

Virginia Supreme Court Adopts Partial Subordination Rule

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The case of [Futuri Real Estate, Inc. v. Atlantic Trustee Services, LLC](#) involved a question of first impression in Virginia regarding what should happen when a first-priority position lien subordinates itself to a third-priority position lien. Under the complete subordination rule, the first-priority position lien becomes junior to the other two liens on the property, the second-priority lien moves to first, and the third-priority lien becomes second. In other words, A-B-C becomes B-C-A. Under the partial subordination rule, the third-priority lien takes part (or all) of the first-position lien's spot. So A-B-C becomes (C and then A, up to the amount of A's lien)-B-(C and then A for the remainder). That way, the second-priority lien does not obtain a windfall. The circuit court opted for the partial subordination rule, and the Virginia Supreme Court, in an opinion by Senior Justice Lacy, affirmed, holding that complete subordination was inconsistent with Virginia law because it incorporates an inference that the contracting parties intended to affect lienholders who are not a party to the agreement, notwithstanding that such intent is not contained in the language of the agreement.

A link to the opinion is [here](#).

TAGGED: virginia supreme court, Partial Subordination, complete subordination, Futuri Real Estate Inc. v. Atlantic Trustee Services LLC