

BUILDERS' LIENS

February 15, 2022

Tim Mavko

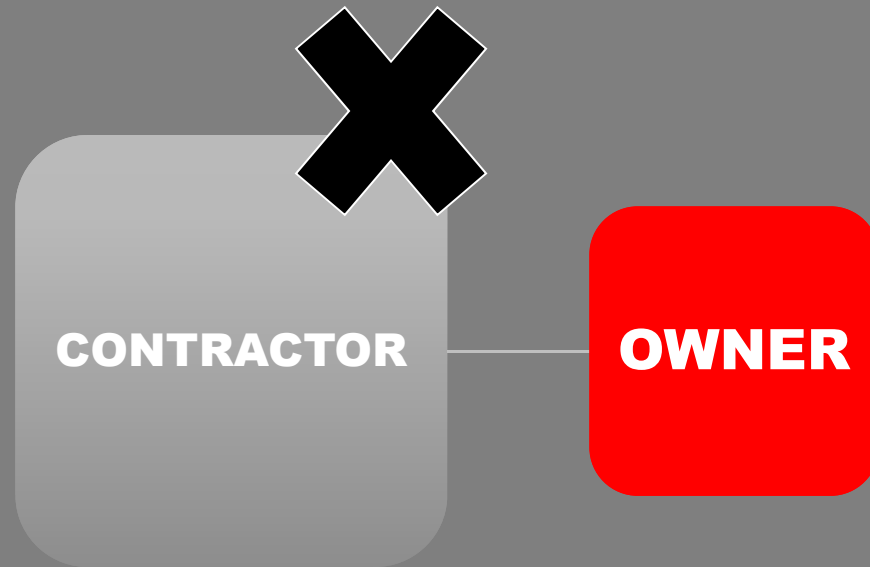
Partner,
Reynolds Mirth Richards & Farmer LLP

Christopher Hirst

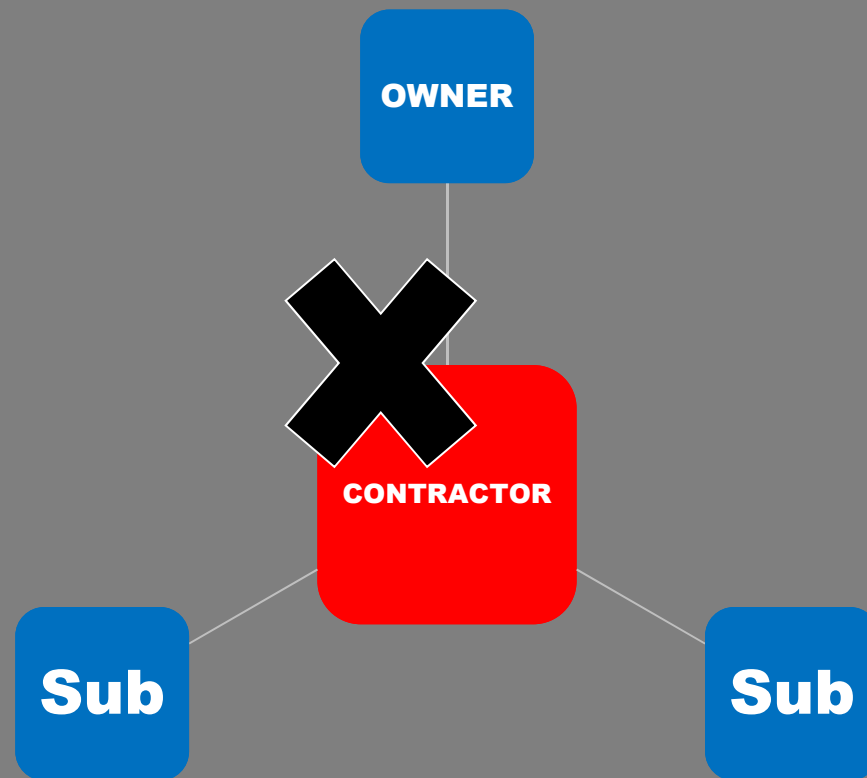
Managing Partner,
Alexander Holburn Beaudin + Lang LLP

Certificate in Construction Law – Western 2022

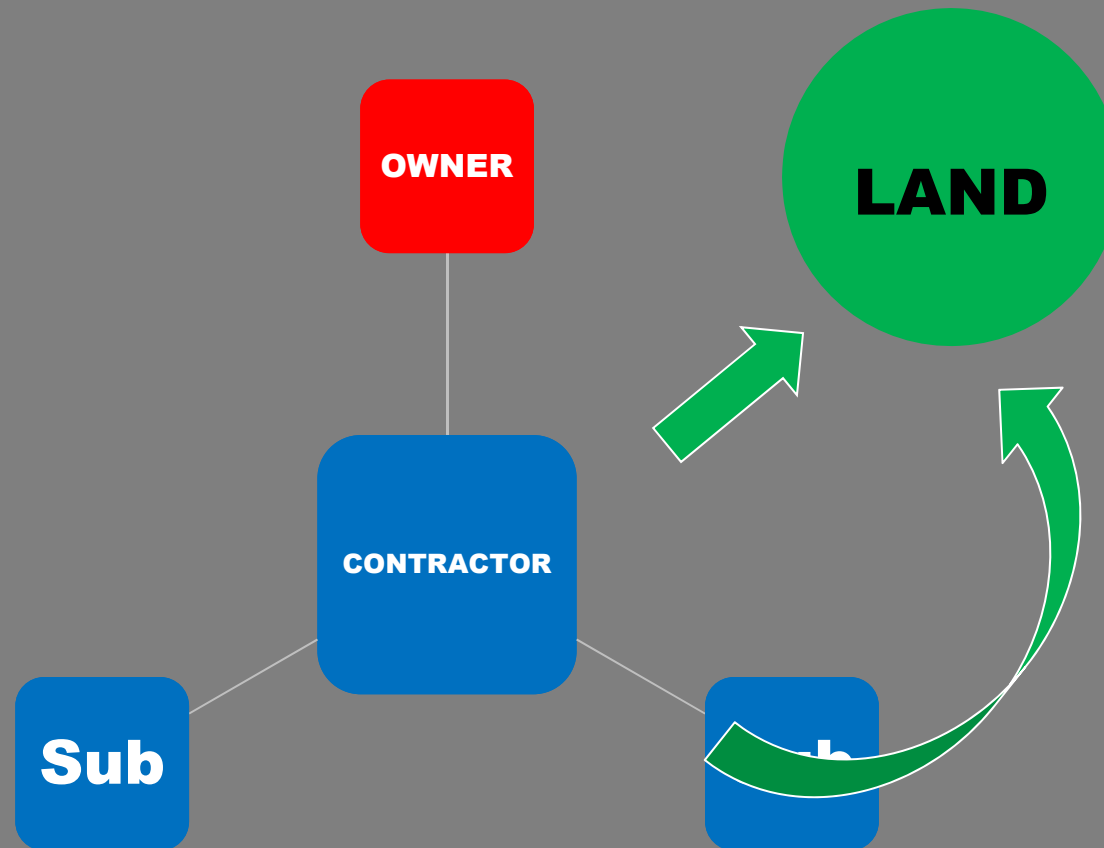
Problem: Defaulting Owner



Problem: Defaulting Contractor



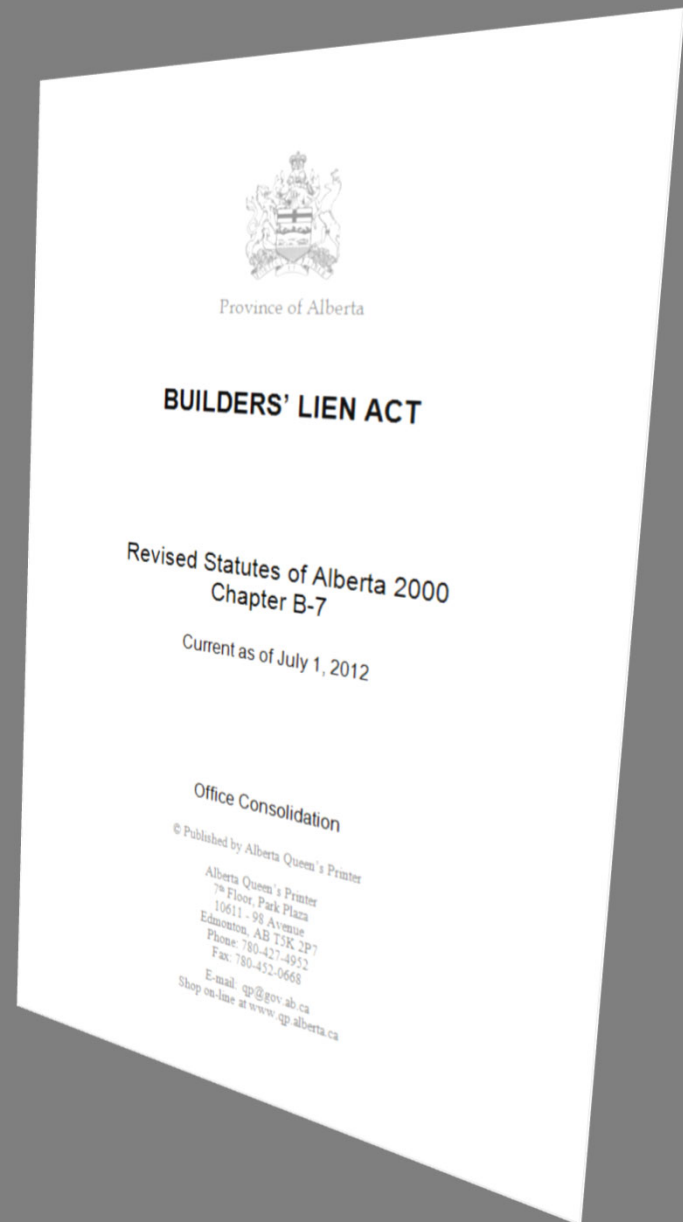
Solution: Builders' Lien



What is a Builders' Lien?

A security interest in the land,
that gives the lienholder
the right to sell
and share in the proceeds.

- No common law – created by statute
- Different in each province
- Need to carefully consider each provincial statute to ensure strict compliance



Who Has a Lien?

ALBERTA

s.6(1) A person who

(a) does **work** or

(b) furnishes **material**

in respect of an **improvement**, for an **owner, contractor** or **subcontractor** has, for so much of the price of the work or material as remains due, a lien on the **estate or interest** of the owner in the land improved.

Who Has a Lien?

ALBERTA

s.6(4) A person who **rents** equipment to an owner, contractor or subcontractor is, while the equipment is on the contract site or in the immediate vicinity of the contract site, **deemed to have performed a service** and has a lien for reasonable rental of the equipment while it is used or is reasonably required to be available for the purpose of the work.

Who Has a Lien?

BRITISH COLUMBIA

s. 2(1) a **contractor, subcontractor or worker** who, in relation to an **improvement**,

(a) performs or provides **work**,

(b) supplies **material**, or

(c) does **any combination** of those things referred to in paragraphs (a) and (b)

has a lien for the price of the work and material, to the extent that the price remains unpaid, on all of the following:

(d) the **interest of the owner** in the improvement;

(e) the **improvement itself**;

(f) the **land** in, on or under which the improvement is located;

(g) the **material** delivered to or placed on the land.

Who Has a Lien?

BRITISH COLUMBIA

"material" = means movable property that is **delivered to the land on which the improvement is located** and is intended to become part of the improvement, either directly or in a transformed state, or is consumed or used in the making of the improvement, **including equipment rented without an operator**;

"work" means work, labour **or services**, skilled or unskilled, on an improvement;

"services" includes

...

(b)the **rental of equipment, with an operator**, for use in making an improvement;

KEY DEFINITIONS

ALBERTA

s.1(d) **"improvement"**: anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land except a thing that is neither affixed to the land nor intended to be or become part of the land

s.1(p) **"work"** includes the performance of services on the improvement.

BRITISH COLUMBIA

s. 1(1) **"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 includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land

"work" means work, labour or services, skilled or unskilled, on an improvement

KEY DEFINITIONS

ALBERTA

s.1(b) “**contractor**” a person contracting with or employed directly by an owner to do work on or to furnish materials for an improvement, but does not include a labourer;

s.1(n) “**subcontractor**” a person other than
(i) a labourer,
(ii) someone only furnishing materials, or
(iii) someone only performing services,
who is not a contractor but is under a contract

BRITISH COLUMBIA

“**contractor**” means a person engaged by an owner to do one or more of the following in relation to an improvement:

(a) perform or provide work;

(b) supply material;

but does not include a worker;

“**subcontractor**” means a person engaged by a contractor or another subcontractor to do one or more of the following in relation to an improvement:

(a) perform or provide work;

(b) supply material;

but does not include a worker or a person engaged by an architect, an engineer or a material supplier;

KEY DEFINITIONS

ALBERTA

s.1(e) “**labourer**” a person employed for wages in any kind of labour;

BRITISH COLUMBIA

"worker" means an individual engaged by an owner, contractor or subcontractor for wages in any kind of work, whether engaged under a contract of service or not, but does not include an architect or engineer or a person engaged by an architect or engineer.

BC ONLY: “Head Contractor” Definition

s. 1(1): **"head contractor"** means a contractor who is engaged to do substantially all of the work respecting an improvement, whether or not others are engaged as subcontractors, material suppliers or workers;

Important to determine if there is a “head contract” and a “head contractor” as this may affect time limits and obligations!!

Who is an Owner?

ALBERTA

s.1(j) “**owner**” is person having an estate or interest in land at whose request, express or implied, and

- (i) on whose credit,
- (ii) on whose behalf,
- (iii) with whose privity and consent, or
- (iv) for whose direct benefit,

work is done on or material is furnished for an improvement.

BRITISH COLUMBIA

"owner" includes a person who has, at the time a claim of lien is filed under this Act, an estate or interest, whether legal or equitable, in the land on which the improvement is located, at whose request and

- (a) on whose credit,
- (b) on whose behalf,
- (c) with whose knowledge or consent, or
- (d) for whose direct benefit

work is done or material is supplied, and includes all persons claiming under the owner, but does not include a mortgagee unless the mortgagee is in possession of the land

“Owner” (both provinces) = a person:

Who has estate
or interest in land



Who (expressly or
impliedly)
requests work or
materials for an
improvement



a) On whose credit,
b) on whose behalf,
c) With whose
privity/knowledge
and consent, or
d) for whose direct
benefit,

work is done or
materials
furnished/supplied

RECALL: Who Has a Lien?

s.6(1) A person who

(a) does **work** or

(b) furnishes **material**

in respect of an **improvement**, for an **owner**, **contractor** or **subcontractor** has, for so much of the price of the work or material as remains due, a lien on the **estate or interest** of the **owner** in the land improved.

WHICH LANDS?

Private Lands?

Yes

WHICH LANDS?

Provincial Lands?

Crown Interest (Alberta) – No

Crown Interest (BC) - Yes

Private Interests (e.g. leases) - Yes

WHICH LANDS?

Federal Lands?

Crown Interests – No
Private Interests - No

WHICH LANDS?

Municipal Lands?

Yes

Except Public Highways (Alta & BC)/Irrigation Districts (Alta)
and Forestry Roads (BC)

WHICH LANDS?

First Nation Lands?

No

WHICH INTERESTS?

Leasehold Interest of tenants?

Yes -

if tenant meets
definition of “owner” (AB)

Yes -

but only if leasehold interest is registered
on title (BC)

WHICH INTERESTS?

Interest of landlord?

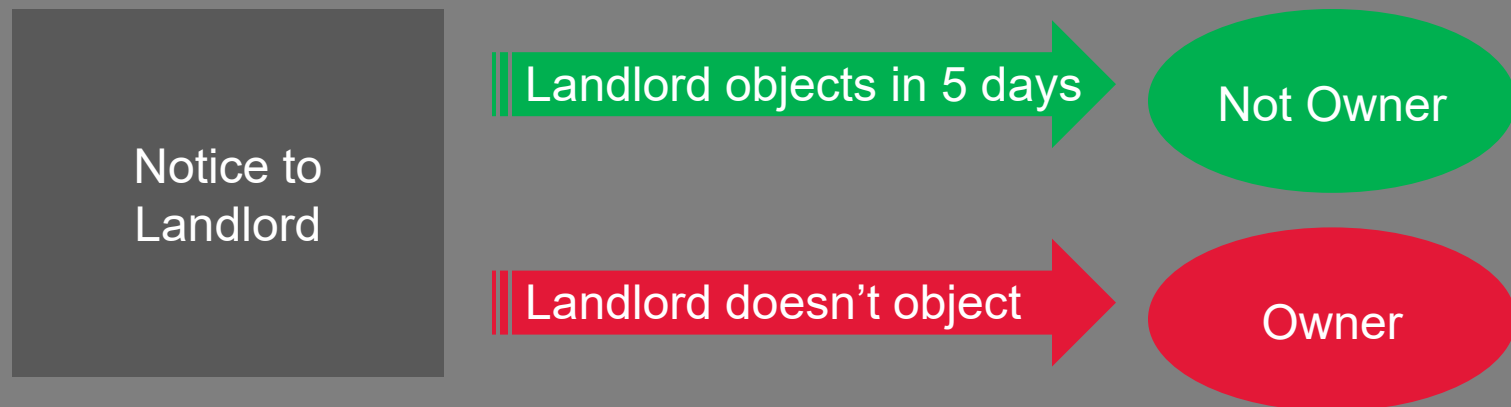
Yes –

if landlord meets definition of “owner”

Or, notice give under s.15 (**AB**)
No equivalent notice provision in **BC**

WHICH INTERESTS?

S.15(1):



RECALL: “Owner” = a person:

Who has estate
or interest in land



Who (expressly or
impliedly)
requests work or
materials for an
improvement



a) On whose credit,
b) on whose behalf,
c) With whose
privity/knowledge
and consent, or
d) for whose direct
benefit,

work is done or
materials
furnished/supplied

WHICH INTERESTS?

ALBERTA: Condo Owners?

If contractor retained by Condo Association, can lien every unit and all common property;

If retained by unit-holder, can lien unit (which includes unit's percentage of common property).

BRITISH COLUMBIA: Strata Owners?

Builder's Lien Act applies to land held in a strata plan with some SPECIAL RULES (contained in BC Strata Property Act):

If an owner developer conveys a strata lot to a purchaser, can affect

- timelines for filing lien against strata lot or share of common property
- New purchaser's ability to discharge lien

WHICH INTERESTS?

Interests of Married Persons?

AB: YES

S.14(1): “When work is done or material is furnished in respect of land which a married person has an estate or interest, if the work is done or the material is furnished with the privity of the spouse of the married person then, for the purposes of this Act, the spouse shall be **conclusively presumed** to be acting as the agent of the married person as well as for himself or herself.”

BC: NO

No mention in the BC legislation of spouses as presumed agents of one another

WHICH INTERESTS?

Mineral Interest?

ALBERTA: Yes

s.6(2): for work or materials:
preparatory to, in connection with,
or for abandonment
operations for the recovery
of a mineral.

Against all estates and interests in
the mineral, and the mineral
itself when severed from the
land.

BRITISH COLUMBIA: Yes

s. 18(1): In order to file a claim of lien in
respect of a **mineral title held under
the Mineral Tenure Act** other than a
Crown granted mineral claim, the lien
claimant must file the claim of lien in
BOTH

- the office of the gold
commissioner and
- the land title office

WHICH INTERESTS?

Against a pipeline?

Yes

When does a Lien arise?

ALBERTA: Section 10:

The lien created by this Act arises when the work is begun or the first material is furnished.

BRITISH COLUMBIA: Section 21

A claim of lien filed under this Act takes effect from the time work began or the time the first material was supplied for which the lien is claimed

When do Lien Rights Expire? ALBERTA

Section 41:

- 1) A lien for materials may be registered at any time within the period commencing when the lien arises, and
 - (a) subject to (b), terminating 45 days from the day that the last of the material is furnished or the contract to furnish the materials is abandoned; or
 - (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned.

When do Lien Rights Expire? ALBERTA

- 2) A lien for the performance of services may be registered at any time within the period commencing when the lien arises, and
 - (a) subject to clause (b), terminating 45 days from the day that the performance of the services is completed or the contract to provide the services is abandoned; or
 - (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the last of the services is furnished or the contract to furnish the materials is abandoned.

When do Lien Rights Expire? ALBERTA

- 3) A lien for wages may be registered at any time within the period commencing when the lien arises, and
 - (a) subject to clause (b), terminating 45 days from the day that the work for which the wages are claimed is completed or abandoned, or
 - (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the work for which the wages are claimed is completed or abandoned.

When do Lien Rights Expire? ALBERTA

- 4) In cases not referred to in subsections (1) to (3), a lien in favour of a contractor or subcontractor may be registered at any time within the period commencing when the lien arises, and
- (a) subject to clause (b), terminating 45 days from the day that the contract or subcontract is completed or abandoned, or
 - (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day the contract or subcontract is completed or abandoned.

When do Lien Rights Expire?

ALBERTA SUMMARY

Materials	Services	Wages	Everything Else
45/90 days ... from day materials are last furnished or contract abandoned	... from day performance of services is completed or contract abandoned	... from day that the work for which wages are claimed is completed or abandoned	... from the day the contract or subcontract is completed or abandoned

When do Lien rights expire?

BRITISH COLUMBIA

Section 20(1): Certificate of Completion Issued

(1) **If a certificate of completion has been issued** with respect to a contract or subcontract, the claims of lien of

- (a) the contractor or subcontractor, and
- (b) any persons engaged by or under the contractor or subcontractor

may be filed **no later than 45 days after the date on which the certificate of completion was issued.**

When do Lien rights expire?

BRITISH COLUMBIA

Section 20(2): No Certificate of Completion

(2) A claim of lien that is **not governed by subsection (1)** may be filed no later than **45 days after**

(a) the **head contract has been completed, abandoned or terminated**, if the owner engaged a head contractor, or

(b) the **improvement has been completed or abandoned**, if paragraph (a) does not apply.

When do Lien rights expire?

BRITISH COLUMBIA

Section 20(3): No Extension by Certificate of Completion

(3) Subsection (1) does not operate to extend or renew the time for filing of a claim of lien if

- (a) that time would otherwise be determined with reference to the time an earlier certificate of completion was issued, or
- (b) time had started to run under subsection (2)

When do Lien Rights Expire?

BRITISH COLUMBIA SUMMARY

Certificate of Completion Issued	No Certificate of Completion Issued
45 days after date on which certificate of completion was issued **CANNOT extend or renew time for filing if time has already started to run	45 days after head contract/improvement has been completed, abandoned, or terminated

Common Qs

Q. Does repair of deficiencies extend lien period?

ALBERTA: NO

S.41(5): “Notwithstanding subsections (1) to (4), the time limited by this section for registering a lien is not extended by reason only that something improperly done or omitted to be done in respect of work done or materials furnished is corrected or done, as the case may be, at a later date.”

BRITISH COLUMBIA: NO

As long as cost of correction is low enough such that contract is still “substantially performed” (see s. 1(2))

Common Qs

Q. When has a supplier “furnished/delivered” material to site?

ALBERTA S.9(1): “Material is considered to be furnished to be used within the meaning of this Act when it is delivered either on the land on which it is to be used or on such land or in such place in the immediate vicinity of that land as is designated by the owner or the owner’s agent or by the contractor or the subcontractor.”

BRITISH COLUMBIA S. 29: “If a person to whom material is supplied signs an acknowledgement of receipt of the material stating that it is received for inclusion in an improvement at a named address, the acknowledgement is proof, in the absence of evidence to the contrary, that the material was delivered to the land described by the address.”

How to Enforce a Builders' Lien?

ALBERTA: Section 43(1):

“A lien that has been registered ceases to exist unless, within 180 days from the date it is registered,

a. an action is commenced under this Act ..., and

b. the lien claimant registers a certificate of lis pendens in respect of the claimant's lien in the appropriate land titles office.”

How to Enforce a Builders' Lien?

BRITISH COLUMBIA: Section 33

(1) If a claim of lien has been filed, an action to enforce the claim of lien must be commenced and, unless the claim of lien has been removed or cancelled under section 23 or 24, a certificate of pending litigation in respect of the action must be registered, **not later than one year from the date of its filing**, in the land title office or gold commissioner's office in which the claim has been filed.

(2) Despite subsection (1),

(a) an owner, or

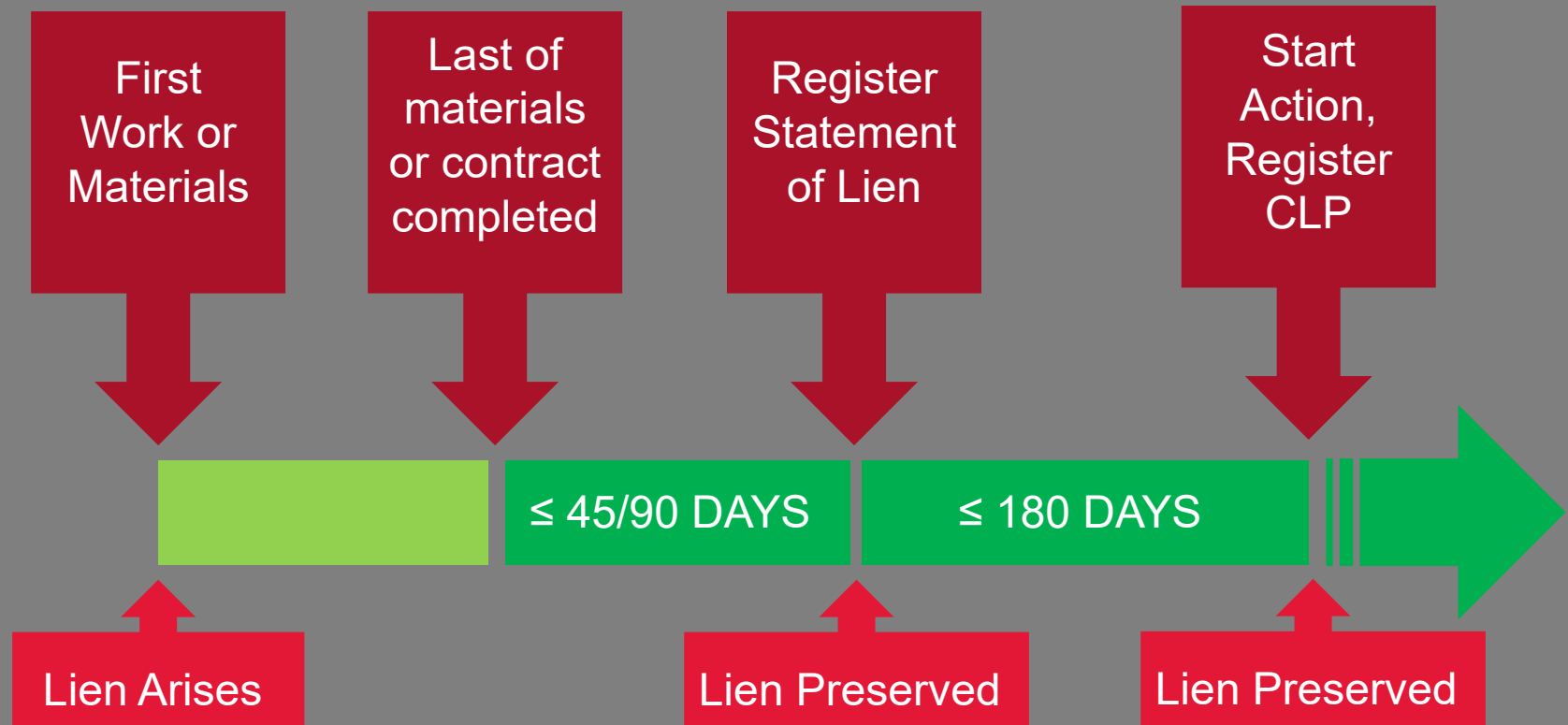
(b) a lien claimant who has commenced an action

may serve on a lien claimant, or other lien claimants, as the case may be, **a notice to commence an action** to enforce the claim of lien and to register in the land title office or in the gold commissioner's office, as the case may be, a certificate of pending litigation **within 21 days after service of the notice**.

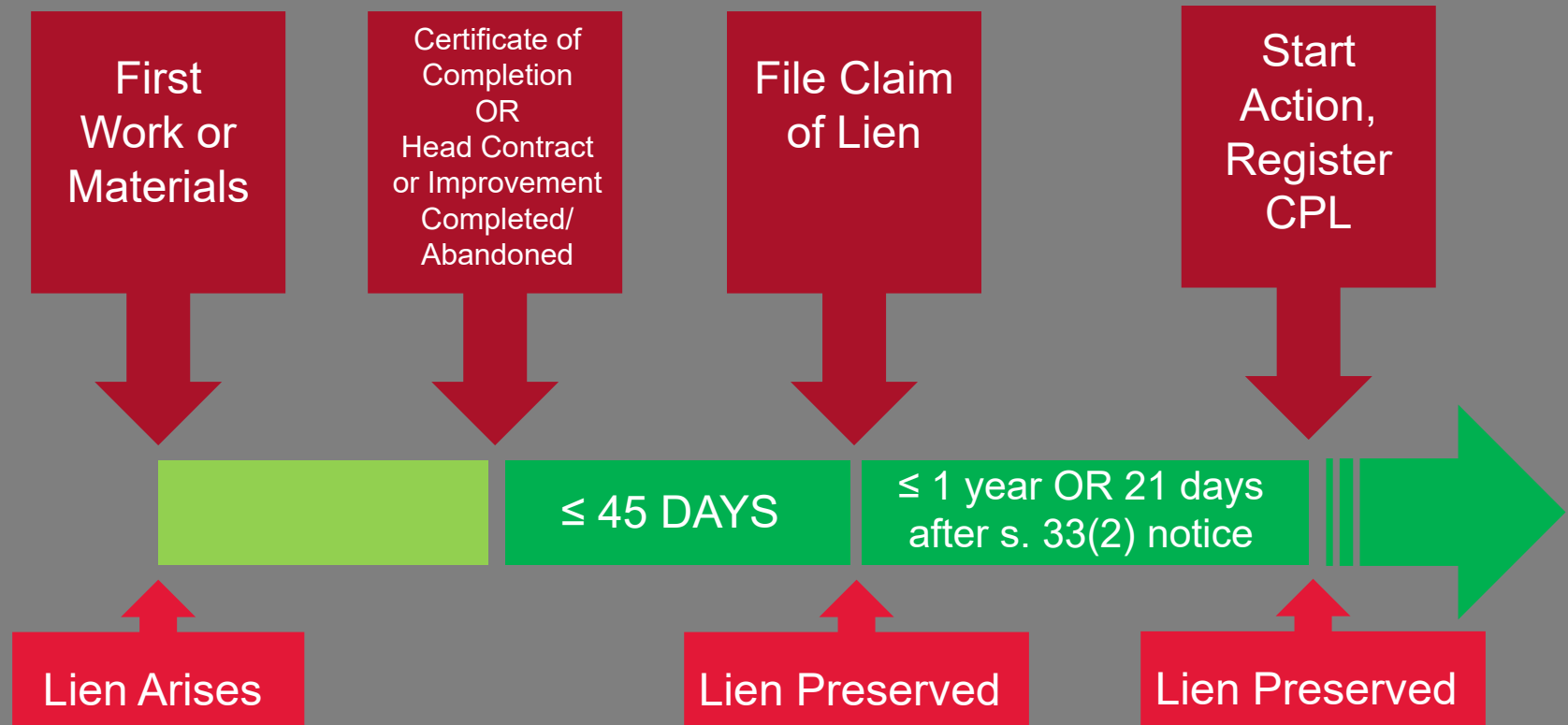
...

(5) Unless an action to enforce a claim of lien is commenced and a certificate of pending litigation is registered within the **time provided in this section**, the lien is extinguished.

ALBERTA TIMELINE



BRITISH COLUMBIA TIMELINE



How to Register a Lien?

ALBERTA

- Register a Statement of Lien at Land Titles Office (or with Minister of Energy)

BRITISH COLUMBIA

- Register a Claim of Lien at Land Title Office (or Gold Commissioner's Office)

- Forms are prescribed in respective Builders' Lien Forms Regulations
- Important to follow forms CAREFULLY

ALBERTA

Statement of Lien Form A



BUL-1
FORM A

Statement of Lien

<small>Insert name and address of lienholder. If claimant is the assignee of the original lienholder, state the fact(s).</small>	Lienholder
	Address
<small>Specify owner of estate or interest upon which lien is claimed and describe his / her estate or interest.</small>	claims a Lien under the Builders' Lien Act in the fee simple estate OR (specify if some other type of estate or interest applies) _____ of
	Name Address
<small>Insert legal description of land on which work or materials were supplied.</small>	in the following land:
<small>Insert short description of the work or materials supplied.</small>	The Lien is claimed in respect of the following work or materials:
<small>Insert name and address of person for whom the work or materials were supplied.</small>	which work or materials were or are to be provided for: Name of Person or Corporation
	Address
<small>If applicable, check this box</small>	<input type="checkbox"/> This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.
<small>Check one box only</small>	<input type="checkbox"/> a) The work was completed or the materials were last furnished: on _____ month / day / year
	- OR - <input type="checkbox"/> b) The work is not yet completed or all the materials have not yet been furnished.
<small>Insert amount of money being claimed (minimum claim is \$300)</small>	The sum claimed as due or to become due is \$ _____
<small>Insert address for service (Address must be in Alberta)</small>	The address for service of the Lienholder is in the Province of Alberta.

Dated on _____ day / month / year _____ Signature of Lienholder or Agent

at _____, Alberta.

ALBERTA

Name and
address
of person
claiming
lien



BUL-1
FORM A

Statement of Lien

Insert name and address of
lienholder (if claimant is not
assignee or
lienholder, state
relationship)

Lienholder
Nice-Guy Windows and Doors Inc.
12345 – 123 Ave, Edmonton, AB T5J 3M4

Specify owner of estate or
interest upon which lien is
claimed and describe his / her
estate or interest

claims a Lien under the Builders' Lien Act in the fee simple estate OR (specify if
some
other type of estate or interest applies) _____ of

Name

Address

Insert legal description of land
on which work or materials
were supplied

in the following land:

Insert short description of the
work or materials supplied

The Lien is claimed in respect of the following work or materials:

which work or materials were or are to be provided for:

Name of Person or Corporation

Insert name and address of
person for whom the work or
materials were supplied

Address

If applicable, check this box

☐

This lien is in respect of an improvement to an oil or gas well, or to an oil or
gas well site, for which the lien may be registered in the Land Titles Office not
later than 90 days from the last day that the work was completed or the
materials were last furnished.

☐

a) The work was completed or the materials were last furnished:

on _____

month / day / year

- OR -

☐

b) The work is not yet completed or all the materials have not yet been

Check one box only

ALBERTA

Type of
interest or
estate
liened:
Fee Simple
Leasehold
Easement



BUL-1
FORM A

Statement of Lien

Insert name and address of
lienholder. If claimant is the
assignee of the original
lienholder, state the fact(s).

Lienholder
Nice-Guy Windows and Doors Inc.
Address
12345 – 123 Ave, Edmonton, AB T5J 3M4

Specify owner of estate or
interest upon which lien is
claimed and if
estate or interest

claims a Lien under the Builders' Lien Act in the fee simple estate ~~OR (specify if
some~~

~~other type of estate or interest applies)~~ _____ of

Name

Address

Insert legal description of land
on which work or materials
were supplied

in the following land:

Insert short description of the
work or materials supplied

The Lien is claimed in respect of the following work or materials:

which work or materials were or are to be provided for:

Name of Person or Corporation

Insert name and address of
person for whom the work or
materials were supplied

Address

If applicable, check this box

☐

This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.

☐

a) The work was completed or the materials were last furnished:

on _____

month / day / year

- OR -

☐

b) The work is not yet completed or all the materials have not yet been

Check one box only

Name and address of person who OWNS the interest or estate

Alberta
REGISTRIES

BUL-1
FORM A

Statement of Lien

Insert name and address of
lienholder (If claimant is the
assignee of the original
lienholder, state the fact(s))

Lienholder

Nice-Guy Windows and Doors Inc.

Address

12345 – 123 Ave, Edmonton, AB T5J 3M4

Specify owner of estate or
interest upon which lien is
claimed and describe his / her
estate or interest

claims a Lien under the Builders' Lien Act in the fee simple estate ~~OR (specify if
some~~

~~other type of estate or interest applies)~~ _____

of

Deadbeat Owner Inc.

Address

666 – 666 St., Edmonton, AB T6J 6M6

Insert legal description of land
on which work or materials
were supplied

in the following land:

Insert short description of the
work or materials supplied

The Lien is claimed in respect of the following work or materials:

Insert name and address of
person for whom the work or
materials were supplied

which work or materials were or are to be provided for:

Name of Person or Corporation

Address

If applicable, check this box

☐

This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.

☐

a) The work was completed or the materials were last furnished:

on _____

month / day / year

- OR -

☐

b) The work is not yet completed or all the materials have not yet been

Check one box only

ALBERTA

Legal description of the land



BUL-1
FORM A

Statement of Lien

Insert name and address of
lienholder. If claimant is the
assignee of the original
lienholder, state the fact(s).

Lienholder
Nice-Guy Windows and Doors Inc.
Address
12345 – 123 Ave, Edmonton, AB T5J 3M4

Specify owner of estate or
interest upon which lien is
claimed and describe his / her
estate or interest.

claims a Lien under the Builders' Lien Act in the fee simple estate ~~OR (specify if
some~~
~~other type of estate or interest applies)~~ _____ of

Name
Deadbeat Owner Inc.
Address
666 – 666 St., Edmonton, AB T6J 6M6

Insert region
on which work or
materials were supplied

in the following land:
Plan 98765, Lot 4, Block 3

Insert short description of the
work or materials supplied

The Lien is claimed in respect of the following work or materials:

which work or materials were or are to be provided for:

Name of Person or Corporation

Insert name and address of
person for whom the work or
materials were supplied

Address

If applicable, check this box

☐ This lien is in respect of an improvement to an oil or gas well, or to an oil or
gas well site, for which the lien may be registered in the Land Titles Office not
later than 90 days from the last day that the work was completed or the
materials were last furnished.

Check one box only

☐ a) The work was completed or the materials were last furnished:
on _____
month / day / year
- OR -
☐ b) The work is not yet completed or all the materials have not yet been

ALBERTA

General
description
of work,
services or
materials



BUL-1
FORM A

Statement of Lien

Insert name and address of
lienholder. If claimant is the
assignee of the original
lienholder, state the fact(s).

Lienholder
Nice-Guy Windows and Doors Inc.
Address
12345 – 123 Ave, Edmonton, AB T5J 3M4

Specify owner of estate or
interest upon which lien is
claimed and describe his / her
estate or interest.

claims a Lien under the Builders' Lien Act in the fee simple estate ~~OR (specify if
some~~
~~other type of estate or interest applies)~~ _____ of

Name
Deadbeat Owner Inc.
Address
666 – 666 St., Edmonton, AB T6J 6M6

Insert legal description of land
on which work or materials
were supplied.

in the following land:
Plan 98765, Lot 4, Block 3

Insert short description of the
work or materials supplied.

The Lien is claimed in respect of the following work or materials:
Supply and install windows and doors.

Insert name and address of
person for whom the work or
materials were supplied.

which work or materials were or are to be provided for:
Name of Person or Corporation
Address

If applicable, check this box

☐ This lien is in respect of an improvement to an oil or gas well, or to an oil or
gas well site, for which the lien may be registered in the Land Titles Office not
later than 90 days from the last day that the work was completed or the
materials were last furnished.

Check one box only

☐ a) The work was completed or the materials were last furnished:
on _____
month / day / year
- OR -
☐ b) The work is not yet completed or all the materials have not yet been

Name and
address of
person
who hired
lienholder



BUL-1
FORM A

Statement of Lien

Insert name and address of
lienholder. If claimant is the
assignee of the original
lienholder, state the fact(s).

Lienholder
Nice-Guy Windows and Doors Inc.
Address
12345 – 123 Ave, Edmonton, AB T5J 3M4

Specify owner of estate or
interest upon which lien is
claimed and describe his / her
estate or interest

claims a Lien under the Builders' Lien Act in the fee simple estate ~~OR (specify if
some
other type of estate or interest applies)~~ _____ of

Name
Deadbeat Owner Inc.
Address
666 – 666 St., Edmonton, AB T6J 6M6

Insert legal description of land
on which work or materials
were supplied

in the following land:
Plan 98765, Lot 4, Block 3

Insert short description of the
work or materials supplied

The Lien is claimed in respect of the following work or materials:
Supply and install windows and doors.

Insert name and address of
person for whom the work or
materials were supplied

which work or materials were or are to be provided for:
Name of Person or Corporation
EZEE Contracting Ltd.
Address
11 – 345 St., Edmonton, AB T2Y 4B5

If applicable, check this box

☐ This lien is in respect of an improvement to an oil or gas well, or to an oil or
gas well site, for which the lien may be registered in the Land Titles Office not
later than 90 days from the last day that the work was completed or the
materials were last furnished.

Check one box only

☐ a) The work was completed or the materials were last furnished:
on _____
month / day / year
- OR -
☐ b) The work is not yet completed or all the materials have not yet been

ALBERTA

Last day
work done,
materials
furnished, or
services
performed



BUL-1
FORM A

Statement of Lien

<small>Insert name and address of lienholder. If claimant is the assignee of the original lienholder, state the fact(s).</small>	Lienholder Nice-Guy Windows and Doors Inc. Address 12345 – 123 Ave, Edmonton, AB T5J 3M4
<small>Specify owner of estate or interest upon which lien is claimed and describe his / her estate or interest.</small>	claims a Lien under the Builders' Lien Act in the fee simple estate OR (specify if some other type of estate or interest applies) _____ of _____
	Name Deadbeat Owner Inc. Address 666 – 666 St., Edmonton, AB T6J 6M6
<small>Insert legal description of land on which work or materials were supplied.</small>	in the following land: Plan 98765, Lot 4, Block 3
<small>Insert short description of the work or materials supplied.</small>	The Lien is claimed in respect of the following work or materials: Supply and install windows and doors.
<small>Insert name and address of person to whom the work or materials were supplied.</small>	which work or materials were or are to be provided for: Name of Person or Corporation EZEE Contracting Ltd. Address 11 – 345 St., Edmonton, AB T2Y 4B5
<small>If applicable, check this box</small>	<input type="checkbox"/> This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.
<small>Check <u>one</u> box only</small>	<input type="checkbox"/> a) The work was completed or the materials were last furnished: on <u>March 3, 2008</u> month / day / year - OR - <input type="checkbox"/> b) The work is not yet completed or all the materials have not yet been

ALBERTA

Amount
claimed (say
whether GST
is included)

estate or interest	other type of estate or interest applies _____ of _____
Name	Deadbeat Owner Inc.
Address	666 – 666 St., Edmonton, AB T6J 6M6
in the following land:	Plan 98765, Lot 4, Block 3
The Lien is claimed in respect of the following work or materials:	Supply and install windows and doors.
which work or materials were or are to be provided for:	
Name of Person or Corporation	EZEE Contracting Ltd.
Address	11 – 345 St., Edmonton, AB T2Y 4B5
If applicable, check this box	<input type="checkbox"/> This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.
Check <u>one</u> box only	<input type="checkbox"/> a) The work was completed or the materials were last furnished: <u>March 3, 2008</u> on _____ month / day / year - OR - <input type="checkbox"/> b) The work is <u>not</u> yet completed or all the materials have <u>not</u> yet been furnished.
Insert amount claimed (in \$300)	The sum claimed as due or to become due is \$ <u>\$43,189.14 (incl. GST)</u>
Insert address for service (Address must be in Alberta)	The address for service of the Lienholder is _____ in the Province of Alberta.
Dated on _____ day / month / year	Signature of Lienholder or Agent _____
at _____, Alberta.	

REG 3020 (Rev. 2004/04)

ALBERTA

Address
where
notice and
legal
documents
will be sent

estate or interest	other type of estate or interest applies _____ of _____
Name	Deadbeat Owner Inc.
Address	666 – 666 St., Edmonton, AB T6J 6M6
Insert legal description of land on which work or materials were supplied	in the following land: Plan 98765, Lot 4, Block 3
Insert short description of the work or materials supplied	The Lien is claimed in respect of the following work or materials: Supply and install windows and doors.
Insert name and address of person for whom the work or materials were supplied	which work or materials were or are to be provided for: Name of Person or Corporation EZEE Contracting Ltd. Address 11 – 345 St., Edmonton, AB T2Y 4B5
If applicable, check this box	<input type="checkbox"/> This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.
Check <u>one</u> box only	<input type="checkbox"/> a) The work was completed or the materials were last furnished: on <u>March 3, 2008</u> month / day / year - OR - <input type="checkbox"/> b) The work is <u>not</u> yet completed or all the materials have <u>not</u> yet been furnished.
Insert amount of money being claimed (minimum claim is \$300)	The sum claimed as due or to become due is \$ <u>\$43,189.14 (incl. GST)</u>
Insert address (Address in Alberta)	The address for service of the Lienholder is Nice-Guy Windows and Doors Inc. 12345 – 123 Ave, Edmonton, AB T5J 3M4 in the Province of Alberta.
Dated on _____	_____ day / month / year Signature of Lienholder or Agent
at _____, Alberta.	
REG 3020 (Rev. 2004/04)	

ALBERTA

Date and
sign

estate or interest	other type of estate or interest applies _____ of _____
Name	Deadbeat Owner Inc.
Address	666 – 666 St., Edmonton, AB T6J 6M6
in the following land:	Plan 98765, Lot 4, Block 3
The Lien is claimed in respect of the following work or materials:	Supply and install windows and doors.
which work or materials were or are to be provided for:	
Name of Person or Corporation	EZEE Contracting Ltd.
Address	11 – 345 St., Edmonton, AB T2Y 4B5
If applicable, check this box	<input type="checkbox"/> This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.
Check <u>one</u> box only	<input type="checkbox"/> a) The work was completed or the materials were last furnished: on <u>March 3, 2008</u> month / day / year - OR - <input type="checkbox"/> b) The work is <u>not</u> yet completed or all the materials have <u>not</u> yet been furnished.
Insert amount of money being claimed (minimum claim is \$300)	The sum claimed as due or to become due is \$ <u>\$43,189.14 (incl. GST)</u>
Insert address for service (Address must be in Alberta)	The address for service of the Lienholder is Nice-Guy Windows and Doors Inc. <u>12345 – 123 Ave, Edmonton, AB T5J 3M4</u> in the Province of Alberta.
Dated on _____	<u>14/04/08</u> day / month / year
at _____, Alberta.	<u>F. Smith</u> Signature of Lienholder or Agent

ALBERTA

Also complete:

- Affidavit verifying lien

At same time:

- Discharge of Lien
- Affidavit of Execution

Alberta
REGISTRIES

FORM B

Affidavit Verifying Claim by Lienholder

Insert name in full and
occupation

Insert full address, including
postal code

I, _____,
of _____, Alberta
named in the above (or annexed) statement make oath and say that the said claim is
true.

Sworn before me at _____, Alberta _____
on _____ day / month / year _____
Signature of Applicant

Commissioner for Oaths in and for the Province of Alberta Print Name Expiry Date of Commission

- OR -

Alberta
REGISTRIES

Affidavit Verifying Claim by Other Than Lienholder

Insert name in full and
occupation

Insert full address, including
postal code

I, _____,
of _____, Alberta
make oath and say:

1. That I am the agent (or assignee) of _____ named in the above (or annexed) statement and have full knowledge of the facts set forth in the above (or annexed) statement.

- OR -

Specify source of information

- I am informed by _____
and believe that the facts are as set forth in the above (or annexed) statement.
2. That the said claim is true (or when deponent has been informed, that I believe that the said claim is true).

Sworn before me at _____, Alberta _____
on _____ day / month / year _____
Signature of Applicant

Commissioner for Oaths in and for the Province of Alberta Print Name Expiry Date of Commission

This information is being collected for the purposes of land files records in accordance with the Builders' Lien Act and the Land Titles Act. Questions about the collection of this information can be directed to the Freedom of Information and Protection of Privacy Coordinator for Alberta Registries, Research and Program Support, Box 3140, Edmonton, Alberta T5J 2G7, (780) 427-2742.

REG 3020 (Rev. 2004/04)

BRITISH COLUMBIA

Claim of Lien Form 5

Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, _____ [claimant] of
_____ [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. _____ [claimant] of
_____ [address], British Columbia,

claims a lien against the following land:

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

4. The sum of \$_____ is or will become due and owing to _____
on _____ [month, day, year].

5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20_____

Signed: _____

Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

Name and Address of Claimant
or Agent of Claimant

Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

in is made by an agent, insert here "agent of the lien claimant"] state that:
_____[claimant] of
_____[address], British Columbia,

claims a lien against the following land:

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:
3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:
4. The sum of \$_____ is or will become due and owing to _____
on _____ [month, day, year].
5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20_____


Signed: _____

Note: Section 45 of the *Builders Lien Act* provides as follows:

- 45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.
(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and

BRITISH COLUMBIA

Name and Address of Claimant
(Will appear TWICE, if
Claimant is filling out the form
themselves)



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

claims a lien against the following land:

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

4. The sum of \$_____ is or will become due and owing to _____
on _____ [month, day, year].

5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20_____

Signed: _____


Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

Legal Description of Land –
include 9 digit Parcel
Identifier Number (PID) from
BC Land Title Office



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

claims a lien against the following land:

789 Rainy Lane, Vancouver, BC, B8D 1X6
PID: 001-567-234

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

4. The sum of \$_____ is or will become due and owing to _____
on _____ [month, day, year].

5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20_____

Signed: _____

Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

General Description of Work or Materials



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

claims a lien against the following land:

789 Rainy Lane, Vancouver, BC, B8D 1X6
PID: 001-567-234

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

Supplied and Installed windows and doors

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

4. The sum of \$_____ is or will become due and owing to _____
on _____ [month, day, year].

5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20____.

Signed: _____


Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

Name and Address of
Person who Engaged
Lien Claimant



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street [address], British Columbia,

claims a lien against the following land:

789 Rainy Lane, Vancouver, BC, B8D 1X6
PID: 001-567-234

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

Supplied and installed windows and doors

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

Deadbeat Owner Ltd., 666 Maple St, Vancouver, BC

4. The sum of \$_____ is or will become due and owing to _____
on _____ [month, day, year].

5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20_____

Signed: _____

Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

Amount Claimed
(including taxes), who
amount is owed to, and
Date amount became
or will become due and
owing



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

claims a lien against the following land:

789 Rainy Lane, Vancouver, BC, B8D 1X6
PID: 001-567-234

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

Supplied and installed windows and doors

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

Deadbeat Owner Ltd., 666 Maple St, Vancouver, BC

4. The sum of \$ 5000 is or will become due and owing to Nice-Guy Windows and Doors Inc.
on January 30, 2022 [month, day, year].

5. The lien claimant's address for service is:

Dated: this _____ day of _____, 20____

Signed: _____

Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

Provide address to
receive documents
related to lien



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

claims a lien against the following land:

789 Rainy Lane, Vancouver, BC, B8D 1X6

PID: 001-567-234

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

Supplied and installed windows and doors

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

Deadbeat Owner Ltd., 666 Maple St, Vancouver, BC

4. The sum of \$ \$5000 is or will become due and owing to Nice-Guy Windows and Doors Inc.
on January 30, 2022 [month, day, year].

5. The lien claimant's address for service is:

12345 – 123 Street, Vancouver, BC

Dated: this _____ day of _____, 20_____

Signed: _____

Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

BRITISH COLUMBIA

Date and Sign



Builders Lien Act
FORM 5
(sections 15, 16, 18)

CLAIM OF LIEN

I, Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

[if claim is made by an agent, insert here "agent of the lien claimant"] state that:

1. Nice-Guy Windows and Doors Inc. [claimant] of
12345 – 123 Street, Vancouver [address], British Columbia,

claims a lien against the following land:

789 Rainy Lane, Vancouver, BC, B8D 1X6

PID: 001-567-234

[Insert legal description here or, if a lien is claimed under section 16 against more than one parcel of land, insert the legal description of all parcels of land against which the lien is claimed. If insufficient space is provided, attach a schedule. If the claim of lien is to be filed in the gold commissioner's office, insert the name of the mineral title, its tenure number and the name of the mining division.]

2. A general description of the work done or material supplied, or to be done or supplied, or both, is as follows:

Supplied and installed windows and doors

3. The person who engaged the lien claimant, or to whom the lien claimant supplied material, and who is or will become indebted to the lien claimant is:

Deadbeat Owner Ltd., 666 Maple St, Vancouver, BC

4. The sum of \$ \$5000 is or will become due and owing to Nice-Guy Windows and Doors Inc.
on January 30, 2022 [month, day, year].

5. The lien claimant's address for service is:

12345 – 123 Street, Vancouver, BC

Dated: this 14th day of February, 2022

Signed: Guy Jones.

Note: Section 45 of the *Builders Lien Act* provides as follows:

45 (1) A person who knowingly files or causes an agent to file a claim of lien containing a false statement commits an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine not exceeding the greater of \$2,000 and the amount by which the stated claim exceeds the actual claim.

The HOLDBACK



The HOLDBACK: ALBERTA

18(1) owner shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 45 days from

- a. the date of issue of a certificate of substantial performance on the contract, in a case where a certificate of substantial performance is issued, or
- a. the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

The HOLDBACK: **BRITISH COLUMBIA**

4(1)The person primarily liable on each contract, and the person primarily liable on each subcontract, under which a lien may arise under this Act must retain a holdback equal to **10% of the greater of:**

- (a)the **value of the work or material** as they are actually provided under the contract or subcontract, and
- (b)the **amount of any payment made** on account of the contract or subcontract price.

ALBERTA: “Substantial Performance”

BRITISH COLUMBIA: “Completed” =
substantially completed or performed

Substantial Performance – SAME BOTH ACTS

AB: s. 2

BC: s. 1(2) and 1(3)

Substantial Performance means:

- a. ready for use or is being used for the purpose intended, and
- b. remaining work costs no more than
 - i. 3% of the first \$500,000
 - ii. 2% of the next \$500,000, and
 - iii. 1% of the balance of the contract or subcontract price.

\$500,000 Contract	\$700,000 Contract	\$5M Contract
3% x \$500,000 = \$15,000	3% x \$500,000 = \$15,000	3% x \$500,000 = \$15,000
	2% x \$200,000 = \$4,000	2% x \$500,000 = \$10,000
		1% x \$4M = \$40,000
< \$15,000	< \$19,000	< \$65,000

Certificate of Substantial Performance: **AB**

S.19 and 20:

Contractor or sub-contractor issues CSP
(NOT the Owner or Architect)

Release of Holdback: ALBERTA

27(2) ... on the expiration of 45 days

- a. from the date of issue of a certificate of substantial performance, payment of the major lien fund may be validly made, and
- b. from the date that the contract is completed, payment of the minor lien fund may be validly made,

so as to discharge the owner's liability in respect of all liens that are a charge on the lien fund in respect of which the payment was made, unless a statement of lien is registered."

Certificate of Completion (incl. substantial completion): **BC**

S.7:

“Payment certifier” issues CofC

(can be architect, engineer, owner, or other person identified in contract as such)

Release of Holdback: **BRITISH COLUMBIA**

8(1) **If a certificate of completion is issued** with respect to a contract or subcontract, the holdback period in relation to

(a) the contract or subcontract, and

(b) any subcontract under the contract or subcontract

expires at the end of 55 days after the certificate of completion is issued.

8(2) The holdback period for a contract or subcontract that is **not governed by subsection (1) expires at the end of 55 days** after

(a) the head contract is completed, abandoned or terminated, if the owner engaged a head contractor, or

(b) the improvement is completed or abandoned, if paragraph (a) does not apply.

(4) **Payment of a holdback** required to be retained under section 4 **may be made after expiry of the holdback period**, and all liens of the person to whom the holdback is paid, and of any person engaged by or under the person to whom the holdback is paid, are then discharged unless in the meantime a claim of lien is filed by one of those persons or proceedings are commenced to enforce a lien against the holdback.

\$500,000 Contract: **ALBERTA**

	Value of Work	Holdback	If no lien, then pay:
End of Month 1	\$100,000	\$10,000	\$90,000
End of Month 2	\$200,000	\$20,000	\$180,000
End of Month 3	\$185,000	\$18,500	\$166, 500
46 th Day after CSP		(\$48,500) – Major lien fund	\$48,500
Total Completion	\$15,000	\$1,500	\$13,500
46 th Day after Total Completion		(\$1,500) – Minor lien fund	<u>\$1,500</u>
	\$500,000		\$500,000

\$500,000 Contract: **British Columbia**

	Value of Work	Holdback	If no lien, then pay:
End of Month 1	\$100,000	\$10,000	\$90,000
End of Month 2	\$200,000	\$20,000	\$180,000
End of Month 3	\$185,000	\$18,500	\$166,500
55 th Day after Certificate of Completion		(\$48,500) Holdback	\$48,500
Total Completion	\$15,000		<u>\$15,000</u>
	\$500,000		\$500,000

Golden Rule: Never pay a dime in the face of a lien.

Why?

Because 1st lien registered “freezes” the lien fund. What happens if a whole series of liens are registered after the pay out?

All of those liens would attach to the lien fund which the owner was supposed to have maintained.

What should the Owner do?

Require the contractor to get the lien off of title and pay out the lien fund on the same day that it has a clear title.

Getting Liens Off the Title

Option #1: Pay into court

ALBERTA

Section 27(3):

“When a statement of lien has been registered, the owner or a mortgagee authorized by the owner to disburse the money secured by a mortgage may

...

give security for or pay into court the amount of the major lien fund, the minor lien fund, or both...”

BRITISH COLUMBIA

Section 23(1):

“If a claim of lien is filed ... **the owner, contractor, subcontractor or mortgagee authorized by the owner** to disburse money secured by a mortgage **may**, on application, **pay into court** the lesser of

(a) **the total amount of the claim** or claims filed, and

(b) **the amount owing** by the payor to the person engaged by the payor through whom the liens are claimed **provided the amount is at least equal to the required holdback** in relation to the contract or subcontract...

Getting Liens Off the Title

Option #2: Pay security into court

ALBERTA

Section 48:

“The court may, on application ...
order that the registration of a lien be removed from the title to the land concerned

where security is given or payment is made into court for

- i. **the amount of the claim;**
- ii. the maximum amount for which the lien may properly attach under section 18(3) or (4) or 23(3) or (4), or
- iii. such lesser amount as the court determines, and any costs that the court may fix...”

BRITISH COLUMBIA

Section 24:

(1) A person against whose land a claim of lien has been filed, and a contractor, subcontractor or any other person liable on a contract or subcontract in connection with an improvement on the land, **may apply to a court to have the claim of lien cancelled on giving sufficient security for the payment of the claim.**

(2) The court hearing the application under subsection (1) may, after considering all relevant circumstances, order the cancellation of the claim of lien **on the giving of security satisfactory to the court.**

(3) The value of the security required under an order under subsection (2) may be less than the amount of the claim of lien.

Two Non-Builders' Lien Remedies:

Unpaid Vendors Lien: ALBERTA only

Section 17(2): “Material actually delivered and to be used for an improvement ... is subject to a charge in favour of the person furnishing the material until incorporated in the improvement...”

Two Non-Builders' Lien Remedies:

Holdback or “Shimco” Lien: **British Columbia only**

Section 4(9): “Subject to section 34, a holdback required to be retained under this section is subject to a lien under this Act, and each holdback is charged with payment of all persons engaged, in connection with the improvement, by or under the person from whom the holdback is retained”.

Two Non-Builders' Lien Remedies:

Trust Remedy: ALBERTA

Section 22: “(1) “Where

- a. a certificate of substantial performance is issued, and
- b. a payment is made by the owner after a certificate of substantial performance is issued

the person who receives the payment, to the extent that the person owes money to persons who provided work or furnished materials for the work or materials in respect of which the certificate was issued, holds that money in trust for the benefit of those persons.”

Two Non-Builders' Lien Remedies:

Trust Remedy: **BRITISH COLUMBIA**

Section 10:

(1) **Money received by a contractor or subcontractor** on account of the price of the contract or subcontract **constitutes a trust fund** for the benefit of persons engaged in connection with the improvement by that contractor or subcontractor and **the contractor or subcontractor is the trustee of the fund.**

(2) Until all of the beneficiaries of the fund referred to in subsection (1) are paid, a contractor or subcontractor must not appropriate any part of the fund to that person's own use or to a use not authorized by the trust.

Section 14: **one year limitation period** for action by beneficiary against trustee, time starts to run upon completion/abandonment/termination of head contract or improvement

Mistakes

ALBERTA: Section 37(1) (the “curative provision”):

“A substantial compliance with [the registration requirements in 34] is sufficient and a lien shall not be invalidated by failure to comply with any requirements...unless, in the opinion of the court, the owner, contractor, subcontractor, mortgagee or some other person is prejudiced by the failure.”

NO EQUIVALENT IN BC – However, Section 28 of the BC *Interpretation Act* applies:

28 (1) If a form is prescribed under an enactment, **deviations from it not affecting the substance or calculated to mislead, do not invalidate the form used.**

Mistakes

Late Claims

- **ALBERTA:** S. 42 If a lien is not registered within the time limited by section 41, the lien ceases to exist.
- **BRITISH COLUMBIA:** S. 22 A lien in respect of which a claim of lien is not filed in the manner and within the time provided in this Act is extinguished.
- Court cannot relieve from this error.

Mistakes

Wrong Lands

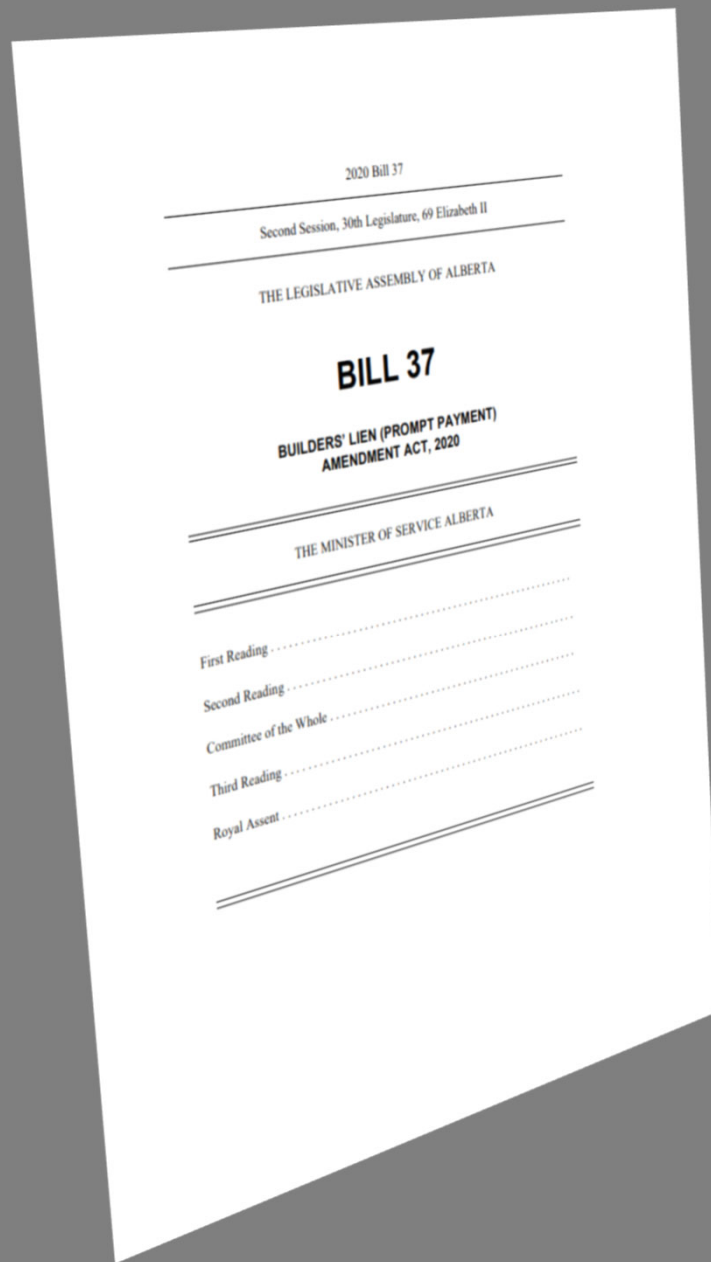
- General rule: Lien registered against the wrong title is dead.
- Court cannot relieve from this error
- Lien is creature of statute so requires strict compliance to affect property rights

Contracting Out

It is not possible to contract out of the Act:

ALBERTA s.5: “An agreement by any person that this Act does not apply or that the remedies provided by it are not to be available for the person’s benefit is against public policy and void.”

BRITISH COLUMBIA s. 42(2): “An agreement that this Act is not to apply, or that the remedies provided by it are not to be available for a person's benefit, is void.”



Coming soon ... **ALBERTA** Bill 37

- 60 days to register
 - Prompt Payment
 - Adjudication
- and REGULATIONS!

Royal Assent: December 9, 2020
Will come into force upon
proclamation

No equivalent in **BC**... yet

The End