

## LIEN AND MEAN

### *Answers to Often Asked Questions About Builders Liens*

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British Columbia's *Builders Lien Act* establishes rules governing payments on construction projects to meet two primary objectives: to provide a form of security for people involved in the construction of a building **and** to protect an owner from paying twice when money does not flow from a general contractor to its subcontractors and suppliers.

A person who does work or supplies materials for a construction project and does not get paid may file a builders lien claim. The lien is registered in the Land Title Office and becomes a charge against the title to the land or property involved. If the landowner does not pay the amount owing, the court can order the sale of the property and the use of the sale proceeds to pay the claim.

To protect owners from having to pay for a defaulting general contractor, the Act allows them to hold back 10 per cent of the contract price from the payments made to the contractor. Holdbacks can be released to the contractor (or used to pay any liens which may have been filed) 55 days after the general contract is substantially completed.

Although the overall concept of builders liens is relatively straightforward, there are several details and technical requirements that must be met in order to preserve the rights of both lien claimants and owners.

#### **Who can file a lien?**

Almost anyone who has performed services or supplied materials to a construction or renovation project and has not been fully paid can file a lien, including general contractors, subcontractors, materials suppliers, architects and engineers.

#### **Is filing a lien complicated and expensive?**

No and no. Lien claimants must complete a one-page form which identifies the property, the parties involved, the work or materials supplied and the amount owing. For a small fee, the claim form is then filed at the Land Title Office where the property is registered.

**When must the lien be filed?**

Lien claimants have 45 days to file a lien. The time starts from substantial performance of the general contract or subcontract under which the lien arises. Where there is no general contract, time runs from when the project is substantially complete or abandoned.

**If I miss the deadline for filing a lien, is my claim for payment lost?**

No. You will still have a contractual claim that can be pursued in a lawsuit but you will have lost the security of an interest in the property to assist in recovering the amount owed.

**Can I file a lien on multiple properties?**

No, unless you have not been paid for work performed on multiple properties or parcels of land. A lien can be registered only against title to the property for which the unpaid work was performed.

**If I file a lien, do I still have to sue?**

Yes, you should. Most owners will attempt to resolve claims quickly because a lien on title can interfere with their ability to sell the property or maintain mortgage financing for the project. But if payment is not received, an action to prove the lien must be commenced in B.C. Supreme Court within one year of the date of filing the lien. An owner who would like the matter resolved more quickly can deliver notice requiring the lien holder to begin the action within 21 days. If an action is not commenced within these time limits, the lien can be removed from title and cannot be refiled.

**What happens after the lawsuit is started?**

If the court decides that the amount is owing and the lien is valid, the court can order the sale of the property and the use of the sale proceeds to pay the claim. If the claim is not valid, because the amount is not owing or requirements under the Act were not met, the lien will be removed. The claimant may have to pay the landowner's costs resulting from the lien and the court case. If an improperly filed lien delays or defeats the sale of the land, these costs can be significant.

**Will filing a lien guarantee full payment?**

No. A lien holder's ultimate recovery will depend on an owner's equity in the property. Liens generally rank behind mortgages and other charges existing on title at the time a lien is filed. When a project fails, those who have properly filed liens may receive only a portion of what is owing—or nothing at all.

**How is the money “held back” by the owner?**

For each payment due to its contractor, the owner must calculate the holdback portion (10 per cent of the payment) and, if the value of the project is \$100,000 or more, deposit that amount into a dedicated bank account. If the owner contracts with several people instead of a single general contractor, a separate bank account for holdback funds must be opened for each contract. After 55 days from substantial completion of the project, the holdback can be released to the contractor or used to pay any liens that may have been filed.

**How do I know if the owner has maintained a holdback?**

By asking. The Act gives potential lien claimants the right to demand from an owner the particulars of all payments made to the contractor, the amounts held back, and the location of the holdback account.

**How does an “innocent” owner clear the lien off title?**

In most cases, the owner can clear liens from title by paying into court or a lawyer’s trust account an amount equal to the holdback retained from the contractor. Owners that do not need liens removed quickly will often wait to see if an action is commenced within the one-year period.

For more information about builders liens or other construction-related issues, please contact **Stephen Berezowskyj** *sjb@singleton.com*