

# An Introduction to the Builder's Lien Act

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*The Builder's Lien Act* is in place to protect the owners and contractors, subcontractors, suppliers and labourers who engage in a construction project. It includes a mechanism for contractors and suppliers to be paid for services and it limits the liability on the owner. The Act covers all sizes of projects—from commercial developments to home renovations.

Essentially, a lien allows an unpaid contractor or supplier to claim a charge against the owner's property (or minerals, in the case of mining) if they have not been paid. The Act requires the owner to create a lien fund, made up of a 10% holdback against the value of work completed and materials furnished plus other amounts due and owing under the contract. There is a separate lien fund for each contract that the owner signs. The owner's liability is limited to the lien fund(s), and they can use these funds to pay creditors to remove the lien on property, rather than foreclose.

## Who is a Lienholder?

A lienholder is any person who does any work or furnishes any material for an 'improvement'. An 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 become part of the land"

General maintenance, like snow removal, legal and accounting services are not considered 'improvements'.

## Entitlement to a Lien

Rights are created as soon as work commences and/or materials are furnished. If the lienholder is not compensated, it can bring an action against the owner and any contractors to whom it has supplied work or materials. The court has the authority to order that the owner's interest in the property be sold in order to satisfy the claims of lienholder(s).

'Lienable' lands include Fee simple, Leaseholds, Mines & Minerals and Condominium plans. Liens are not generally enforceable against Crown Lands; however, they can be registered against lands owned jointly by the Crown and a third party. Indian and Métis lands fall within the exclusive jurisdiction of the Federal Government, and the Provincial lien legislation does not apply.

## Registering a Lien

To create a Lien, you must register a Statement of Lien at the Land Titles Office or, for mineral interests, at the Department of Energy. A lien *must* be registered within 45 days from the date when the labour and/or materials were last furnished or the contract was completed or abandoned.

In the case of work provided to an oil or gas well site, the limitation is 90 days.

### **Litigation process**

Once a lien has been registered, the Act provides the parties with many procedural mechanisms to deal with a claim:

- Paying money into Court
- Notice to Prove Lien
- Notice to Commence Action
- Order for the Sale of Land

This is an overview of *The Builder's Lien Act*. A builder's lien can be an effective way to garner payment for unpaid work or materials, but it is important to note that it is not a guarantee of payment. Seek legal counsel to understand the requirements and restrictions that might apply to your situation. Likewise, if you are an owner, you may wish to obtain legal advice to ensure that you set up your Lien Fund(s) correctly and limit your liability accordingly.

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