

POINT COUNTER POINT

With Norm Streu & Chris Hirst



A good guide for where not to lien

The primary purpose of lien legislation is to secure payment for those involved in construction projects.

Lien acts provide an extraordinary "leg up" on regular creditors and a remarkably powerful tool to secure payment.

However, there are a number of kinds of land in B.C. that you cannot lien. In this article, we summarize the main exclusions under the B.C. Builders Lien Act:

- Land not in B.C. - The B.C. Act only applies to B.C. land. To file a lien in Alberta, or any other jurisdiction, the lien legislation of that jurisdiction applies.
- Unregistered land - Considerable tracts of land in B.C. remain unpatented and are not recorded in the land title registry. Since the lien must attach to a title in land, unregistered Crown land is generally not lienable.
- Federal land & undertakings - Since lien legislation is provincial in

nature, it cannot interfere with federal land or federal undertakings that have an extraprovincial importance. This generally includes such improvements as federal government buildings and most international airports

- Aboriginal Land - Aboriginal land is subject to only federal jurisdiction and therefore aboriginal reserves cannot be liened. It has yet to be determined to what extent, if any, lands subject to aboriginal land claims may be subject to the BC Act.

- Highways - Public streets, roads, trails, lanes, bridges, trestles, tunnels, or any other "public way" cannot be liened, nor can any improvements on them.

- Ferry Terminals - Ferry terminals are defined as "continuing highway properties" under the Coastal Ferry Act and cannot be liened pursuant to section 1.1 (a.1) of the B.C. Builders Lien Act.

- Forest Service Roads - A forest service road, as defined in the Forest Act, or any improvements on forest service

roads, cannot be liened. Always remember that if you cannot lien the land, there may well be other options available to you to secure amounts owing.

For example, federal projects often require a "two tier" labour and material payment bond to ensure that project participants are paid. You may also be able to assert lien rights against unpaid holdback amounts in the owner's possession. In other words, it is important to be aware of these exclusions, but always consider your alternate options for debt recovery.

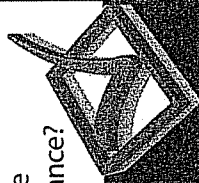
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Your Opinion Counts

This week's question:

Should Temporary Foreign Workers be allowed to collect employment insurance?

Respond online at www.journalofcommerce.com



Worth Repeating

"They (temporary foreign workers) are supposed to have the same rights as Canadian workers. If this is true, they should be able to collect EI."

Dean Homewood, business rep of the Construction and Specialized Workers Union local 1611

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