

## BUILDERS LIEN ACT

### CHAPTER 40

#### Interpretation

##### 1. In this Act

- “claimant” means any person who claims or asserts or seeks to realize a lien by the filing of an affidavit in the land title office, or other appropriate office, under the provisions of this Act, claiming that lien;
- “completed”, whenever used with reference to a contract for an improvement, means substantial performance, not necessarily total performance;
- “contractor” means a person contracting with or employed directly by an owner or his agent to do work on or to place or furnish materials, or to do both, on an improvement, but does not include a worker;
- “court” means the County Court of the county in which the land or any part of it is situate on which the improvement is made or is being made;
- “highway” has the meaning given to it in the *Highway 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 any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;
- “land title office” means the registry office of the land title district in which the land is situate on which the improvement is made or is being made;
- “lien holder” means a person adjudged to be entitled to a lien under this Act;
- “material” means every kind of movable property;
- “material man” means a person who supplies material for an improvement, which material has been delivered to the land on which the improvement is placed or situate;
- “owner” includes a person who has, at the time a claim of lien is filed in the land title office, any estate or interest, legal or equitable, in the land on which the improvement is made, at whose request and on whose credit, or on whose behalf, or with whose privity or consent, or for whose direct benefit, the work is done or material supplied, and all persons claiming under him;
- “person” includes a firm, a partnership, an association or any other legal entity;
- “registrar” means the Registrar of Titles of the land title office;
- “subcontractor” means a person not contracting with or employed directly by an owner or his agent to do work on or to place or furnish material, or to do both, on or for the making of an improvement, but one who contracts with or is employed by the contractor or under him by another subcontractor or their agents for the purposes mentioned, but does not include a worker;
- “wages” means money earned by a worker for work done;
- “work” means the doing of work, labour or service, skilled or unskilled, on an improvement;
- “worker” means any person employed by an owner, contractor or subcontractor for wages in any kind of work, whether employed under a contract of service or not.

RS1960-238-2; 1965-24-2; 1978-25-333,334.

**Contract price constituted a trust fund**

**2.** (1) All sums received by a contractor or subcontractor on account of the contract price are and constitute a trust fund in the hands of the contractor or of the subcontractor, as the case may be, for the benefit of the owner, contractor, subcontractor, Workers' Compensation Board, workers and material men. The contractor or the subcontractor, as the case may be, is the trustee of all those sums received by him and, until all workers and all material men and all subcontractors are paid for work done or material supplied on the contract and the Workers' Compensation Board is paid any assessment with respect to it, shall not appropriate or convert any part of it to his own use, or to any use not authorized by the trust.

(2) Every contractor or subcontractor who appropriates or converts any part of the contract price referred to in subsection (1) to his own use, or to any use not authorized by the trust, commits an offence, and on conviction is liable to a penalty of not more than \$5,000 or to imprisonment for a term of not more than 2 years, or both. Every director or officer of a corporation who knowingly assents to or acquiesces in any offence by the corporation commits the offence in addition to the corporation.

(3) Notwithstanding this section, where a contractor or subcontractor has paid in whole or in part for any materials supplied on account of the contract, or has paid any worker or subcontractor who has performed any work or placed or furnished any material in respect of the contract, the retention by that contractor or subcontractor of any amount equal to the amount so paid by him shall not be deemed an appropriation or conversion of it to his own use, or to any use not authorized by the trust.

RS1960-238-3.

**Exemption**

**3.** Nothing in this Act extends to a highway or to any improvement done or caused to be done on it by a municipal corporation.

RS1960-238-4.

**Liens created in respect of work and material**

**4.** Subject to this Act, a worker, material man, contractor or subcontractor who does or causes to be done any work on, or supplies material, or does both work and supplies material, to or for an improvement, for an owner, contractor or subcontractor, has a lien for wages or for the price of the work or material, or both or any of them, or for so much of it as remains owing to him, on the interest of the owner in the improvement, on the improvement itself, on the material delivered to or placed on the land on which the improvement is situate, and on the land.

RS1960-238-5.

**Owner's liability as to amounts unpaid by contractor**

**5.** With the exception of liens in favour of workers for not more than 6 weeks' wages, no lien attaches to make the owner liable for a greater sum than the sum payable by the owner to the contractor, but this section shall not be construed to apply to liens under section 14.

RS1960-238-6.

**Liens on mortgaged premises**

**6.** (1) A registered mortgage has priority over a lien to the extent of the mortgage money bona fide secured or advanced in money prior to the filing of the claim

of lien, but in proceedings for the enforcement of a claim of lien the court may order the sale of mortgaged land at an upset price of not less than the amount secured under all registered mortgages having priority over the claim, costs and the costs of the sale, and the mortgages shall be satisfied out of the proceeds of the sale according to their respective priorities and in priority to the lien to the extent mentioned and subject to subsection (2).

(2) Advances or payments made under a mortgage after a claim of lien has been filed shall rank after the lien, but any mortgagee who has applied mortgage money in payment of a claim of lien which has been filed is subrogated to the rights and priority of the lien claimant who has been paid as mentioned to the extent of the money applied.

(3) A registered agreement for the sale and purchase of land and any money bona fide secured or payable under it has the same priority over a lien as is provided for a mortgage and mortgage money in subsections (1) and (2), and for the purposes of this Act the seller shall be deemed to be a mortgagee, and any money bona fide secured and payable under the agreement shall be deemed to be mortgage money bona fide secured or advanced.

(4) Every worker's lien for 25 days' wages, which shall be calculated proportionately when not payable by the day, for work on an improvement to a mine or mineral claim takes priority over any mortgage or other encumbrance.

RS1960-238-7.

#### **No claim under \$20**

**7.** No claim of lien shall be filed if the amount of the claim or aggregate of joined claims is less than \$20.

RS1960-238-8.

#### **Lien attaches notwithstanding agreement to contrary**

**8.** No agreement shall deprive a person otherwise entitled to a lien, who is not a party to the agreement, of the benefit of the lien, but it shall attach notwithstanding the agreement.

RS1960-238-9.

#### **Agreement to avoid Act void**

**9.** (1) An agreement by a worker that this Act shall not apply, or that the remedies provided by it shall not be available for his benefit, is null and void. This subsection does not apply to any worker whose wages are more than \$15 per day.

(2) Every device by an owner, contractor or subcontractor adopted to defeat the priority given by this Act to a worker for his wages is, as against the worker, null and void.

(3) A conveyance, mortgage or charge of or on land granting one or more of a number of lien claimants a preference or priority is null and void for that purpose.

RS1960-238-10.

#### **Husband to be deemed wife's agent**

**10.** Where work is done or material furnished to or for an improvement on the land of a married woman with the privity, consent or at the request of her husband, he shall be conclusively presumed, for the purposes of this Act, to be acting as her agent as well as for himself to bind his own interest in it, if any, unless before doing the work or furnishing the material the person doing or furnishing it has had actual notice to the contrary.

RS1960-238-11.

**When lien arises**

**11.** Subject to this Act, when a claim of lien has been filed in the land title office or gold commissioner's office where applicable, it takes effect from the date of commencement of the work or when the first materials are furnished or placed for which the lien is claimed, and it takes priority over all judgments, executions, attachments and receiving orders recovered, issued or made after the lien takes effect.

RS1960-238-12, 1978-25-334

**Filing of affidavit deemed notice**

**12.** The filing of an affidavit of claim of lien under this Act shall be deemed notice of the claim of lien to all persons.

RS1960-238-13

**Owner deemed to have authorized works**

**13.** Subject to section 6, all improvements done with the knowledge, but not at the request, of the owner, his authorized agent or the person claiming any interest in them, shall be held to have been done at the instance and request of the owner or person having or claiming any interest. This section does not apply to any improvements done after there has been posted, in at least 2 conspicuous places on the land, or on the improvements on it by authority of the owner or person, a notice in writing that he will not be responsible for the improvements, or after actual notice in writing to the above effect has reached the person claiming a lien under this Act.

RS1960-238-14

**Owner's liability for works on premises held under option**

**14.** Notwithstanding section 13, all improvements placed on premises held under option or working bond, where the grantee of the option is required or permitted by the grantor of the option to make improvements shall, for the purpose of creating a lien, be held to have been constructed at the instance and request of the owner of the premises and the grantor of the option, and the liens by virtue of this Act attach and are enforceable against the interest both of the owner of the premises and the grantor of the option.

RS1960-238-15

**Insurance money**

**15.** Where any of the property on which a lien is given by this Act is wholly or partly destroyed by fire, any insurance receivable by the owner, prior mortgagee or other encumbrancer takes the place of the property destroyed, and is, after satisfying any prior mortgage, charge or encumbrance in the manner and to the extent set out in section 6, subject to the claims of all persons for liens to the same extent as if the money was realized by the sale of the property in an action to enforce a lien.

RS1960-238-16

**Claimant may demand particulars of contract**

**16.** Any claimant may at any time demand of the owner or his agent the terms of the owner's contract or agreement with the contractor for the improvement and a statement of the amount due or unpaid under it, and if the owner or his agent

- (a) does not at the time of the demand, or within a reasonable time after that, inform the claimant of the parties to and general terms of the contract or agreement for the improvement, and the amount due or unpaid under it;
- or

(b) intentionally or knowingly falsely states the terms of the contract, or the amount due or unpaid on it;  
and if the claimant sustains loss by reason of the refusal, neglect or false statement, the owner is liable to him in an action for the amount of the loss.

RS1960-238-17.

**Owner may demand particulars from claimant**

**17.** Any owner or other person who is liable for the payment may at any time demand from any contractor or subcontractor performing work, or person claiming a lien for materials, the terms of and parties to any contract or agreement under which he is performing work or placing or furnishing materials, and a statement of account under the contract to the date of demand; and

(a) if the contractor, subcontractor, person or his agent

(i) does not at the time of the demand, or within a reasonable time after that, inform the person making the demand of the terms of the contract or agreement, and the amount due or unpaid under it, and furnish the account as demanded; or

(ii) intentionally or knowingly falsely states the terms of the contract or agreement, or the amount due or unpaid on it, or furnishes a false account; and

(b) if the owner or person making the demand sustains loss by reason of the refusal, neglect or false statement,

the contractor, subcontractor or person is liable to him in an action for the amount of the loss, and in any event the lien of the contractor, subcontractor or person shall be limited by the statement given or furnished.

RS1960-238-18.

**Assignment by contractor or counterclaim  
against him not to defeat lien or trust**

**18.** (1) No assignment by the contractor or subcontractor of any money due in respect of the contract is valid as against any lien or trust created by this Act.

(2) As to all liens, except that of the contractor, the whole contract price is payable in money, and shall not be diminished by any prior or subsequent indebtedness, set off, or counterclaim in favour of the owner against the contractor.

RS1960-238-19.

**During continuance of lien, property must not be removed**

**19.** During the continuance of any lien, no portion of the material or the property affected by it shall be removed to the prejudice of the lien, and any attempt at removal may be restrained on application to the court.

RS1960-238-20.

**Retention of percentage by owner for 40 days**

**20.** (1) Notwithstanding section 5, in all cases the owner or person primarily liable on any contract under or by virtue of which a lien may arise shall retain, for a period of 40 days after the contract has been completed, abandoned or otherwise determined, 15% of the value of the work, service and materials actually done, placed or furnished as mentioned in section 4, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated on evidence given in that regard on the basis of the

contract price, or if there is no specific contract price, then on the basis of the actual value of the work, service or materials.

(2) A lien is a charge on the amount directed to be retained by this section in favour of claimants whose liens are derived under persons to whom the money required to be retained is respectively payable, or whose liens are filed as provided in this Act.

(3) All payments up to 85% of the value of the contract or the work, services or materials as calculated under subsection (1), made in good faith by an owner, contractor or subcontractor to any person entitled to file a claim of lien, shall operate as a discharge of any lien to the extent of the payments.

(4) Payment of the percentage required to be retained under this section may be validly made to discharge all liens after the expiration of the period of 40 days mentioned in subsection (1), unless in the meantime a claim of lien has been filed or proceedings have been commenced to enforce any claim of lien or charge against the percentage, in which event the owner or any person entitled may pay the percentage into court with respect to the proceedings or claim of lien, and the payment into court constitutes a valid discharge to the owner with respect to the liens.

(5) Every contract for an improvement already made or made in the future shall be read and construed as if amended to conform with this section.

(6) Where the contractor or subcontractor makes default in completing his contract or subcontract, the percentage required to be retained under this section shall not, as against any claimant who by virtue of subsection (2) has a charge on it, be applied by the owner, contractor or subcontractor to the completion of the contract, subcontract, or for any other purpose, or for the payment of damages for the noncompletion of the contract or subcontract by the contractor or any subcontractor, or in payment or satisfaction of any claims against the contractor or any subcontractor.

RS1960-238-21.

### **Affidavit of lien**

**21.** (1) A claim of lien shall be by affidavit sworn before any person authorized to take oaths, and may be in Form 1 of the Schedule.

(2) No affidavit of claim of lien shall be held to be defective or void solely on the ground that it was taken and made before the solicitor for the person claiming the lien, or before a partner of the solicitor, or before a clerk in the office of the solicitor.

(3) Every county court registrar shall be supplied with printed forms of the affidavits in blank, which shall be supplied to every person requesting them and desiring to file a lien. Except in the Counties of Vancouver, Victoria and Westminster with respect to claims of lien other than those claimed against mining property referred to in sections 23 and 24, every county court registrar shall keep an alphabetical index of all claimants of liens, and the persons against whom the liens are claimed, which index shall be open for inspection during office hours, and it is the duty of the county court registrar to decide whether his is or is not the proper office for the filing of the affidavit and to direct the applicant accordingly. No affidavit shall be held insufficient on the ground that it was not filed in the proper county court registry.

(4) The affidavit of claim of lien required to be filed under this section may be made by the person claiming the lien, or by his agent, and the affidavit may be made not only as to the facts within the personal knowledge of the deponent, but also, if the deponent gives the source of his information and states that he believes the facts to be true, as to the facts of which the deponent is informed.

(5) A substantial compliance only with this section shall be required, and no lien shall be invalidated by reason of failure to comply with any of its requisites unless, in the opinion of the court hearing the claim of lien, the owner, contractor, subcontractor, mortgagee or other person is prejudiced by it, and then only to the extent to which he is prejudiced.

RS1960-238-22.

### Time limit

**22.** (1) A claim of lien of a contractor or subcontractor may be filed as provided in this Act at any time after the contract or subcontract has been made, but not later than 31 days after the contract of the contractor has been completed, abandoned or otherwise determined.

(2) A claim of lien for materials supplied may be filed as provided in this Act at any time after the contract to supply the materials has been made, but not later than 31 days after the improvement to which the material has been supplied has been completed or abandoned, or the contract for the construction or making of the improvement otherwise determined, except in the case of a contract to supply materials for a mine or quarry, in which case the claim of lien shall be filed not later than 60 days after the materials have been supplied, placed or furnished to the mine or quarry.

(3) A claim of lien of a worker may be filed as provided in this Act at any time during the performance of the work, but not later than 31 days after the last work has been done by him for which the lien is claimed, except for a lien claimed in relation to a mine or quarry, when the time mentioned shall be 60 days. No worker shall be held to have ceased work on an improvement until the completion of it if he has in the meantime been employed upon any other work by the same contractor.

(4) Every lien for which a claim of lien is not filed as provided in this Act shall absolutely cease to exist on the expiration of the time limited for its filing.

RS1960-238-23.

### Procedure to file claim of lien

**23.** (1) The following shall be the procedure to file a claim of lien, except where the lien is claimed in respect of chattels, motor vehicles or mining property held under the provisions of the *Mineral Act* or the *Mining (Placer) Act* other than a Crown granted mineral claim. The claimant shall, within the respective times set out in section 22,

- (a) file the affidavit of claim of lien in the nearest court registry of the county or counties in which the land or any part of it is situate;
- (b) file in the land title office a duplicate of the affidavit or a copy certified to be a true copy of it by the registrar of the court in whose registry office the affidavit has been filed.

(2) It is not necessary in the Counties of Vancouver, Victoria and Westminster to file the affidavit in the court registry or to obtain a certified or true copy of it, and it is sufficient if the affidavit is filed in the land title office only.

(3) On the filing of the affidavit or, where required, a duplicate or certified copy of it in the land title office, the registrar shall endorse a memorandum of it on the register of title to the land or against the estate or interest in the land or property described.

RS1960-238-24; 1978-25-334.

**Procedure to file claim of lien under  
Mineral Act or Mining (Placer) Act**

**24.** (1) The following shall be the procedure to file a claim of lien where the lien is claimed in respect of mining property held under the *Mineral Act* or the *Mining (Placer) Act* other than a Crown granted mineral claim. The claimant shall, within the respective times set out in section 22,

- (a) file the affidavit of claim of lien in the nearest court registry of the county or counties in which the mining property or land or any part of it is situate;
- (b) file in the office of the gold commissioner in which the mining property or land is recorded a duplicate of the affidavit or a copy certified to be a true copy of it by the registrar of the court in whose registry office the affidavit has been filed;
- (c) if the mining property or land is registered in a land title office, also file in the land title office a duplicate or certified copy of the affidavit.

(2) On the filing of the duplicate or certified copy of the affidavit as provided, the gold commissioner shall endorse a memorandum of it on the record of the mining property in his office. If the land or the estate or interest in it described in the affidavit is registered in the land title office, the registrar shall endorse a memorandum of it on the register of title to the land or against the estate or interest in the land or property described.

RS1960-238-25; 1978-25-334.

**Action to be commenced within one year**

**25.** (1) In every case in respect of which an affidavit of claim of lien has been filed, an action to enforce it shall be commenced and a certificate of *lis pendens* in respect of it registered in the land title office and in the gold commissioner's office in which the duplicate or certified copy of the affidavit has been filed not later than one year from the date of filing of the claim of lien.

(2) Notwithstanding subsection (1), an owner or his agent may, after the filing of an affidavit of claim of lien, send to the claimant a notice in writing to commence an action to enforce the lien and to register in the land title office and in the gold commissioner's office a certificate of *lis pendens* in respect to it within 21 days from the mailing of the notice. The notice shall be substantially in the Form 2 set out in the Schedule, and shall be sent by registered mail, postage prepaid, addressed to the claimant at the address for service given in the affidavit of claim of lien. In the event that no address for service is given in the affidavit of claim of lien, the notice, addressed to the claimant, shall be mailed to the claimant at his last known address, and if it is not known, then to general delivery of the principal post office of the city in which the land title office is situate.

(3) A notice sent in the above manner shall be deemed to have been given by the owner and to have been received by the claimant in the ordinary course of the mails.

RS1960-238-26; 1974-87-26; 1977-54-67; 1978-25-334.

**Lien expires unless action commenced under s. 25**

**26.** Unless an action to enforce a claim of lien is commenced and a certificate of *lis pendens* in respect to it is registered in the land title office and the gold commissioner's office where required or applicable

- (a) within the time provided by section 25 (1); or



(b) within the time stated by an owner to a claimant under section 25 (2), the lien absolutely ceases to exist.

RS1960-238-27; 1977-54-67; 1978-25-334.

### **Cancellation of lien**

**27.** An owner may at any time apply to a registrar or gold commissioner to have a claim of lien cancelled where

- (a) a lien has absolutely ceased to exist under sections 25 and 26;
- (b) an action to enforce the claim of lien has been dismissed, and no appeal from the dismissal has been taken within the time limited for the appeal;
- (c) an action to enforce the claim of lien has been discontinued;
- (d) the claim of lien has been satisfied;

and on the application, and on the registrar or gold commissioner being satisfied as to the facts, he may cancel the claim of lien accordingly.

RS1960-238-28; 1977-54-67.

### **Claimant may assign lien**

**28.** The rights of a claimant may be assigned by an instrument in writing, and if not assigned, pass, on the death of the claimant, to his personal representative.

RS1960-238-29.

### **Enforcement of claim in court**

**29.** (1) Subject to sections 18 (2) and section 20 (6), a claim of lien or liens for any amount may be enforced by action in the court according to the practice and procedure of the court, including third party practice and procedure, except where it is varied by this Act. Where an action is brought to enforce a claim of lien in respect of an improvement made on land in the boundaries of more than one county, the court of one of the counties has full power to enforce the claim of lien for the whole improvement, and the claimant has the right to select the court of any one of the counties in which to bring his action.

(2) On the trial of an action to enforce a claim of lien, the court may hold that the claimant is entitled to a lien for the amount found to be due, and that in the event the amount found to be due is not paid may order and direct the sale of the land, or the improvement, or the materials placed on the land, or the interest of the owner or any of them, and further proceedings may be taken for the purposes mentioned as the court thinks proper, and any conveyance under its seal shall be effectual to pass any estate or interest sold.

(3) A defendant in an action to enforce a claim of lien may set off or set up by way of counterclaim any right or claim arising out of the same transaction for any amount, whether the set off or counterclaim sounds in damages or not, and the court has power to pronounce a final judgment in the same action on the claim of lien, set off and counterclaim.

RS1960-238-30.

### **Particulars need not be pleaded**

**30.** It is not necessary to set out in the plaint a copy of the affidavit of claim of lien.

RS1960-238-31.

**Proof of filing of affidavit**

**31.** The production of a copy of the affidavit of a claim of lien disclosing the date of its filing and certified by the registrar of the County Court, or the registrar or gold commissioner in whose office or registry it has been filed, shall be accepted on the trial or proceedings in any action to enforce the lien as evidence of the filing of the affidavit and the date of its filing.

RS1960-238-32, 1977-54-67

**Cancellation on payment or security**

**32.** (1) Any person against whose property a claim of lien has been filed under this Act may apply to have the claim of lien cancelled on payment of the claim, or sufficient security for the payment being given. The court hearing the application may order the cancellation of the claim of lien, either in whole or in part, on payment, or on the giving of security, by the party against whose property the claim of lien is registered, in an amount satisfactory to the court, and on terms, if any, the court sees fit to impose.

(2) The registrar or the gold commissioner in whose office a claim of lien is filed shall, on production of the order or an office copy of it, file it and cause the claim of lien to be cancelled as to the property affected by the order.

RS1960-238-33, 1977-54-67

**Consolidation of actions**

**33.** If more than one action is commenced in respect of the same contract, the owner or the contractor shall apply to have the actions consolidated, and, failing to do so, the owner or the contractor shall pay the costs of the additional action or actions the court decides.

RS1960-238-34

**Idem**

**34.** If more than one action is commenced in respect of the same improvement, the court may by order, on the application of any person interested, consolidate all the actions, and may make an order as to costs it thinks fit.

RS1960-238-35

**Appeal**

**35.** (1) In any action to enforce a claim of lien, an appeal lies from any judgment or order of the court in the same manner and to the same extent as provided for other actions in the court.

(2) If an action to enforce a claim of lien is dismissed, the claim of lien does not cease to exist, but remains in full force and effect until the time limited for appeal from the dismissal has expired without an appeal having been taken or, if the appeal has been taken, until the judgment of the Court of Appeal has been entered, and the same provisions apply, with the necessary changes and so far as applicable, to any further appeal to the Supreme Court of Canada.

RS1960-238-36

**Purchaser of leasehold interest deemed assignee**

**36.** If the estate or interest sold in any proceedings under this Act is a leasehold interest, the purchaser at the sale shall be deemed to be assignee of the lease.

RS1960-238-37

**Costs against owner or contractor**

**37.** Where it appears to the court in any action to enforce a claim of lien that the action has been brought from the failure of an owner or contractor to fulfil the terms of the contract or engagement for the improvement for which the claim of lien is sought to be enforced or to comply with this Act, the court may order the owner or contractor to pay all the costs of the action in addition to the amount of the contract or subcontract, or wages due by him or them to any contractor, subcontractor, material man or worker, and may order a final judgment against the owner or contractor, or both of them, for costs

RS1960 238 38

**Judgment for amount of claim**

**38.** On the trial of an action to enforce a claim or claims of lien, the court may, so far as the parties before it, or any of them, are debtor and creditor, give judgment against the former in favour of the latter for any indebtedness or liability arising out of the claim or claims of lien in the same manner as if the indebtedness or liability had been sued on in the court in the ordinary way without reference to this Act, and judgment may be given for the sum actually due, notwithstanding the sum may exceed the ordinary jurisdiction of the court

RS1960 238 39

**Distribution of money realized under Act**

**39.** Subject to section 6, all money realized by action or proceedings under this Act or paid into court under section 20 shall be applied and distributed in the following order

- (a) the costs of all the lien holders of and incidental to the proceedings of registering and proving their claims of lien,
- (b) 6 weeks' wages, if so much is owing, of all workers employed by the owner, contractor and subcontractor,
- (c) the sums of money owing the workers in excess of 6 weeks' wages, the material men and the subcontractors,
- (d) the amount owing the contractor

Each class of lien holders shall rank without preference for their several amounts, and the portions of the money available for distribution shall be distributed among the lien holders proportionately according to their several classes and rights. Any balance of the money remaining after all the above amounts have been distributed is payable to the owner or other person legally entitled to it

RS1960 238 40

**Certain proceedings not deemed satisfaction or waiver of lien**

**40.** The taking of any security, or the acceptance or discounting of any promissory note or cheque, which on presentation is dishonoured, for the claim, or the taking of any acknowledgment of the claim, or the taking of any proceedings for the recovery of the claim or the recovery of any personal judgment for the claim, does not merge, waive, pay, satisfy, prejudice or destroy any lien created by this Act, unless the claimant, other than a worker, agrees in writing that it shall have that effect. A person who has extended the time for payment of any claim for which he has a lien under this Act, to obtain the benefit of this section, shall file the affidavit of claim of lien, and shall institute proceedings to enforce the lien within the time limited by this Act, but no

further proceedings shall be taken in the action until the expiration of the extension of time. Notwithstanding the extension of time, those persons may, where proceedings are instituted by any other person to enforce a lien against the same property, prove and obtain payment of their claim in the suit or action as if no extension had been given.

RS1960-238-41

**Costs**

**41.** No fees in stamps or money are payable to a court or other officer in any action brought to enforce a claim of lien under this Act, or on any filing, order, record or judgment or other proceedings in the action, but a person, other than a worker, shall, on commencing his action where he is a plaintiff, or on filing his claim where he is not a plaintiff, pay in stamps \$2 on every \$100, or fraction of \$100, of the amount of his claim up to \$1,000.

RS1960-238-51

**Court costs**

**42.** Costs of an action awarded to the plaintiffs, exclusive of costs of an appeal and subject to the maximum costs allowed exclusive of disbursements, by the County Court Rules, shall be in addition to the amount of the judgment, and shall be apportioned and borne in the proportions as the court that tries the action may direct.

RS1960-238-52

**Maximum court costs**

**43.** Where costs are awarded against the plaintiff or other persons claiming the lien, the costs, exclusive of the costs of an appeal, shall not exceed the maximum costs allowed to defendants by the County Court Rules, exclusive of disbursements, and shall be apportioned and borne as the court may direct.

RS1960-238-53

**Plaintiff may be deprived of portion of costs**

**44.** In case the least expensive course is not taken by a plaintiff under this Act, the costs allowed shall in no case exceed what would have been incurred if the least expensive course had been taken.

RS1960-238-54

**Costs on cancellation, etc.**

**45.** Where a claim of lien is cancelled under section 27, or where, in an action, judgment is given for or against a claimant, in addition to the costs of an action, the court may allow a reasonable sum for the costs of drawing and filing the claim of lien or for vacating the filing of the claim of lien.

RS1960-238-55

**Costs not otherwise provided for**

**46.** The costs incidental to all applications and orders under this Act and not otherwise provided for shall be in the discretion of the court to which the application or by which the order is made.

RS1960-238-56

**Microfilm authorized**

**47.** Where directed to do so by the Attorney General, the registrar or County Court registrar shall cause a document filed in his office under this Act to be

photographed on microfilm, and, if the direction provides, return the document to the person who filed it. The microfilm, for the purpose of this Act, is deemed to be the document filed.

1970-44-14

## SCHEDULE

### FORM 1

In the Matter of the *Builders Lien Act*, and in the Matter of a Lien Claimed by

I, \_\_\_\_\_, of \_\_\_\_\_, British Columbia, [where affidavit is made by agent insert here, agent of the above named claimant] make oath and say

1 That \_\_\_\_\_, of \_\_\_\_\_, claims a builders lien against the property or interest hereinafter mentioned, whereof \_\_\_\_\_ is owner [where affidavit is made by agent with personal knowledge add here, and I have a personal knowledge of the facts hereinafter stated] [or where affidavit is made by agent on information and belief add here, I am informed by \_\_\_\_\_ verily believe the facts hereinafter stated to be true]

2 That the particulars of the work done or material supplied, or to be done or supplied, or both, are as follows

3 That the contract for the work, hiring or supplying of material, or both, was made on [month, day], 19 \_\_\_\_\_

Or

3 That the contract for the work, hiring or supplying of material, or both, was completed on [month, day], 19 \_\_\_\_\_

Or

3 That the improvement for which the material was supplied was completed on [month, day], 19 \_\_\_\_\_

4 That \_\_\_\_\_ was or will be in the employment of \_\_\_\_\_ for the work for which the lien is claimed for \_\_\_\_\_ days after the above mentioned date

5 That the sum of \$ \_\_\_\_\_ is or will become due and owing to \_\_\_\_\_ for the same on [month, day], 19 \_\_\_\_\_

6 That the description of the land described in my claim of lien to be charged is as follows

7 That my address for service is \_\_\_\_\_

Sworn before me at \_\_\_\_\_,  
British Columbia,  
[month, day], 19 \_\_\_\_\_

\_\_\_\_\_

A Commissioner for Taking Affidavits  
in British Columbia

### FORM 2

In the Matter of the *Builders Lien Act*, and in the Matter of a Lien Claimed by  
To \_\_\_\_\_

Take notice that you are required, within 21 days after the mailing of this notice, to commence an action to enforce your claim of lien and to register a certificate of lis pendens in respect of it in the land title office and in the gold commissioner's office where applicable or required against the land hereinafter described of which \_\_\_\_\_ is the owner

And further take notice that in the event that you fail to commence an action and register a certificate of lis pendens in respect of it in the land title office and in the gold commissioner's office where applicable or required, pursuant to this notice an application will be made to the Registrar of Titles or to the gold commissioner where applicable to have the claim of lien cancelled from the records of the land title office and of the gold commissioner's office where applicable

The description of the land described in your claim of lien to be charged is as follows

Owner or agent

---

Queen's Printer for British Columbia ©  
Victoria, 1979