claim at the time such obligation was created, and are prior and superior to such subsequent rights, liens or claims irrespective of such or any notice in the following cases:

1. Where the person, in whose favor the obligation secured thereby was created, was legally bound to make the advance or give the consideration resulting in such obligation.

2. Where the consideration for such obligation was necessarily and actually applied to the maintenance and/or preservation of the property subject to the lien.

Making the advance or giving the consideration to result in an obligation not in existence at the time such a contract creating a lien to secure the same is made, is optional with the person making the advance or giving the consideration unless he is bound by an express contract to the contrary which shall not be implied from the fact that the contract to secure such obligation was made.

Obligations otherwise within the limits and description of those specified in any contract creating a lien to secure the performance of obligations not then in existence, but created in favor of any person to whom the original party to be secured by the lien created by such contract has transferred such contract, shall also be secured thereby in like manner as similar obligations between the original parties thereto.

Contracts of mortgage of real property are subject to all the provisions of this section as amended.

[(45-108) R.S., sec. 3332; reen. R.C. & C.L., sec. 3380; C.S., sec. 6347; am. 1929, ch. 255, sec. 1, p. 520; I.C.A., sec. 44-108; am. 1955, ch. 145, sec. 1, p. 286; am. 1967, ch. 272, sec. 10, p. 745.]

45-109. LIEN TRANSFERS NO TITLE. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

[(45-109) R.S., sec. 3333; reen. R.C. & C.L., sec. 3381; C.S., sec. 6348; I.C.A., sec. 44-109.]

45-110. CONTRACTS FOR FORFEITURE VOID. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

[(45-110) R.S., sec. 3334; reen. R.C. & C.L., sec. 3382; C.S., sec. 6349; I.C.A., sec. 44-110.]

45-111. PERSONAL OBLIGATION NOT IMPLIED. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

[(45-111) R.S., sec. 3335; reen. R.C. & C.L., sec. 3383; C.S., sec. 6350; I.C.A., sec. 44-111.]

45-112. PRIORITY OF PURCHASE MONEY MORTGAGE. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

[(45-112) R.S., sec. 3336; reen. R.C. & C.L., sec. 3384; C.S., sec. 6351; I.C.A., sec. 44-112.]

45-113. RIGHT TO REDEEM FROM LIEN. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

[(45-113) R.S., sec. 3337; reen. R.C. & C.L., sec. 3385; C.S., sec. 6352; I.C.A., sec. 44-113.]

45-114. RIGHTS OF JUNIOR LIENOR. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

[(45-114) R.S., sec. 3338; reen. R.C. & C.L., sec. 3386; C.S., sec. 6353; I.C.A., sec. 44-114.]

45-115. RESTORATION EXTINGUISHES LIEN. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith and for a good consideration.

[(45-115) R.S., sec. 3339; reen. R.C. & C.L., sec. 3387; C.S., sec. 6354; I.C.A., sec. 44-115.]

45-116. EFFECT OF MODIFICATION ON PRIORITY OF LIEN. (1) The lien of a mortgage and its priority shall not be affected by provisions in the mortgage instrument or in the note or other agreement evidencing the obligation that the mortgage secures, or by the exercise of such provisions by the mortgagee:

- (a) which provide for the renegotiation or adjustment of the interest rate at designated intervals, the effect of which may be to increase or decrease the number of periodic payments to be made, or extend or shorten the terms of payment, or both; or

(b) which results in an increase in the underlying mortgage obligation during a portion of the designated term of the mortgage because of deferment of all or a portion of interest payments and the addition of such payments to the outstanding principal balance of the mortgage.

The mortgagee may issue new notes at designated intervals during the term of the mortgage to reflect the modifications described herein.

(2) The provisions of subsection (1) of this section shall apply where the terms of the obligation provide that the interest rate, payment terms, or balance due on the loan may be indexed, adjusted, renewed or renegotiated and the mortgage instrument received for recordation discloses that fact.

(3) As used in this section, the term "mortgage" includes deed of trust.

[45-116, added 1982, ch. 245, sec. 1, p. 632.]