

Subject: **Construction Liens**

BACKGROUND

On August 29, 2022, Bill 37: The Builders' Lien Act (Prompt Payment) Amendment Act, 2020 came into force to replace the Builders' Lien Act (BUL-1). Construction Liens are regulated under the Prompt Payment and Construction Lien Act (PPCLA).

Construction liens provide a simple and inexpensive method for a person to collect money due to them for work done or material supplied to a building site. What is referred to as a construction lien in Alberta is commonly referred to as a 'mechanics' lien' in other jurisdictions.

The definition of improvement has not changed from the Builders' Lien Act. An improvement means "anything constructed, erected, built, placed, dug or drilled on or in land that improves the land, except a thing that is neither affixed to the land nor intended to be or become part of the land". (1)

Any person who does work in respect to 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 to which the improvement is being made. (2) The lien is created when the work is either started or the first material is furnished but ceases to exist if it is not registered within the time period stated in the Act. (3) Even when registered, a lien may cease to exist in a variety of situations if compliance with procedural requirements specified in the Act does not occur.

The PPCLA included a two-year transition period for contracts signed before August 29, 2022, which would be governed by the Builders' Lien Act. This transition period for construction contracts to comply with the PPCLA ends on August 29, 2024. For contracts signed before August 29, 2022, Land Titles and Surveys will only accept Builders' Liens up until the following dates:

- Regular Builders' Liens must be received by October 13, 2024 (45 days from August 29, 2024).
- Oil and gas Builders' Liens must be received by November 27, 2024 (90 days from August 29, 2024).

Liens on contracts signed August 29, 2022, or after must use the Construction Lien forms after August 29, 2024.

Any contracts entered into before August 29, 2022, that are scheduled to remain in effect past August 29, 2024, must be amended to comply with the PPCLA by that date.

For information regarding Builders' Liens, please see **BUL-1** of the Land Titles Procedures Manual.

REGISTRATION PROCEDURE

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Construction Lien

The code used for registration at Land Titles is: CONL

1. A lien may be registered at the Land Titles Office by filing a statement of lien (**Form 6**). (4)

2. Requirements of a Construction Lien

- a. The full name of the lienholder. This can be an individual, corporation, extra provincial corporation, partnership, or tradename. (5) 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.
- b. The full address of the lienholder including the municipality and postal code. The address for service for the lienholder must be in Alberta. (6)
- c. The full name and address of the owner or alleged owner of the property. If not known, enter "unknown". The name of the owner or alleged owner should be provided but the lien should not be rejected for this reason unless there is some other critical defect. (7)
- d. A proper legal description of the land and the estate or interest against which the construction lien is claimed must be provided (8)
- e. Provide a short description of the work done or to be done or of the materials furnished or to be furnished. (9) The work done, or the materials supplied

- f. must be in respect of an improvement to the land in question (10) If the lien is for wages owed, ensure to include “for wages only”. (11)
- g. The full name of the person the work or materials were provided for. This can be an individual, corporation, extra provincial corporation, partnership, or tradename. (12)
- h. The full address of the person for whom the work or materials were provided.
- i. Check the box if the lien is for an oil or gas well or supply of ready-mix concrete as defined by the North American Industry Classification Systems Canada 2012.
- j. Check the box that applies:
 - i. The date when the work was completed or when the last materials were supplied (13)
OR
 - ii. If the statement of lien is filed before the completion of the contract or subcontract and the work is not yet completed or all the materials have not yet been supplied or furnished (14)
- k. The amount of the lien claimed as due or to be come due must be \$700 or greater. (15)
- l. The lien must be signed by the lienholder or lienholder’s agent. (16)
- m. The statement of lien must be verified by affidavit (**Form B**):
 - i. by the lienholder or the agent of the lienholder.
 - ii. when the statement of lien is made by a corporation, it shall be verified by the affidavit of an officer or employee of the corporation or is agent (17)
 - iii. 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 their information and states that they believe the facts to be true.
 - i. if you are the lienholder and have signed **Form A**, complete the Affidavit Verifying Claim by Lienholder (**Form B**)
 - ii. if you are the Agent on behalf of the lienholder and you have signed the Form A, complete the Affidavit Verifying Claim by Other than Lienholder (**Form B**) (17)

Form B - Affidavit Verifying Claim by Lienholder or Affidavit Verifying Claim by Other than Lienholder must be sworn under oath. For information on how to comply please see Affidavits Sworn in Alberta (**AFF-1**) or Affidavits Sworn outside of Alberta (**AFF-2**).

3. The statement of lien must be filed.
 - a. Within a 60-day period, or
 - b. With respect to an oil and gas well or an oil and gas well site, within a 90-day period.
 - c. With respect to a supply of ready-mix concrete as defined by the Northern American industry Classification Systems Canada 2012, within a 90-day period.

From the date materials were last furnished. (18)

4. The construction lien is registered against the certificate of title of the land referred to in the statement of lien. (19)
5. 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 subsequent (if multiple owners) notices. If the name and/ address is not provided, enter “not provided” in the field(s). Duplicate mailing labels are discarded. (20)
6. A lien is accepted for registration even if the wrong affidavit has been sworn before a time limit may expire if the lien is rejected and because the court has the power to hold that lien is in substantial compliance with the Act notwithstanding an irregularity. (21)

7. Liens Against Crown Land

A construction 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 Prompt Payment and Construction Lien Act. (22)

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. (23)

A lien against Crown land is discharged or cancelled in the same manner as any other lien.

8. Liens Against Crown Minerals

- a. A construction 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. (24)
- b. A construction 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. Liens Against Public Highways

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. (25)

10. Liens Against Irrigation Districts

No lien exists with respect to land held by an irrigation district or for any work or improvement caused to be done by an irrigation district. (26)

11. Liens Against Condominium Property

- a. 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 (27).
- b. If the condominium corporation requests that work be done or materials be furnished for the benefit of the common property generally, the construction of lien is endorsed against the additional sheet. (28)

12. Liens for Wages

When a lien is registered by a laborer for wages, the default indicator on the construction lien screen should be changed from N to Y. A laborer 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. (29)

13. Liens 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. (30)

When registering a lien against a pipeline, the lien submission form must identify which land(s) are affected by the claim.

14. Liens 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. (31)

15. Notice of Registration of Lien

Once a construction lien is registered, a notice in the form of a photocopy of the face of the lien with a notice stamp/label endorsed thereon is to be sent by mail to: (32)

- a. the registered owner(s), and
- 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. (33)
- 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. (34)

16. Filing of Certificate of Lis Pendens

As a certificate of lis pendens (**C.L.P.**) (**Form 13**) relating to a Construction Lien must be registered within a fixed period.

The C.L.P. is granted by the clerk of the Court of King'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 named plaintiff in the proceedings. See procedure under **CLP-1** with respect to registration requirements. (35)

The C.L.P. must be submitted in the land titles office within 180 days after the registration of the lien, (36)

A C.L.P. may be registered pursuant to the provisions of section 43 of the Prompt Payment and Construction 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 48(1), a C.L.P. is not be registered (37).

The SPIN 2 document type to be used when creating a Document Registration Request (DRR) Form is: Certificate of Lis Pendens.

The code used for registration at Land Titles is: CELP

17. Assignment of Lien

An assignment of lien may be registered (38) 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.

The SPIN 2 document type to be used when creating a Document Registration Request (DRR) Form is: Transfer of Instrument

The code used for registration at Land Titles is: TFIN

18. Expiry of Lien

A lien registered expires if the lien claimant has not registered a C.L.P. in respect of their lien within 180 days after registration of the lien. (39)

Where a lien has expired, the expiry is registered without charge. Upon written request by letter or direction on the Document Registration Request Form will cancel registration of the lien.

The SPIN 2 document type to be used when creating a Document Registration Request (DRR) form is: Expiration

The code used for registration at Land Titles is: EXPI.

19. Discharge of Lien or Cancellation of Lien

A cancellation (**FORM 14**) must be completed by the lienholder, the original agent who signed the lien or an attorney pursuant to a power of attorney. (40) 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. (40) An example of the particulars to be endorsed on the additional sheet is:

"PARTIAL DISCHARGE OF CONSTRUCTION LIEN 224 000 001 AS TO UNIT 100"

A cancellation of construction 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.

The SPIN 2 document type to be used when creating a Document Registration Request (DRR) Form is: Discharge.

The code used for registration at Land Titles is: DISC.

20. 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. certificate from a certificate from a court clerk stating that pursuant to an order or judgment of the court:
 - i. the amount due on the lien has been ascertained or paid into court or
 - ii. the land, improvement or material has been sold in satisfaction of the lien. (41)

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge.

The code used for registration at Land Titles is: DISC.

21. 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 from the clerk of the court, (42) 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. (43)
Attestation requirements must be complied with.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge.

The code used for registration at Land Titles is: DISC.

22. Lapsing of Lien

The Prompt Payment and Construction Lien Act 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. (44) 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 affected by one of the following methods(45):
 - i. Personal service on the registered lienholder. The time period commences the day after the date of service indicated in the affidavit of personal service.
 - ii. 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 affected 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 affected and the lien cannot be lapsed.

- iii. 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.
- iv. 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.

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.

The lapse documentation cannot be received into the Land Titles Office until the expiration of the 30-day time limit has lapsed. Should the Land Titles Office receive the documents prior to the 30 days time limit from lapsing:

- the package will be rejected.
- the DRR will be logically deleted and removed from the pending registration queue.
- Once the 30-day limit has lapsed, you may resubmit with a new DRR; this will result in the package being treated as a new submission.

The SPIN 2 document type to be used when creating a Document Registration Request (DRR) form is: Lapse of Lien

The code used for registration at Land Titles is: LAPL.

23. Notice to Prove Lien

A court order is required to discharge a lien which is lost pursuant to the provisions of Section 32. (46)

24. Notice of Change of Address for Service

A notice in the prescribed form (FORM 12) 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. (47)

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Change of Address

The code used for registration at Land Titles is: CHAA.

25. Change of Agents

A lienholder may submit a written request to change the agent authorized to deal with a construction lien. The request must be signed by the lienholder and satisfy normal attestation requirements.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Change of Name

The code used for registration at Land Titles is: CHAN.

26. Fees

Tariff item 11(5) is charged for all discharges except for the discharge of a builders' lien by a laborer for wages in which case no fee is charged pursuant to Tariff item 7(2).

STATUTES AND CASE REFERENCES

Statute references are to the Prompt Payment and Lien Act, RSA 2000, C.P-26.4, unless otherwise indicated.

1. s.1(d)
2. s.6(1)
3. s.6(2)
4. s.34(1)
5. s.34(2)(a)(i)
6. s.34(2)(f)
7. s.34(2)(a)(ii)
8. s.34(2)(e)
9. s.34(2)(c)
10. s.1(d)
11. s.1(o)
12. s.34(2)(a)(iii)

13. s.34(2)(b)
14. s.34(2)(b)
15. s. 35(3)
16. s.34(3)
17. s.34 (7)
18. s.41(1)
19. s.35(4)
20. s.51(1)
21. s.37
22. 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.
23. 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.
24. s.36(1), Land Titles Act 202(A)
25. s.7(1)
26. s.7(2)
27. s.78(1)(c) of Condominium Property Act
28. s.78(1)(b) of Condominium Property Act
29. s.68(a), S.1(o)
30. 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.)
31. s.15
32. s.51(1)
33. insert section of act 15(c) of PM content
34. insert section of act 15(d) of PM content
35. see Land Titles Procedures Manual – Certificate of Lis Pendens (CLP-1)
36. s.43(1)
37. s.48(1)
38. s.30
39. s.43 (1)
40. s.47(1) s.47(2)
41. s.47 (3)(ii)
42. s. 47(3)
43. s. 47(1)(a)
44. s. 45(1)
45. s. 45(3), s.67
46. s. (48)1
47. s (39)