

Procedure Guide

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Builders' Liens

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Alberta Builders' Lien Procedures Guide



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INTRODUCTION

The *Builders' Lien Act* is designed to provide contractors and suppliers of materials or equipment with security for payment. The charge created by the statute is a lien against the land (or the mineral rights) in relation to which the materials or services were provided.

Broadly speaking, a lien gives an unpaid contractor or supplier the right to foreclose on the land (or minerals) to get paid. However, the legislation also requires the construction owner to maintain a 10% holdback. If the construction owner properly maintains the holdback, it can pay the lien fund into court to remove the lien without foreclosure.

It is important to recognize that the registration of a lien does not, by itself, ensure or guarantee payment. Lien requirements are very technical and there are many reasons why lien claims can be invalidated. Also, the lien fund is sometimes insufficient to pay off all lien claimants. Therefore, although a lien is an important form of security for payment, it certainly does not guarantee payment. On the other hand, a lien can sometimes provide the only security for payment when a debtor becomes insolvent or refuses to make payment.

ENTITLEMENT TO A LIEN

A contractor or supplier is entitled to register a lien if they have:

- (a) Done or caused to be done any work on or in respect of an improvement on or to land; or
- (b) Furnished any material to be used in or in respect of an improvement on or to land.

A lien can only be registered in respect of an “improvement,” and it attaches the lands on which the improvement is located. “Improvement” means anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land, except anything that is neither affixed to the land nor intended to be or become part of the land.



This generally means that work done or materials supplied in respect of things not permanently attached to the land will not support a lien.

A claimant will have a valid lien for supplying materials if the materials are actually incorporated into the improvement or consumed in the process of constructing the improvement. The material must be placed or furnished on the contract site, or in a place in the immediate vicinity of the contract site. The supplier of materials must know that the materials are intended for a specified project, or they will not be entitled to register a lien.

A renter of equipment is deemed to perform a “service,” and has a lienable claim while the equipment is on the contract site or in the immediate vicinity of the contract site. The lien is limited to a “reasonable and just rental of the equipment while it is used or is reasonably required to be available for the purpose of the work.”

Design professionals may have lien rights depending on the nature of their work and whether it relates to an improvement in the lands. For example, the preparation of drawings used to complete construction may support a valid lien, while the preparation of drawings used for the primary purpose of obtaining development approval will not support a valid lien.

Other construction services may support a lien if the services are necessary to the construction of the improvement. Services that will support a valid lien in the right circumstances include subsistence (camp) services, gas and plumbing services to a work camp, waste disposal, hauling and transportation.

TIME TO REGISTER LIEN

A lien is deemed to exist from the moment work is started or materials are supplied. However, a lien expires if it is not registered within the time prescribed by statute. Subject to the exceptions set out below, a lien for materials, services or wages may be registered at any time up to **45 days**