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Backgrounder

LRC 114—Report on Priority of Builders Liens Under Bill 52

Date: October 1990

This minor report is in the form of a letter to the Attorney General on the topic of Bill 52 (1990), the *Builders Lien Act*. It refers the Attorney General to the 1986 Commission *Report on Mortgages on Land: The Priority of Further Advances*.

Bill 52 includes provisions that run counter to the 1986 report, and the Commission recommends revising Bill 52 accordingly. The first issue with Bill 52, is that it is confined to priority competitions between construction lenders and builders lien claimants, and the Court would not have any jurisdiction to alter priorities vis-à-vis other potential claimants. The priority rules of Bill 52 and those of the *Property Law Act* might also give rise to situations of “circular priority.” Bill 52 would also require a court application to receive priority, something the Commission’s recommendations do not. Furthermore recent jurisprudence may mean that Bill 52 may be interpreted by the Court in a way not intended or contemplated by the legislators.

The report recommends that section 31 of Bill 52 be reconsidered and modified to be in accordance with the Commission’s 1986 Report. The report also includes an annex that provides an example of circular priority that might arise under Bill 52 if it is left unchanged.

Further Developments

None.