

## Essay Question No. 1

### Answer this question in booklet #1.

Ray owns a piece of land with a small house on it. When he purchased the house several years ago Ray got a \$50,000 loan from First Bank to finance the purchase. Ray executed a promissory note for \$50,000 in favor of First Bank (First Note). The promissory note was secured by a deed of trust (First Deed of Trust), which was properly recorded.

Ray wanted to remodel his house. He hired a local contractor, Bill Builder, to perform the remodel. Ray and Builder signed a contract for the remodel in which Builder agreed to provide labor and materials for the remodel and Ray was to pay \$35,000. Ray went to Second Bank and obtained a \$25,000 loan to finance a part of the remodel. Ray executed a second promissory note for \$25,000 in favor of Second Bank (Second Note), which was secured by a deed of trust (the Second Deed of Trust). By mistake, Second Bank did not record the Second Deed of Trust. Builder did not know how Ray financed his remodel.

During the middle of the remodel, Ray lost his job. He began to miss payments to Builder and to First Bank; he continued to make his monthly payments to Second Bank. Ray's missed payments put him in default under the terms of the First Deed of Trust. Under the terms of the Second Deed of Trust, Ray's default on the First Deed of Trust also put him in default on the Second Deed of Trust. The First Note includes the following provision:

The undersigned Makers of this Note and the trustor of the Deed of Trust are personally obligated and fully liable for the amount due under this Note. The holder of the Note and beneficiary of the Deed of Trust have the right to sue on the Note and obtain a personal judgment against the undersigned Makers of this Note and trustor of the Deed of Trust for satisfaction of the amount due under the Note either before or after a judicial foreclosure.

Although Ray assured Builder that he would catch up on his payments as soon as he found a new job, Builder is concerned that Ray will not be able to pay him.

1. What steps must Builder take to assert a mechanic's lien under Alaska law?

2. What remedies does First Bank have against the property and Ray personally under Alaska law due to Ray's default on the First Note and the First Deed of Trust? Discuss each remedy and the advantages and disadvantages of each remedy.

3. If Builder properly records a mechanic's lien and either First Bank or Second Bank forecloses on their respective deeds of trust, what is the priority of the three liens? Discuss.

4. Would your answer to No. 3 change, if Builder's labor and materials had been provided in the original construction of Ray's house? Explain.