

## **The Builders' Lien Act**

The Builders' Lien Act gives members of the construction industry the right to claim and register a builder's lien. The lien secures payment for the work or services performed or materials supplied.

Entitlement to a lien depends on the work done, the services rendered and the materials supplied to complete an improvement for an owner, contractor or subcontractor. An improvement is a thing intended to be constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled.

Architects, engineers, contractors, subcontractors, labourers, material suppliers, land surveyors and providers of equipment and services may claim a builder's lien.

The lien arises when the work is begun, services are first rendered, or the first material is supplied. The amount of a claimant's lien is limited to the actual value of services rendered, subject to the statutory hold-back provisions. No lien exists for a claim of less than \$100. Liens must generally be registered within 40 days of the completion of the work.

The Act requires every owner to establish a "hold-back trust account" to ensure payment of any liens. An owner must hold back 10 per cent of the value of the work done, services rendered or materials supplied. A 10 per cent hold-back is required for all contracts, including those that provide for periodic payments to contractors and subcontractors.

A contractor or subcontractor cannot claim the hold-back money until the owner is satisfied that the work specified in the contract is complete. When the contract is certified substantially performed and the hold-back period is over, the hold-back is paid out unless a lien has been registered or proceedings have begun to enforce claims against the hold-back fund.

Liens are honoured in the order that they are registered at a Land Titles Registry office or filed with the courts. The contractor and subcontractor shall not allocate funds for their own use until all labourers and all persons who supplied materials are paid. Liens of labourers for 40 days' wages have priority over any other liens. A builders' lien takes priority over all mortgages, judgments, executions, attachments, garnishments, receiving orders, conveyances and other agreements issued or made after the lien arises. However, any municipal taxes owing take priority over all builders' lien claims.

The Act defines when a contract is considered to be substantially performed and in what circumstances the contract is deemed to be completed. The architect or engineer is required to determine if the contract has been substantially performed and, if suitable, provide a certificate of substantial performance within 10 days after the request from the contractor or subcontractor. If there is no architect or engineer on the project, the owner and contractor jointly determine if the contract is substantially performed. Separate procedures apply to obtaining a certificate of substantial performance of the contract between the principal contractor and a subcontractor.

A lien may be enforced by filing a statement of claim in the Court of Queen's Bench. Any number of lienholders may join in an action.