
BUILDERS LIEN ACT

CHAPTER 41

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SCHEDULE**Definitions****1** In this Act:

“claimant” means a 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 the owner’s agent to do work on or to place or furnish materials, or to do both, on an improvement, or for the rental of equipment with an operator for use in making an improvement, but does not include a worker;

“court” means the Supreme Court;

“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 located 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 supplier” means a person who supplies or rents material that is intended to become part of the improvement or to be used in the making of it or to facilitate the making of it, which material has been delivered to the land on which the improvement is placed or located;

“operator” does not include a person who temporarily or periodically is present at the improvement site to install, inspect, service, empty or remove equipment;

“owner” includes a person who, at the time a claim of lien is filed in the land title office, has 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 the person;

“person” includes a firm, a partnership, an association or 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 the owner’s agent to do work on or to place or furnish material, or to do both, on or for the making of an improvement, or for the rental of equipment with an operator for use in making an improvement, but one who contracts with or is employed by the contractor or under the contractor 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 a person employed by an owner, contractor or subcontractor for wages in any kind of work, whether employed under a contract of service or not.

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 suppliers.
- (2) The contractor or the subcontractor, as the case may be, is the trustee of all those sums received by the contractor or subcontractor on account of the contract price, and, until all workers and all material suppliers 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 those sums, must not appropriate or convert any part of it to the contractor’s or subcontractor’s own use, or to any use not authorized by the trust.
- (3) A contractor or subcontractor who appropriates or converts any part of the sums received on account of the contract price referred to in subsection (1) or (2) to the contractor’s or subcontractor’s own use, or to any use not authorized by the trust, commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a penalty of not more than \$5 000 or to imprisonment for a term of not more than 2 years, or both.
- (5) A director or officer of a corporation who knowingly assents to or acquiesces in an offence under subsection (3) by the corporation commits the offence in addition to the corporation.
- (6) Despite this section, if 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 paid by the contractor or subcontractor is not an appropriation or conversion of it to that person’s own use, or to any use not authorized by the trust.

Section 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.

Liens created in respect of work and material

- 4 Subject to this Act, a worker, material supplier, 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 the person, on all of the following:
- (a) the interest of the owner in the improvement;
 - (b) the improvement itself;
 - (c) the material delivered to or placed on the land on which the improvement is located;
 - (d) the land.

Owner's liability as to amounts unpaid by contractor

- 5 (1) Except for 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.
- (2) Subsection (1) does not apply to liens under section 14.

Liens on mortgaged premises

- 6 (1) A registered mortgage has priority over a lien to the extent of the mortgage money secured in good faith or advanced in good faith in money before 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 must 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 rank after the lien, but any mortgagee who has applied mortgage money in payment of a claim of lien that 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 secured in good faith or payable in good faith 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

- (a) the seller is deemed to be a mortgagee, and
 - (b) any money secured in good faith and payable in good faith under the agreement is deemed to be mortgage money secured in good faith or advanced in good faith.
- (4) A worker's lien for 25 days' wages for work on an improvement to a mine or mineral claim takes priority over any mortgage or other encumbrance.
- (5) A lien under subsection (4) must be calculated proportionately when not payable by the day.

No claim under \$20

- 7 A claim of lien must not be filed if the amount of the claim or aggregate of joined claims is less than \$20.

Lien attaches despite agreement to contrary

- 8 An agreement does not deprive a person otherwise entitled to a lien, who is not a party to the agreement, of the benefit of the lien, and the lien attaches despite the agreement.

Agreement to avoid Act void

- 9 (1) An agreement by a worker that this Act does not apply, or that the remedies provided by it are not to be available for the worker's benefit, is null and void.
- (2) Subsection (1) does not apply to any worker whose wages are more than \$15 per day.
- (3) Every device by an owner, contractor or subcontractor adopted to defeat the priority given by this Act to a worker for the worker's wages is, as against the worker, null and void.
- (4) 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.

Spouse deemed agent

- 10 If work is done or material furnished to or for an improvement on the land of a married person with the privity, consent or at the request of the married person's spouse, the spouse is conclusively presumed, for the purposes of this Act, to be acting personally and as the married person's agent to bind both spouses' interests 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.

When lien arises

- 11 Subject to this Act, a claim of lien that has been filed in the land title office or gold commissioner's office, if applicable,
- (a) 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

Section 12

- (b) takes priority over all judgments, executions, attachments and receiving orders recovered, issued or made after the lien takes effect.

Filing of affidavit deemed notice

- 12 The filing of an affidavit of claim of lien under this Act is deemed notice of the claim of lien to all persons.

Owner deemed to have authorized works

- 13 (1) Subject to section 6, all improvements done with the knowledge, but not at the request, of the owner, the owner's authorized agent or the person claiming an interest in the improvements, must be held to have been done at the instance and request of the owner or person having or claiming an interest.
- (2) Subsection (1) 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 the owner or person will not be responsible for the improvements, or after actual notice in writing to that effect has reached the person claiming a lien under this Act.

Owner's liability for works on premises held under option

- 14 Despite section 13, all improvements placed on premises held under option or working bond, if the grantee of the option is required or permitted by the grantor of the option to make improvements, must, 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 under this Act attach and are enforceable against the interest both of the owner of the premises and the grantor of the option.

Insurance money

- 15 If 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 were realized by the sale of the property in an action to enforce a lien.

Claimant may demand particulars of contract

- 16 (1) A claimant may at any time demand of the owner or the owner's 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.
- (2) The owner is liable to the claimant in an action for a loss suffered by the claimant if
- (a) the owner or the agent
- (i) 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

- (ii) intentionally or knowingly falsely states the terms of the contract, or the amount due or unpaid on it, and

(b) the claimant sustains loss because of the refusal, neglect or false statement.

Owner may demand particulars from claimant

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

(2) If

- (a) the contractor, subcontractor, person or 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 because of the refusal, neglect or false statement

the contractor, subcontractor or person claiming the lien is liable to the owner or person making the demand in an action for the amount of the loss, and in any event the lien of the contractor, subcontractor or person is limited by the statement given or furnished.

Assignment by contractor or counterclaim not to defeat lien or trust

- 18 (1) No assignment by the contractor or subcontractor of money due in respect of the contract is valid as against a 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 must not be diminished by a prior or subsequent indebtedness, set off or counterclaim in favour of the owner against the contractor.

During continuance of lien, property must not be removed

- 19 During the continuance of a lien, a portion of the material or the property affected by it must not be removed to the prejudice of the lien, and any attempt at removal may be restrained on application to the court.

Retention of percentage by owner for 40 days

- 20** (1) Despite section 5, in all cases the owner or person primarily liable on any contract under or by operation of which a lien may arise must retain, for a period of 40 days after the contract has been completed, abandoned or otherwise determined, 10% of the value of the work, service and materials actually done, placed or furnished as mentioned in section 4, whether or not the contract or subcontract provides for partial payments or payment on completion of the work, and the value must be calculated on evidence given in that regard on
- (a) the basis of the contract price, or
 - (b) if there is no specific contract price, 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 90% 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, 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) A contract for an improvement already made or made in the future must be read and construed as if amended to conform with this section.
- (6) If the contractor or subcontractor defaults in completing a contract or subcontract, the percentage required to be retained under this section must not, as against any claimant who under 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.

Affidavit of lien

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

- (2) An affidavit of claim of lien must not 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) An affidavit of claim of lien required to be filed under this section may be made by the person claiming the lien, or by the person's agent, and the affidavit may be made
 - (a) as to the facts within the personal knowledge of the deponent, or
 - (b) if the deponent gives the source of the information and states that he or she believes the facts to be true, as to the facts of which the deponent is informed.
- (4) A substantial compliance only with this section is required, and no lien is invalidated because of failure to comply with any of its requirements 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 that person is prejudiced.

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 must 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 the worker for which the lien is claimed, except for a lien claimed in relation to a mine or quarry, when the time mentioned is to be 60 days.
 - (4) A worker must not be held to have ceased work on an improvement until the completion of it if the worker has in the meantime been employed on any other work by the same contractor.
 - (5) A lien for which a claim of lien is not filed as provided in this Act absolutely ceases to exist on the expiration of the time limited for its filing.

Section 23

Procedure to file claim of lien

- 23 (1) This section sets out the procedure to file a claim of lien, except where the lien is claimed in respect of mining property held under the provisions of the *Mineral Tenure Act* other than a Crown granted mineral claim.
- (2) A person who claims a lien must, within the respective times set out in section 22, file the affidavit of claim of lien in the land title office.
- (3) On the filing of the affidavit, the registrar must 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.

Procedure to file claim of lien under *Mineral Tenure Act*

- 24 (1) This section sets out the procedure to file a claim of lien claimed in respect of mining property held under the *Mineral Tenure Act* other than a Crown granted mineral claim.
- (2) A person who claims a lien under this section must, within the respective times set out in section 22,
- (a) file the affidavit of claim of lien in the office of the gold commissioner in which the mining property or land is recorded, and
 - (b) 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.
- (3) On the filing of the affidavit as provided, the gold commissioner must endorse a memorandum of it on the record of the mining property in that office.
- (4) If the land or the estate or interest in it described in the affidavit is registered in the land title office, the registrar must 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.

Application to the court

- 25 An application to the court authorized under this Act must be commenced at a registry of the court located in the judicial district where the land or any part of it is located and on which the improvement is made or is being made.

Action to be commenced within one year

- 26 (1) In every case in respect of which an affidavit of claim of lien has been filed, an action to enforce the lien must be commenced and a certificate of pending litigation in respect of it registered in the land title office and in the gold commissioner's office in which the affidavit or 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) Despite subsection (1), an owner or the owner's agent may, after the filing of an affidavit of claim of lien, serve on or 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 pending litigation in respect to it within 21 days from the mailing of the notice.

- (3) The notice must be substantially in the Form 2 set out in the Schedule, and must be personally served on the claimant or sent by registered mail, postage prepaid, addressed to the claimant at the address for service given in the affidavit of claim of lien.
- (4) If no address for service is given in the affidavit of claim of lien, the notice, addressed to the claimant, must be mailed to the claimant at the claimant's 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 located.
- (5) The registration of a certificate of pending litigation under this section is not necessary if the court has, under section 33, ordered the cancellation of the claim of lien as to the property affected by the order.
- (6) A notice mailed in the above manner is deemed to have been given by the owner and to have been received by the claimant in the ordinary course of the mails.

Lien expires unless action commenced under section 26

- 27** A lien absolutely ceases to exist unless an action to enforce the claim of lien is commenced and, if required, a certificate of pending litigation in respect to it is registered in the land title office and the gold commissioner's office as required or applicable
- (a) within the time provided by section 26 (1), or
 - (b) within the time stated by an owner to a claimant under section 26 (2).

Cancellation of lien

- 28** (1) An owner may at any time apply to a registrar or gold commissioner to have a claim of lien cancelled if
- (a) a lien has absolutely ceased to exist under sections 26 and 27,
 - (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, or
 - (d) the claim of lien has been satisfied.
- (2) On an application under subsection (1), and on being satisfied as to the facts, the registrar or gold commissioner may cancel the claim of lien accordingly.

Claimant may assign lien

- 29** 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 the claimant's personal representative.

Section 30

Enforcement of claim in court

- 30
- (1) Subject to sections 18 (2) and 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, unless it is varied by this Act.
 - (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 is effectual to pass any estate or interest sold.
 - (3) If an action is brought under subsection (1) in respect of a claim of lien or liens for improvement on land that is located in more than one judicial district, the action may be commenced at a registry located in either of the judicial districts.
 - (4) 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.

Particulars need not be pleaded

- 31 It is not necessary to set out in the pleadings a copy of the affidavit of claim of lien.

Proof of filing of affidavit

- 32 The production of a copy of the affidavit of a claim of lien, disclosing the date of its filing and certified by the registrar or gold commissioner in whose office or registry it has been filed, must 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.

Cancellation on payment or security

- 33
- (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.
 - (2) 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.
 - (3) The registrar or the gold commissioner in whose office a claim of lien is filed must, on production of the order or an office copy of it, file it and cause the claim of lien and a certificate of pending litigation in respect of it to be cancelled as to the property affected by the order.

Consolidation of actions

- 34 (1) If more than one action is commenced in respect of the same contract, the owner or the contractor must apply to have the actions consolidated, and, failing to do so, the owner or the contractor must pay the costs of the additional action or actions the court decides.
- (2) 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.

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.

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 is deemed to be assignee of the lease.

Costs against owner or contractor

- 37 If 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 fulfill 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 the owner or contractor or both of them to any contractor, subcontractor, material supplier or worker, and may order a final judgment against the owner or contractor, or both of them, for costs.

Judgment for amount of claim

- 38 On the trial of an action to enforce a claim or claims of lien, the court may, to the extent that 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, even if the sum exceeds the ordinary jurisdiction of the court.

Distribution of money realized under Act

- 39** (1) Subject to section 6, all money realized by action or proceedings under this Act or paid into court under section 20 must 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 suppliers and the subcontractors;
 - (d) the amount owing the contractor.
- (2) Each class of lien holders ranks without preference for their several amounts, and the portions of the money available for distribution must be distributed among the lien holders proportionately according to their several classes and rights.
- (3) Any balance of the money remaining after all the amounts referred to in subsection (1) have been distributed is payable to the owner or other person legally entitled to it.

Certain proceedings not deemed satisfaction or waiver of lien

- 40** (1) The taking of any security, or the acceptance or discounting of any promissory note or cheque, that 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 is to have that effect.
- (2) A person who has extended the time for payment of any claim for which the person has a lien under this Act, to obtain the benefit of this section, must file the affidavit of claim of lien, and must institute proceedings to enforce the lien within the time limited by this Act, but no further proceedings may be taken in the action until the expiration of the extension of time.
- (3) Despite the extension of time, those persons may, if 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.

Court costs

- 41** 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 Rules of Court, are in addition to the amount of the judgment, and must be apportioned and borne in the proportions as the court that tries the action may direct.

Maximum court costs

- 42 If costs are awarded against the plaintiff or other persons claiming the lien, the costs, exclusive of the costs of an appeal, must not exceed the maximum costs allowed to defendants by the Rules of Court, exclusive of disbursements, and must be apportioned and borne as the court may direct.

Plaintiff may be deprived of portion of costs

- 43 If the least expensive course is not taken by a plaintiff under this Act, the costs allowed must not be greater than the costs that would have been incurred if the least expensive course had been taken.

Costs on cancellation, etc.

- 44 If a claim of lien is cancelled under section 28, or if, 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.

Costs not otherwise provided for

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

Microfilm authorized

- 46 (1) If directed to do so by the Attorney General, the registrar must cause a document filed under this Act in the land title office to be photographed on microfilm and, if the direction provides, return the document to the person who filed it.
- (2) The microfilm, for the purpose of this Act, is deemed to be the document filed.

SCHEDULE**FORM 1**

In the Matter of the *Builders Lien Act*, and in the Matter of a Lien Claimed by
 I,, of, British Columbia, [if 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 mentioned in paragraph 6 of this affidavit, of which is owner [if affidavit is made by agent with personal knowledge add here, and I have a personal knowledge of the facts stated in this affidavit] [or if affidavit is made by agent on information and belief add here, I am informed by believe the facts stated in this affidavit 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, year].
 Or
- 3 That the contract for the work, hiring or supplying of material, or both, was completed on [month, day, year].
 Or
- 3 That the improvement for which the material was supplied was completed on [month, day, year].
- 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, year].
- 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, year].

.....
 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, if required under section 26, to register a certificate of pending litigation in respect of it in the land title office and in the gold commissioner's office if applicable or required against the land described in this notice of which is the owner.

And further take notice that in the event that you fail to commence an action and, if required under section 26, register a certificate of pending litigation in respect of it in the land title office and in the gold commissioner's office if applicable or required, following this notice an application will be made to the Registrar of Titles or to the gold commissioner if applicable to have the claim of lien cancelled from the records of the land title office and of the gold commissioner's office if applicable.

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

.....

Owner or agent

BUILDERS LIEN — HISTORICAL TABLE

Legislative History

BUILDERS LIEN ACT

RSBC 1996, chapter 41

Section	History
1	RS1979-40-1; 1984-17-1; 1989-40-24.
2	RS1979-40-2.
3	RS1979-40-3.
4	RS1979-40-4.
5	RS1979-40-5.
6	RS1979-40-6.
7	RS1979-40-7.
8	RS1979-40-8.
9	RS1979-40-9.
10	RS1979-40-10; 1985-68-16.
11	RS1979-40-11.
12	RS1979-40-12.
13	RS1979-40-13.
14	RS1979-40-14.
15	RS1979-40-15.
16	RS1979-40-16.
17	RS1979-40-17.
18	RS1979-40-18.
19	RS1979-40-19.
20	RS1979-40-20; 1984-16-1.
21	RS1979-40-21; 1984-16-2.
22	RS1979-40-22.
23	RS1979-40-23; 1984-16-3; 1988-5-68.
24	RS1979-40-24; 1984-16-4; 1988-5-68.
25	RS1979-40-24.1; 1989-40-25.
26	RS1979-40-25; 1984-16-5; 1992-55-1.
27	RS1979-40-26; 1984-16-6; 1992-55-1.
28	RS1979-40-27.
29	RS1979-40-28.
30	RS1979-40-29; 1989-40-26.
31	RS1979-40-30.
32	RS1979-40-31; 1984-16-7.
33	RS1979-40-32; 1984-16-8; 1992-55-1.
34	RS1979-40-33,34.
35	RS1979-40-35.
36	RS1979-40-36.
37	RS1979-40-37.
38	RS1979-40-38.
39	RS1979-40-39.
40	RS1979-40-40.
41	RS1979-40-42; 1989-40-27.
42	RS1979-40-43; 1989-40-28.
43	RS1979-40-44.
44	RS1979-40-45.
45	RS1979-40-46.
46	RS1979-40-47; 1984-16-9.
Sch.	RS1979-40-Sch; 1984-16-10; 1992-55-1.

EXPLANATORY NOTE

Amendments Not in Force: If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The “Section” column identifies the affected provisions of the Act. The “Citation” column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

Legislative History: The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The “Section” column identifies all sections of the Act in force on December 31, 1996. The “History” column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of “year-chapter-section”.

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