



LEGAL SPECS

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How do you get a builders lien removed quickly from title to land? The answer depends on whether a lawsuit has been commenced to enforce the lien within the one-year limitation period mandated by the act.

If the one-year limitation period has expired and no action was commenced to enforce the lien, the removal of the lien will involve the filing of a simple form in the land-title office. If however the one-year limitation has not expired, the removal of the lien typically involves bringing an application to court to have it removed. That process involves posting security (cash or a bond) with the court. The security posted with the court is said to take the place of the land and secures the lien claimant's claim.

For many years in British Columbia, the practice for the removal of a lien by court order has been to pay into court the amount of the lien plus 10% or 15% of the value of the lien for "security for costs." The so-called security for costs was paid on account of the legal costs and disbursements to be incurred by the lien claimant in enforcing the lien claim.

The argument in favour of the addition of an amount for security for costs was that in removing the lien, the claimant should be in no worse position than if the claim remained against the land. Moreover, since the whole point of the lien-security procedure is to adequately secure the lien claimant, the posted security should reflect the costs of enforcing the lien and should include a reasonable allowance for those costs.

However, a recent Supreme Court decision has significantly changed the law in British Columbia with respect to this practice.

In *Tylon Steepe Home Ltd. vs. Pont*, the court examined in detail what one judge called that "curious practice" and concluded that there was no statutory authority to order an amount for security for costs to be posted in addition to the lien amount.

The decision appears to have been driven by two considerations. First, the act has always been interpreted strictly by the courts because of the extraordinary substantive remedies granted to lien claimants who seek its protection.

Accordingly, since there is no specific mention within the act of posting an amount in addition to the value of the lien,

the court in this case found it to be an unnecessary and unwarranted addition of a substantive right to lien claimants. Second, while other provinces generally allow an amount for security for costs, unlike the legislation in British Columbia, the lien legislation in those provinces specifically provide for such an amount to be paid.

It will be interesting to see how this decision plays out in practice. Presumably, the face cost of securing a lien in British Columbia will be decreased. However, lien claimants may begin to consciously build a small amount into the amounts claimed in a lien in order to account somehow for the costs of enforcing it. We anticipate that the merits of this change in the law are very likely to be considered in the near future by the B.C. Court of Appeal. ♦

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