

## BACKGROUND

The "builders' lien" was created by statute and was unknown at common law. The legislation was originally designed to provide a simple and inexpensive method for a person to collect money due to him for work done to or material supplied to a building site. What is referred to as a builders' lien in Alberta is commonly referred to as a "mechanics' lien" in other jurisdictions. All other common law provinces in Canada (i.e., all provinces except Quebec) have Mechanics' Lien Acts. (1) Any person who does work in respect of an improvement or furnishes any material to be used in an improvement for an owner, contractor or subcontractor has a lien on the estate or interest of the owner of the land in respect of which the improvement is being made. (2) The lien is created when the work is started or the first material is furnished but ceases to exist if it is not registered within the time period provided by the Act. (3) Even when registered, a lien may cease to exist in a variety of situations if procedural requirements specified in the Act are not complied with.

## REGISTRATION PROCEDURE

1. A lien may be registered at the Land Titles Office by filing a statement of lien (FORM A). (4)

As a builders' lien must be registered within a fixed time period, all builders' liens should come to the registration area in red folders.

### 2. Requirements of a Builders' Lien

a) The name and address of the lienholder, and the person for whom the work was done or for whom the materials were furnished must be provided. The name of the owner or alleged owner should be provided but a lien should not be rejected for this reason unless there is some other critical defect. (5) The address for service for the lienholder must be located in Alberta. (6)

b) The lien may be filed by an individual, corporation, extra provincial corporation, partnership or a trade name. (7) It is not necessary to verify that a corporate lien claimant is registered in accordance with section 27 of the Land Titles Act. If the lienholder is a limited company operating as a trade name the limited company's name will be shown on title. If the lienholder is a Receiver Manager on behalf of a company, enter the company name as lienor and use PF16 to enter the Receiver Manager. If the lienholder is a bankruptcy trustee on behalf of a company or individual, enter the company/individual's name and use PF16 to enter bankruptcy trustee.

c) A proper legal description of the land and the estate or interest against which the builders' lien is claimed must be provided. (8)

- d) A short description of the work done or to be done or of the materials furnished or to be furnished must be provided. (9) The general rule is that the work done or the materials supplied must be in respect of an improvement to the land in question. (10)
- e) The date when the work was completed or when the last materials were furnished must be clearly indicated. If the statement of lien is filed before the completion of the contract or subcontract, a statement that the work is not yet completed or the materials have not yet all been furnished must be included.
- f) The statement of lien must be filed
  - (i) within a 45-day period, or
  - (ii) with respect to an oil or gas well or an oil and gas well site, within a 90-day period

following the completion or abandonment of the work or of the supplying of the last of the materials. (11) It is the responsibility of the lien claimant to submit the lien for registration within the correct time period. (12) If the last day for registration falls on a day when the office is closed then registration can occur on the next day that the office is open. For example, if the 45 day or 90 day period ends on a statutory holiday (Monday), then the lien can be registered on the following day (Tuesday). Any disputes about the appropriate registration period will have to be resolved by the courts.

- g) The amount of the lien claimed as due or to become due must be \$300 or greater. (13)
- h) The lien must be signed by the lienholder or agent of the lienholder. (14)
- i) The statement of lien must be verified by affidavit (FORM B) by the lienholder or the agent of the lienholder. When the affidavit is made by a person other than the lienholder, it may be made not only as to the facts within the personal knowledge of the deponent, but also as to the facts of which the deponent is informed, provided the deponent gives the source of his information and states that he believes the facts to be true. (15)

3. The builders' lien is registered against the certificate of title of the land referred to in the statement of lien.

4. The name and address of the "person for whom the work or materials were supplied" (as indicated on the statement of lien form) must be entered as the first notice on the ALTA system. The name and address of the "owner of the estate or interest upon which the lien is being claimed" (as indicated on the statement of lien form) must be entered as the second and subsequent (if multiple owners) notices. If the name and/or address is not provided, enter "not provided" in the field(s). Duplicate mailing labels are discarded.

5. A lien is accepted for registration even if the wrong affidavit has been sworn because a time limit may expire if the lien is rejected and because the court has the power to hold that a lien is in substantial compliance with the Act notwithstanding an irregularity. (16)

6. Subject to items 7. and 8., a statement of lien may be registered against land where the land affected has not been registered under the Land Titles Act. The lien is

registered and endorsed against the record sheet kept for the non-patented land in question. (17)

7. **Liens Against Crown Land** - A builders' lien is accepted for registration against Crown land or land held by an agent of the Crown even though the Crown or Crown agent in most cases will be exempt from the application of the Builders' Lien Act. (18) The lien should indicate that it is being filed against the estate or interest of some person other than the Crown. The Land Titles Office does not resolve the issue of Crown immunity, as there may be special circumstances which justify registration of a lien. For example, if the property is jointly owned with the Crown by persons other than the Crown, the lien can apply to the non-exempt portion of the land. (19) A lien against Crown land is discharged or cancelled in the same manner as any other lien.

8. a) A builders' lien cannot be registered against minerals held by the Crown in Right of Alberta. With respect to untitled minerals, the lien can be registered with the Minister of Energy. (20)

b) A builders' lien may be registered against an estate or interest held directly from the Crown in right of Canada. It is the registrant's responsibility to indicate that the mines and minerals in question are under Federal jurisdiction.

9. A lien may not be registered against a public highway or for any work or improvement caused to be done on it by a municipal corporation. (21)

10. A builders' lien may be registered against land where the registered owner is a board of directors of an irrigation district as long as the lien clearly establishes that it is against an estate or interest in the land other than the estate or interest of the board of directors of the irrigation district. The endorsement on title should indicate the specific interest the lien is against. (22)

11. **Liens Against Condominium Property** - If the owner of a condominium unit or the condominium corporation requests that work be done or materials be furnished to that unit, the lien is registered against the individual owner's certificate of title. If the condominium corporation requests that work be done or materials be furnished for the benefit of the common property generally, the builders' lien is endorsed against the additional sheet. (23)

12. **Lien for Wages** - When a lien is registered by a labourer for wages, the default indicator on the builders' lien screen should be changed from N to Y. A labourer can be an individual or a corporation. No fees are charged on its registration or discharge or on the filing or discharge of a certificate of lis pendens relating to it. (24)

13. **Lien Against Pipelines** - If a lien is in respect of a pipeline, it should be specified in the memorandum endorsed on the certificate of title that the lien is against the utility right of way. (25)

14. **Lien Against Leasehold Interest** - If a lien is filed in respect of a leasehold interest, it should be specified in the memorandum endorsed on the certificate of title

that the lien is against the leasehold interest.

**15. Notice of Registration of a Lien** - Once a builders' lien is registered, a notice in the form of a photocopy of the face of the lien with a notice stamp endorsed thereon is to be sent by mail to:

- a) the registered owner,
- b) the person alleged in the statement of lien to be the owner of the land, and
- c) the person for whom the work referred to in the statement of lien was done or proposed to be done or the materials were furnished or to be furnished. (26)
- d) in the case of registration of a lien against the additional sheet, notice is sent to the condominium corporation but not to the owners of the units. (26)

**16. Filing of a Certificate of Lis Pendens** - As a certificate of lis pendens (C.L.P.) (FORM C) relating to a builders' lien must be registered within a fixed time period, all C.L.P.'s should come to the registration area in red folders.

The C.L.P. is granted by the clerk of the Court of Queen's Bench of Alberta. As a lien claimant may enforce his lien through proceedings commenced by another lien claimant, the person registering a certificate does not have to be the named plaintiff in the proceedings. See procedure under CLP-1 with respect to registration requirements. (27)

The C.L.P. can only be registered within 180 days after registration of the lien, (28) except if a lien was registered prior to July 1, 1985 and there is a subsisting C.L.P. in respect of another lien that was registered within or before the 180-day period for the lien, a C.L.P. can be registered by the lien claimant at any time. (29)

A C.L.P. may also be registered pursuant to the provisions of section 38 of the Builders' Lien Act. The clerk of the court may grant a C.L.P. under this section to a lien claimant

- a) who is a party to the proceedings, and
- b) whose lien was invalidated for failure to comply with sections 155 or 156 of the Land Titles Act (i.e., attestation requirements).

When the court has ordered that a lien be removed pursuant to section 27 or 48(1), a C.L.P. is not to be registered. (30)

**17. Assignment of Lien** - An assignment of a lien may be registered (31) using the form prescribed in section 109 of the Land Titles Act (FORM 18). A change of address for service, similar to the one used for caveats (FORM 28), must also be submitted. Both forms can be amended to reflect the assignment of lien.

**18. Expiry of Lien** - A lien registered after July 1, 1985 expires if the lien claimant has not registered a C.L.P. in respect of his lien within 180 days after registration of the lien. A lien registered before July 1, 1985 expires if there is no subsisting C.L.P. registered by any lien claimant within or before the 180 day period after registration of the lien and no C.L.P. has been registered by the lien claimant himself. In other words, the "umbrella principle" still applies to liens registered before July 1, 1985. (32)

Where a lien has expired, the expiry is registered without charge. The Registrar on his own initiative or upon written request by letter or direction on the Document Registration Request form will cancel registration of the lien. (33)

19. **Lapsing of Lien** - For liens registered after July 1, 1985, the Builders' Lien Amendment Act, 1985 provides a lapsing procedure similar to the one for caveats in the Land Titles Act. Such a lien ceases to exist if an owner or another person affected by the lien serves written notice (**FORM D**) on the lienholder to commence an action to realize on his lien and the lienholder does not register a C.L.P. within 30 days after service. (34)

A statutory declaration (**FORM E**) has been developed which outlines what is required before a lien may be lapsed. Any documentation which provides all the necessary information can be accepted. The essential criteria are:

- a) proof of service of the notice on the registered lienholder by an acceptable method,
- b) the person causing notice to be served must be an owner or another person affected by the lien (e.g., a mortgagee or contractor), and
- c) expiration of the 30 day time period.

Service of the notice can only be effected by one of the following methods: (35)

- a) Personal service on the registered lienholder. The time period commences the day after the date of service indicated in the affidavit of personal service.
- b) Single registered mail sent to the address for service set out in the statement of lien. As the address for service must be within Alberta, service is deemed to be effected 7 days after mailing, so the time period commences on the 8th day. If the material submitted indicates that the notice was returned, service has not been effected and the lien cannot be lapsed. (36)
- c) Delivery to the address that is the address for service set out in the statement of lien. The time period commences the day after the date of delivery.
- d) Courier Service on the registered lienholder. (This is considered personal service.) The time period commences the day after the date of service indicated in the affidavit of personal service.
- e) A notice sent via facsimile is not an acceptable method for service.

Any reference above to "the address for service set out in the statement of lien" is to be taken as a reference to the address in the latest notice of change of address if any such notice has been filed in respect of the lien.

Where the requirements for lapsing a lien are complied with, the documentation is given a registration number and that number is used as a discharge. The fee in **Tariff item 7(3)** is charged.

20. **Calculation of Time Periods** - The following rules apply to the calculation of the time periods in the Act (i.e., 45 days or 90 days for the filing of the builders' lien, 180 days for the filing of the C.L.P. or 30 days from the day the registered owner is

served with a notice to commence an action):

- a) If the last day for the filing of the lien or C.L.P. falls on a day the Land Titles Office is closed, it can be registered on the next day the office is open.
- b) The day the work was completed, the lien was registered or the notice was served is not included in the calculation of the time period. (37)

**21. Cancellation of Lien** - A cancellation (**FORM F**) must be completed by the lienholder, the original agent who signed the lien or an attorney pursuant to a power of attorney. See procedure under **POA-1** for the requirements with respect to use of a power of attorney. If a lawyer executed a lien as agent under his firm name, the particular lawyer is treated as the agent, not the law firm. In all cases, the lienholder may execute the cancellation. If the cancellation is signed by an individual, it requires a witness and an affidavit of execution. If a lien by a corporation was not signed by an agent, the cancellation must be under seal or be accompanied by a corporate signing authority affidavit. If the cancellation is executed for a partnership by someone other than the agent who signed the lien, the Registrar must be satisfied that the person executing the cancellation is a partner in the partnership. A statutory declaration by the person executing the cancellation stating that he is a partner in the partnership which filed the lien or a comparable statement by the witness in the affidavit of attestation may be accepted as proof that he was authorized to execute the cancellation of lien.

When a lien is registered against the additional sheet, a partial discharge as it pertains to the owner's unit and the owner's share in the common property may be registered. (38)  
An example of the particulars to be endorsed on the additional sheet is:

"PARTIAL DISCHARGE OF BUILDERS' LIEN 852000001  
AS TO UNIT 100"

A cancellation of builders' lien is registered even if a withdrawal of the related C.L.P. is not also presented for registration. A note should be made on the Customer Registration Notice advising the registrant that the C.L.P. is still registered against the title.

**22. Cancellation of Lien and Certificate of Lis Pendens** - A lien and any C.L.P. depending on the lien for its existence are cancelled upon the registration of the following:

- a) a certified copy of an order or judgment of the court ordering the cancellation of the registration of the lien, (compliance with section 191 is not required) or
- b) a certificate under the seal of the clerk of the court stating that pursuant to an order or judgment of the court the amount due on the lien has been paid into court or the land has been sold in satisfaction of the lien. (39)

**23. Discharge of Certificate of Lis Pendens** - The registration of a C.L.P. is cancelled upon the registration of the following:

- a) a certificate of discontinuance under seal of the clerk of the court, or
- b) a withdrawal of C.L.P. signed by either the person on whose behalf the C.L.P.

was registered or by the original agent who executed the lien. (40) Attestation requirements must be complied with.

24. **Notice to Prove Lien** - A court order is required to discharge a lien which is lost pursuant to the provisions of sections 48 or 52.

25. **Change of Address for Service** - A notice in the prescribed form (FORM G) or to the like effect (e.g., a letter containing the required information or see procedure under ADD-1 with respect to FORM A), executed by the lienholder or the original agent may be registered. (41)

26. **Change of Agents** - A lienholder may submit a written request to change the agent authorized to deal with a builders' lien. The request must be signed by the lienholder and satisfy normal attestation requirements (use document type CHAN).

27. **Fees** - [Tariff item 11\(5\)](#) is charged for all discharges except for the discharge of a builders' lien by a labourer for wages in which case no fee is charged pursuant to [Tariff item 7\(2\)](#).

## STATUTE AND CASE REFERENCES

Statute references are to the Builders' Lien Act, R.S.A. 2000, c. B-7, unless otherwise indicated.

1. Macklem and Bristow, *Mechanics' Liens in Canada*, 4th ed., p. 1. see *Western International Contractors Ltd. v. Sarcee Developments Ltd. et al.*, [1979] 3 W.W.R. 631 (Alta. C.A.) per Morrow, J. at p. 648
2. s. 6(1); *Western International Contractors Ltd. v. Sarcee Developments Ltd. et al.*, [1979] 3 W.W.R. 631 (Alta. C.A.), at p. 649; *Alberta Gas Ethylene Company Ltd. et al. v. Noyle et al.* [1980] 2 W.W.R. 507 (Alta. C.A.); *Suss Woodcraft Ltd. v. Abbey Glen Property Corporation and Zwaig*, [1975] 5 W.W.R. 57 (Alta. S.C.) held that acquiring the right to a builders' lien constituted acquiring or holding an interest in land.
3. s. 10 and 42
4. s. 34(1)
5. *Canadian Patent Scaffolding Co. Ltd. v. Capton Holding Ltd.*, (1985) 63 A.R. 106 (Q.B. Master).
6. s. 34(2)(a) and (f)
7. *Waisman, Ross & Association v. Crown Trust Company* (1970), 72 W.W.R. 531 (S.C.C.); s. 27(5), Land Titles Act, R.S.A. 2000, c. L-4
8. s. 34(2)(e)
9. s. 34(2)(c)
10. In s. 1(d), improvement is defined as: "anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land except a thing that is neither affixed to the land nor intended to be or become part of the land".
11. s. 41 and 42
12. Sec. 22(2), Interpretation Act, R.S.A. 2000, c. 1-8

13. s. 34(2)(d) and 35(3)
14. s. 34(2) and (3)
15. s. 34(6) and (8)
16. s. 37(1); *Empire Drywall Ltd. v. Kim and Busan Holdings Ltd.* (1982), 21 Alta. L.R. (2d) 399 (Q.B.). Master Quinn held that as there was no prejudice to any of the parties, a lien which was registered against the fee simple title rather than the leasehold title was validly filed and pursuant to s. 27 of the Builders' Lien Act was in substantial compliance with the registration requirements of s. 25 of the Act.
17. s. 35; *Western International Contractors Ltd. v. Sarcee Developments Ltd. et al.*, *supra* footnote 2
18. *Kardinal Homes Ltd. v. Alberta Housing Corporation and A.H. Hagen Construction Ltd.* (1979), 8 Alta. L.R. (2d) 56 (Alta. D.C.): Alberta Housing Corporation is a Crown agent by virtue of the Alberta Housing Act, and by virtue of s. 14 of the Interpretation Act no enactment affects Her Majesty unless it expressly states that the Crown is bound. *Engineered Homes Ltd. v. Popil*, [1972] 4 W.W.R. 357 (Alta. D.C.): Crown immunity may only be claimed by the Crown and not by a third party.
19. *Ed Miller Sales & Rentals Ltd. v. R. in Right of Alberta et al.* (1983), 22 Alta. L.R. (2d) 9 (Q.B.): Property owned jointly by the Crown and others may be liened to the extent of the non-exempt interests.
20. s. 36, s. 202 Land Titles Act, R.S.A. 2000, c.L-4
21. s. 7(1); see *Prairie Roadbuilders Ltd. v. Stettler 23 et al.* (1984), 27 Alta. L.R. (2d) 289 (Q.B.) for a review of the law in respect of the registration of builder's liens against municipal land.
22. s.7(2); see *Prairie Roadbuilders Ltd. v. Stettler 23 et al.*, *supra*
23. s. 78, Condominium Property Act, R.S.A. 2000, c. C-22
24. s. 68; s. 7, Tariff of Fees, Alberta Regulation 120/2000
25. *East Central Gas Co-op Ltd. et al. v. Henuset Ranches and Construction Ltd.* (1977), 1 Alta L.R. (2d) 345 (Alta. S.C.T.D.)
26. s. 153, Land Titles Act; s. 78, Condominium Property Regulation, Alberta Regulation 168/2000
27. s. 43(2) and (3)
28. s. 43(1)
29. *Consolidated Concrete Limited v. Bauer et al.*, [1979] 5 W.W.R. 351 (Alta. D.C.). In this case, a lienholder discharged a C.L.P. when there were other lienholders who were parties to the action and whose claims had not been resolved. The court held that the lienholder should not have discharged the C.L.P. in these circumstances. Consequently, a lienholder who has been relying on a C.L.P. registered by another lienholder may wish to ensure his lien is protected by a separate C.L.P. This case will continue to be applicable to liens registered prior to July 1, 1985.
30. s. 44; *Driden Industries Ltd. v. Sieber and Willemcen*, [1974] 3 W.W.R. 368 (Alta. S.C. App. Div.)
31. s. 30
32. *Contract Interiors and Design Ltd. v. Vogel*, [1973] 5 W.W.R. 286 (Alta. D.C.). In this case, a lienholder whose lien was registered and subsisting at the time of the registration of the plaintiff's C.L.P. failed to register a C.L.P. As a result, the lien was expired from the certificate of title by the Land Titles Office. It was held that



the lien should not have been expired for failure to register a C.L.P. as once an action is brought by one lienholder and a C.L.P. is registered, the entire matter is in issue. It is unnecessary for each lienholder to register a C.L.P. Although in *Contract Interiors* the C.L.P. was registered subsequent to registration of the lien, it is established practice to extend this protection to liens registered subsequent to the filing of a C.L.P. However, this judgment will not apply to liens registered after July 1, 1985, by s. 27, S.A. 1985, c. 14.

- 33. s. 43(5)
- 34. s. 45(1)
- 35. s. 45(3)
- 36. s. 23, Interpretation Act, R.S.A. 1980, c. I-7
- 37. s. 22(2), (6) and (7), Interpretation Act
- 38. s. 78(3), Condominium Property Act
- 39. s. 47(3)
- 40. s. 43(4); *Consolidated Concrete Limited v. Bauer et al.*, *supra* footnote 29 [1979] 5 W.W.R. 351 (Alta. D.C.). This case held that it was improper to discontinue an action completely where only one C.L.P. had been registered and there were other registered liens, or to withdraw the C.L.P. in such circumstances. It does not suggest any onus on the Registrar to ensure that the discontinuance or withdrawal is proper.
- 41. s. 39(1)