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CIVL 402 – Professionalism and Law in Civil Engineering

Builders Liens

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Seema Lal

Partner
slal@singleton.com

singleton.com

What is a Builders Lien?

A lien is a registered claim for payment for services or materials supplied in relation to an improvement to lands.

A lien forms a charge on title of the subject lands.

Registration is through the Land Title Office of the subject lands (or by filing a Notice of Civil Claim in Supreme Court to enforce a lien against the holdback funds)



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Form 5

Builders Lien Act

(Sections 15, 16, 18)

Claim of Lien

I,.....[claimant] of .....[address], British Columbia, [if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1 .....[claimant] of .....[address], British Columbia, claims a lien against the following land:

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2 A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

3 The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

4 The sum of $..... is or will become due and owing to ..... on ..... [month, day, year].

5 The lien claimant's address for service is:

Signed: .....

Dated ..... [month, day, year]

NOTE: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of $2 000 or the amount by which the stated claim exceeds the actual claim.

Why file a Builders Lien?

Liens create a security interest in the lands as of the date they are registered.

- This interest takes priority to subsequently filed security.
  - (e.g., subsequent mortgages or advance of construction financing)
- Liens also affect the ability of the the owner to sell the lands.

Liens may spur an owner into action to address payment disputes.

Liens also provide the lienholder security in the lands until the payment dispute is resolved.

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Who can file a builders lien?

Five types of people can file a lien:

a. workers on a construction project

b. anyone who has supplied or rented materials and/or equipment to the project

c. a contractor hired by the owner to work on the project

d. subcontractors hired by the contractor or by other subcontractors to work on the project

e. engineers/consultants/architects on the project (with certain restrictions)

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Engineers – Lien Rights

- engineers can file liens BUT no-one with whom an engineer contracts can file a lien (e.g. subconsultants)
- same applies for architects – so be careful if you are a sub-consultant to an architect or engineer as you have no lien rights

What do you lien?

Definition in the Builders Lien Act:

- "**improvement**" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading, or ditching of, in, on or under land
- there is no improvement if construction does not happen
    - therefore, a design professional may not file a claim of lien against land if there has been no physical improvement to the land
    - however, if *any* construction has happened, regardless of whether the construction project was finished, there is an improvement

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What do you lien?

- the Builders Lien Act does not apply to all land
- the following types of land are not subject to the Act:
  - highways, as defined by the *Transportation Act*
  - certain ferry properties
  - any improvement done by or for the Ministry of Forests
  - lands owned by BC Hydro
  - federal undertakings e.g airport or other federal projects
- also – not all land to which the Act applies is treated the same, e.g. mines
- may not be able to register a lien in relation to First Nations owned land

What is the timeline to file a lien?

In BC, you have 45 days from the earliest of:

- a Certificate of Completion of a contract or the contract of the party under whom the person was retained; or
- substantial completion or termination of the head contract or, if no head contract, substantial completion of the improvement; or
- abandonment of the head contract or, if no head contract, abandonment of the improvement

to file a lien.

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Substantial Completion

If there is a head contract or if dealing with a subcontract – use 3-2-1 percentage of cost-to-complete formula:

- For the purposes of the *Builders Lien Act*, a head contract, contract or subcontract is "substantially performed" if the work to be done under that contract is capable of completion or correction at a cost of not more than:

3% of the first $500,000 of the contract price,

2% of the next $500,000 of the contract price, and

1% of the balance of the contract price.

e.g. $1,500,000 contract price – substantial completion is achieved when the value of the work to be completed under the contract is capable of correction or completion at a cost of no more than $30,000

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Substantial Completion (cont.)

Contractor or subcontractor can request “payment certifier” to determine completion

Payment certifier: the person identified in the contract/subcontract as person responsible for payment certification or, if no such person:

- the owner acting alone re: amounts due to contractor; or
- the owner and contractor acting together re: amounts due to subcontractor

Engineers are frequently appointed as payment certifiers for projects

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Substantial Completion (cont.)

- payment certifier must, within 10 days of request from contractor or subcontractor, issue a Certificate of Completion (if the payment certifier determines that the contract/subcontract has been substantially completed) or advise contractor/subcontractor of refusal to issue Certificate of Completion
- payment certifier is responsible for ensuring that:
  - a copy of the Certificate of Completion is delivered to contractor/subcontractor who requested it; and
  - a Notice of Certification of Completion is posted at project site within 7 days of issuance
- Certificate of Completion is effective as of the date of its issuance.

Substantial Completion (cont.)

Form 2

Builders Lien Act

(Section 7 (4))

Notice of Certification of Completion

NOTICE: Re ..... [Name or popular description of project]

Take notice that on ..... [date] a certificate of completion, or court order to that effect, was issued with respect to a contract (or subcontract) between

..... [owner, contractor or subcontractor]

and

..... [contractor or subcontractor]

in connection with an improvement on land described as follows:

for the provision of [brief, general description of work done under contract or subcontract]:

All persons entitled to claim a lien under the *Builders Lien Act* and who performed work or supplied material in connection with or under the contract are warned that the time to file a claim of lien may be abridged and section 20 of the Act should be consulted.

Form 3

Builders Lien Act

(Section 7 (10))

Certification of Completion

I ..... [name of payment certifier], of ..... [address], British Columbia, certify that, for the purposes of the *Builders Lien Act*, the following contract or subcontract was completed on ..... [month, day, year]:

Street address or other description of the land affected by the improvement:

Brief description of the improvement:

Brief description of the contract or subcontract, including the date of the contract and the names of the parties to it:

Signed: ..... [signature of payment certifier]

Dated ..... [month, day, year]

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Engineers as Payment Certifiers

- engineers may be identified as “payment certifier” under construction contract
- responsible to certify substantial completion and progress payments
- certification triggers payment and holdback release
- must certify objectively and based on actual progress
- while the Act does not prescribe how you assess completion, courts expect payment certifiers to:
  - rely on field reviews and documentation
  - record assumptions and exclusions
  - base decisions on information reasonably available at the time

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Engineers as Payment Certifiers (cont.)

- Courts may review certification decisions after the fact and engineers can face exposure if certification is careless, premature, or misleading
- certification decisions are often scrutinized when lien disputes arise
- the failure by payment certifiers to follow the requirements of the Builders Lien Act in relation to certification can lead to a certificate of completion being deemed to be invalid
- a Certificate of Completion under the Builders Lien Act is only a determination for lien and holdback purposes - does not certify occupancy readiness, Code compliance, safety or fitness for use

Lien holdback

Holdback accounts protect:

- Owners, in cases where they have paid a general contractor but the general contractor has not paid its subcontractors;
- Subcontractors, where the general contractor has been paid, but the subcontractor has not been paid.

An Owner must hold back 10% of every payment made during a construction project.

- Emphasis on every payment, it is not sufficient to hold back at the end of the project.

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Lien holdback (cont.)

We have a multiple holdback requirement:

- Where an Owner holds back 10% from every payment to a general contractor, a general contractor must also hold back 10% from every payment made to any subcontractors.

Exception

In BC, no holdback can be kept from:

1. Workers
2. Material Suppliers
3. Architects
4. Consultants; or
5. Engineers

Lien holdback (cont.)

The holdback must be maintained for 55 days after:

- Substantial completion or termination of the head contract or, if no head contract, completion of the improvement; or
- Abandonment of the head contract or, if no head contract, abandonment of the improvement.

Enforcement of the Lien

A lien will expire after a year (or 21 days after service by the owner of a Notice to Commence an Action) without taking further steps to enforce it.

The Lawsuit

- A lawsuit must be commenced and Certificate of Pending Litigation (CPL) filed against the title to the property to enforce the rights secured by the lien.
- The time limit for commencing a lawsuit is one year from the date of filing the lien.
- Lawsuits must be commenced in Supreme Court
- Provincial Court (Small Claims Court) does not have jurisdiction over lien matters (even if amount of lien is within monetary jurisdiction of Small Claims Court)

Owner's response to a lien

21-Day Notice

- An owner who has a lien on title may obligate the lienholder to commence a lawsuit within 21 days by delivering a Notice to Commence an Action
- If the lienholder fails to commence an action in Supreme Court and file a CPL within that time period, the owner may apply to discharge the lien.
- Such a step by an owner forces the lienholder to take action.

Application to Cancel Invalid Lien

If the claim of lien has been filed in a manner that is not in compliance with the Builders Lien Act (e.g. the claim of lien has been filed too late or the claim of lien has been filed in an inflated/exaggerated amount), then an owner can apply to have the lien cancelled on the basis that it is invalid

Owner's response to a lien (cont.)

Posting Security

An owner may choose to "post security" to discharge the lien:

- The owner can pay money into court (usually the amount of the lien), and the court will order the lien discharged and hold the money as security for later resolution
- The owner may have a lawyer hold that money in trust (instead of the court) on undertakings pending resolution (a less formal process)

Pay the Lienholder

The owner may simply pay the lienholder an amount in settlement of the lien claim (on the condition that the lien be discharged)

Prompt Payment Legislation in BC!

Construction Prompt Payment Act

- *Construction Prompt Payment Act* introduces statutory prompt payment and adjudication in BC (received Royal Assent on November 27, 2025)
- compliments — not replaces—the BC *Builders Lien Act*
- objective is to improve cash flow and reduce payment disputes.
- awaiting proclamation and regulations for implementation – current information suggests that implementation expected likely in early-to-mid 2026

This presentation does not constitute legal advice or a legal opinion on any matter discussed.

Amendments to the Builders Lien Act

- Holdback period reduced: 55 → 46 days
- definition of “”improvement” expanded to include demolition/removal
- payment obligations under CPPA remain subject to required holdback
- expected to only apply to contracts entered into after the Act comes into force – commencement date will be set by regulation i.e. existing contracts and those entered into before the Act comes into force will remain governed by the current statutory regime

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Thank you & any questions?



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