The Builders' Lien Act

being

Chapter B-7.1* of the *Statutes of Saskatchewan, 1984-85-86* (effective January 1, 1986) as amended by the *Statutes of Saskatchewan*, 1986, c.8; 1988-89, c.54; 1989-90, c.29; 1993, c.C-26.1; 1996, c.E-9.3 and 47; 1997, c.S-50.11; 2000, c.L-5.1; 2001, c.23; 2002, c.C-11.1, R-8.2 and S-35.02; 2004, c.C-11.2 and L-16.1; 2005, c.M-36.1 and S-35.03; 2006, c.C-1.1 and 25; 2010, c.N-5.2; 2010, c.E-9.22; 2013, c.S-15.1 and c.32; 2014, c.1; and 2015, c.21.

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

PART I
Title and Interpretation

1 Short title
2 Interpretation
3 When contract or subcontract substantially performed
4 When contract deemed complete
5 Application of Act to Crown

PART II
Trust Provisions

6 Owner's trust
7 Contractor's trust
8 Subcontractor's trust
9 Trust for insurance proceeds
10 Where consideration not money
11 Where trustee pays for services, etc.
12 Where trustee pays for services, etc., out of borrowed money
13 Set off by trustee
14 When trustee discharged
15 Priorities between beneficiaries and third parties
16 Liability for breach of trust by corporation
17 Summary disposition of dispute concerning trust money
18 Offence and penalty
19 When trust expires and limitation period
20 Trust not affected
21 Payment pursuant to Act not breach of trust

PART III
The Lien

22 Lien on land and materials and extension re minerals
23 Repealed
24 No lien under $100
25 No lien for interest
26 Liens respecting interest of Crown in land
27 When lien arises
28 Limit of lien and set off
29 General lien
30 Joint or common interests charged
31 Leasehold interests charged
32 Services or materials provided to condominium property
33 Lien a charge

PART IV
The Holdback

34 Holdback
35 Holdback inviolable
36 Cause of action for failure to release
37 Owner personally liable
38 Holdback trust account
39 Interest on holdback trust accounts
40 Payments above holdback
41 Certificate of substantial performance
42 Liability for refusal to certify
43 Payment of holdback where certificate of substantial performance of contract
44 Payment of holdback where no certificate of substantial performance of contract
45 Payment of holdback where certificate of substantial performance of subcontract
46 Payment of holdback on large contracts in excess of one year
47 Direct payment to person having lien
48 Discharge, extent of

PART V
Expiry, Registration and Discharge of Liens

49 Expiry of liens
50 Registration of a claim of lien
51 Where claim of lien affects disposition (minerals) held from Crown
52 Claim of lien given to Crown
53 Liability for exaggerated claim, etc.
54 Action to be commenced
55 Lien expires unless action set down for trial
56 Vacating lien by payment into court
57 Payment in of holdback
58 Lapsing of lien
59 Discharging lien where registered against Crown land
60 General power to vacate liens
61 Certificate of action
62 Land titles requirements
63 Discharge or withdrawal of lien or written notice of a lien
64 Discharge irrevocable

PART VI
Priorities
65 Enforcement when contract abandoned
66 Assignment of lien rights
67 Continuation of general lien
68 Effect of taking security
69 Lien claimant deemed purchaser
70 Priority of liens over executions, etc.
71 Priorities between mortgages, etc., and liens
72 Persons who comprise class
73 Priority between and within class
74 Where conveyance or mortgage void
75 Labourer's lien
76 Subordination of general lien claims

PART VII
Additional Remedies
77 Application of insurance proceeds
78 Distribution of proceeds of sale
79 Distribution in trust action
80 Purchaser of leasehold interest considered an assignee
81 Labour and material payment bonds
82 Right to information
83 Examination on claim of lien
84 Appointment of trustee
85 Referral to arbitrator

PART VIII
Jurisdiction and Procedure
86 Commencement of action
87 Service of statement of claim
88 Parties to the action
89 Procedure
90 Use of examinations and limitation
91 Proceedings to be summary
92 Evidence
93 Technical assistance
94 Representation by agent
95 Carriage of action
96 Disposition by court
97 Costs

PART IX
General Rules
98 Records by contractors and subcontractors
99 No waiver of rights
100 Substantial compliance only
101 Removal of materials restrained
102 References
103 Repeal of part of R.S.S. 1978, c.M-7
104 Regulations
105 Application
106 Coming into force

Editorial Appendix

CHAPTER B-7.1

An Act respecting Liens in the Construction Industry

PART I
Title and Interpretation

Short title

1 This Act may be cited as *The Builders' Lien Act*.

Interpretation

2(1) In this Act:

(a) **"architect"** means an architect registered pursuant to *The Architects Act, 1996* and includes a corporation licensed to practise architecture pursuant to the bylaws of The Saskatchewan Association of Architects;

(a.1) **"contract"** means the contract between the owner and contractor and includes any amendment to that contract;

(b) **"contractor"** means a person contracting with or employed directly by the owner or his agent to provide services or materials to an improvement, but does not include a labourer;

(c) **"court"** means Her Majesty's Court of Queen's Bench for Saskatchewan;

(d) **"Crown"** means:

(i) Her Majesty in right of Saskatchewan;

(ii) an agent of Her Majesty in right of Saskatchewan, including The Workers' Compensation Board;

(iii) a board, local authority or municipal corporation that is created by or under:

(A) *The Cities Act*;

(A.1) *The Conservation and Development Act*;

(B) *The Drainage Act*;

(C) *The Education Act*;

(C.01) **Repealed.** 2002, c.R-8.2, s.71.

(C.1) **Repealed.** 2002, c.R-8.2, s.115.

(D) *The Irrigation Districts Act*;

(D.1) **Repealed.** 2002, c.R-8.2, s.71.

(E) *The City of Lloydminster Act;*

(F) *The Northern Municipalities Act, 2010*;

(F.1) section 85 of *The Public Health Act*;

(F.2) *The Regional Health Services Act;*

(G) *The Municipalities Act*;

(H) **Repealed.** 2001, c.23, s.7.

(H.1) *The Saskatchewan Water Corporation Act*;

(H.2) *The Saskatchewan Watershed Authority Act;*

(H.3) *The Water Security Agency Act;*

(I) **Repealed.** 2002, c.R-8.2, s.71.

(J) **Repealed.** 2002, c.R-8.2, s.71.

(K) **Repealed.** 2002, c.R-8.2, s.71.

(L) *The University of Regina Act*;

(M) *The University of Saskatchewan Act*;

(N) **Repealed.** 2005, c.M-36.1, s.417.

(N.1) **Repealed.** 2002, c.R-8.2, s.71.

(O) **Repealed.** 2002, c.S-35.02, s.97.

(P) *The Water Users Act*;

(Q) *The Watershed Associations Act*;

(iv) the Saskatchewan Cancer Agency continued pursuant to *The Cancer Agency Act*;

(d.1) **"engineer"** means a professional engineer, as defined in *The Engineering and Geoscience Professions Act*, and includes the holder of a certificate of authorization granted pursuant to section 22 of that Act;

(e) **"estate or interest in land"** includes a statutory right given or reserved to the Crown to enter any lands or premises for the purpose of doing any work, construction, repair or maintenance in, on, through, over or under any such lands or premises;

(f) **"general lien"** means a lien mentioned in section 29;

(g) **"holdback"** means the amount required to be withheld from payment in section 34;

(h) **"improvement"** means a thing constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled or intended to be constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled on or into, land, except a thing that is not affixed to the land or intended to become part of the land and includes:

(i) landscaping, clearing, breaking, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;

(ii) the demolition or removal of any building, structure or works or part thereof;

(iii) services provided by an architect, engineer or land surveyor;

and **"improved"** has a corresponding meaning;

(i) **"labourer"** means a person who is employed for wages to perform labour of any kind, whether employed under a contract of service or not;

(i.1) **"land surveyor"** means a Saskatchewan land surveyor or professional surveyor who is licensed to practise in accordance with *The Land Surveyors and Professional Surveyors Act;*

(j) **"materials"** means every kind of movable property that becomes or is intended to become, part of the improvement, or that is used to facilitate directly the making of the improvement;

(k) **"owner"** includes a person having an estate or interest in land, other than an encumbrance, 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;

an improvement is made to the land;

(l) **"payer"** means the owner, contractor or subcontractor who is liable to pay for the services or materials provided to an improvement under a contract or subcontract;

(m) **"payment certifier"** means an architect, engineer or any other person on whose certificate payments are made under a contract or subcontract;

(n) **"prescribed"** means prescribed in the regulations;

(o) **"registered"** means:

(i) in the case of a claim of lien mentioned in section 50 and in the case of any other registrable interest, registered as an interest pursuant to *The Land Titles Act, 2000* or filed in the Abstract Directory pursuant to that Act where no title has been issued for the parcel of land affected;

(ii) in the case of a claim of lien mentioned in section 51, filed with the Records Officer, Department of Energy and Mines;

(iii) in the case of a claim of lien mentioned in section 52, given to the Crown;

and **"registering"** and **"registration"** have corresponding meanings;

(p) **"registrar"** means the Registrar of Titles as defined in *The Land Titles Act, 2000*;

(q) **"services"** means any labour done or service performed on or in respect of an improvement and includes the rental of equipment and the wages of any operator provided with the equipment;

(r) **"services or materials"** includes both services and materials;

(s) **"subcontract"** means any agreement between the contractor and a subcontractor, or between two or more subcontractors, relating to the provision of services or materials and includes any amendment to that agreement;

(t) **"subcontractor"** means a person, not contracting with or employed directly by an owner or his agent, but who provides services or materials to an improvement under an agreement with the contractor or under him with another subcontractor, but does not include a labourer;

(u) **"wages"** means remuneration or compensation of any kind of a person employed as a labourer whether by time, or as piece work or otherwise and includes:

(i) salary, pay or commission;

(ii) remuneration in respect of overtime;

(iii) statutory holiday pay;

(iv) money required to be paid to an employee under Part II of *The Saskatchewan Employment Act*; and

(v) all supplementary benefits whether provided for by statute, contract or collective bargaining agreement;

(v) **"written notice of a lien"** means a written notice, which may be in the prescribed form, claiming a lien and which sets out:

(i) the name and address of:

(A) the person claiming the lien;

(B) the owner or the person who the claimant or the agent of the claimant believes to be the owner; and

(C) the person for whom the services or materials were provided;

(ii) a short description of the services or materials that were provided;

(iii) the amount claimed in respect of services or materials that have been provided;

(iv) a description, sufficient for identification of the land; and

(v) an address for service of the lien claimant.

(2) For the purposes of this Act, materials are provided to an improvement when they are:

(a) placed on the land on which the improvement is being made;

(b) placed on land designated by the owner or his agent that is in the immediate vicinity of the land, but placing materials on the land so designated does not, of itself, make that land subject to a lien; or

(c) in any event, incorporated into or used in making or facilitating directly the making of the improvement.

(3) Where an owner, contractor or subcontractor to whom materials are provided, or his agent, signs an acknowledgement of receipt of the materials stating that the materials are received for inclusion in an improvement at a named address, the materials will prima facie be deemed to have been delivered to the land described by the address.

1984-85-86, c.B-7.1, s.2; 1989-90, c.29, s.3; 1996, c.47, s.21; 1996, c.E-9.3, s.57; 2000, c.L-5.1 s.208; 2001, c.23, s.7; 2002, c.C-11.1, s.371; 2002, R-8.2, s.71; 2002, S-35.02, s.97; 2004, c.C-11.2, s.14; 2005, c.S-35.03, s.104; 2005, c.M-36.1, s.417; 2006, c.C-1.1, s.24; 2002, c.R-8.2, s.115; 2010, c.N-5.2, s.449; 2013, c.32, s.8; 2014, c.1, s.3; 2013, c.S-15.1, s.10-16.

When contract or subcontract substantially performed

3(1) For the purposes of this Act, a contract or subcontract is substantially performed:

(a) when the improvement to be made under that contract or subcontract or a substantial part of the improvement is ready for use or is being used for the purposes intended; and

(b) when the improvement to be made under the contract or subcontract is capable of completion or, where there is a known defect, correction, at a cost of not more than the aggregate of:

(i) 3% of the first $500,000 of the contract price or subcontract price;

(ii) 2% of the next $500,000 of the contract price or subcontract price; and

(iii) 1% of the balance of the contract price or subcontract price.

(2) For the purposes of this Act:

(a) where the improvement or a substantial part of the improvement is ready for use or is being used for the purposes intended and the remainder of the improvement cannot be completed expeditiously for reasons beyond the control of the contractor or subcontractor, as the case may be; or

(b) where the owner and the contractor or the contractor and subcontractor, as the case may be, agree not to complete the improvement expeditiously;

the price of the services or materials remaining to be provided and required to complete the improvement shall be deducted from the contract or subcontract price in determining substantial performance.

1984-85-86, c.B-7.1, s.3.

When contract deemed complete

4 For the purposes of this Act, a contract is deemed to be completed when the total price of the following is not more than 1% of the contract price:

(a) completion;

(b) correction of a known defect;

(c) last provision of services or materials.

2014, c.1, s.4.

Application of Act to Crown

5(1) Except as otherwise provided, the Crown is bound by this Act.

(2) This Act does not apply where services or materials are provided:

(a) in connection with a contract entered into under or pursuant to *The Highways and Transportation Act*; or

(b) in connection with the construction or improvement of a street or highway owned by the Crown.

(3) Notwithstanding subsection (2), this Act applies where services or materials are provided in connection with the construction or improvement of a bridge owned by the Crown other than a bridge constructed or improved under or pursuant to *The Highways and Transportation Act*.

1984-85-86, c.B-7.1, s.5.

PART II
Trust Provisions

Owner's trust

6(1) All amounts received by an owner, other than the Crown, that are to be used in the financing of an improvement, including the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

(2) Where the owner provides his own capital or where the owner is the Crown, and where amounts become payable under a contract to a contractor, the moneys in the hands of the owner or received by him for payment under the contract at any time thereafter constitute a trust fund for the benefit of the contractor.

(3) Where the owner's interest in an improvement is sold by the owner, an amount equal to the positive difference between:

(a) the value of the consideration received by the owner as a result of the sale; and

(b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any encumbrances which are entitled to priority under this Act;

constitutes a trust fund for the benefit of the contractor.

(4) The owner is the trustee of the trust fund created by subsections (1) to (3), and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to him by the owner.

1984-85-86, c.B-7.1, s.6.

Contractor's trust

7(1) All amounts:

(a) owing to a contractor, whether or not due or payable; or

(b) received by a contractor;

on account of the contract price of an improvement constitute a trust fund for the benefit of:

(c) subcontractors who have subcontracted with the contractor and other persons who have provided materials or services to the contractor for the purpose of performing a contract; and

(d) labourers who have been employed by the contractor for the purpose of performing the contract.

(2) The contractor is the trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by the contractor.

1984-85-86, c.B-7.1, s.7.

Subcontractor's trust

8(1) All amounts:

(a) owing to a subcontractor, whether or not due or payable; or

(b) received by a subcontractor;

on account of the subcontract price of an improvement constitute a trust fund for the benefit of:

(c) subcontractors who have subcontracted with the subcontractor and other persons who have provided materials or services to the subcontractor for the purpose of performing the subcontract; and

(d) labourers who have been employed by the subcontractor for the purpose of performing the subcontract.

(2) The subcontractor is trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by that subcontractor.

1984-85-86, c.B-7.1, s.8.

Trust for insurance proceeds

9 Where an improvement is wholly or partly destroyed or damaged, any amount received or receivable by reason of insurance on the property by a trustee mentioned in section 6, 7 or 8, or a prior mortgagee:

(a) takes the place of the improvement so destroyed or damaged to the extent of the value of the improvement as part of the contract price; and

(b) constitutes, after satisfying the claim of any mortgagee which is otherwise entitled to priority, a trust fund for the benefit of the beneficiaries mentioned in sections 6, 7 or 8, as the case may be;

and the trustee shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the beneficiaries for whose benefit the trust is created are paid all amounts related to the improvement owed to them by the trustee.

1984-85-86, c.B-7.1, s.9.

Where consideration not money

10 Where any part of the consideration of a contract between an owner and a contractor, or a subcontract between a contractor and a subcontractor, does not consist of money, the value of the part of the consideration that does not consist of money is deemed to be money owing from the owner to the contractor, or from the contractor to the subcontractor, as the case may be, for the benefit of the persons for whom the trust is constituted pursuant to subsections 6(4), 7(2) and 8(2), respectively.

1984-85-86, c.B-7.1, s.10.

Where trustee pays for services, etc.

11 Subject to the requirement to maintain a holdback, a trustee who pays in whole or in part for services or materials provided to an improvement or pays a beneficiary pursuant to the contract or subcontract out of money that is not subject to a trust under this Part may retain from trust funds an amount equal to that paid by him.

1984-85-86, c.B-7.1, s.11.

Where trustee pays for services, etc., out of borrowed money

12 Subject to the requirement to maintain a holdback, where a trustee pays in whole or in part for services or materials provided to an improvement, or pays a beneficiary pursuant to the contract or subcontract, as the case may be, out of money that is lent to him, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee.

1984-85-86, c.B-7.1, s.12.

Set off by trustee

13 Subject to the requirement to maintain a holdback, a trustee may, retain from trust funds an amount that, as between himself and the person he is liable to pay under a contract or subcontract related to the improvement, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages, that are related to the improvement.

1984-85-86, c.B-7.1, s.13.

When trustee discharged

14 Subject to the requirement to maintain a holdback, every payment made by a trustee to a person whom he is liable to pay for services or materials provided to an improvement discharges, to the extent of the payment made by him, the trust of that trustee and his obligations and liabilities as trustee to all beneficiaries of the trust.

1984-85-86, c.B-7.1, s.14.

Priorities between beneficiaries and third parties

15 In addition to any other priority which a beneficiary of a trust constituted by this Part may have at law, a beneficiary has priority over all general or special assignments, security interests, judgments, seizures, attachments, garnishments and receiving orders, whenever received, granted, issued or made, of or in respect of the contract or subcontract price or any portion of the contract or subcontract price.

1984-85-86, c.B-7.1, s.15; 2010, c.E-9.22, s.143.

Liability for breach of trust by corporation

16(1) Where a corporation is constituted a trustee by this Part, in addition to the persons who are otherwise liable in an action for breach of trust:

(a) every director or officer of the corporation; and

(b) any person, including an employee or agent of the corporation who has effective control of the corporation or its relevant activities;

who assents to, or acquiesces in, conduct that he knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust.

(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and, in determining that question, the court may disregard the form of any transaction and the separate corporate existence of any participant.

(3) All persons who are found liable or have admitted liability for a particular breach of trust under this Part are jointly and severally liable.

(4) A person who is found liable, or who has admitted liability, for a particular breach of a trust under this Part is entitled to recover contribution from any other person also liable for the breach in an amount to be determined by the court.

1984-85-86, c.B-7.1, s.16.

Summary disposition of dispute concerning trust money

17(1) An application for directions may be made to the court where a dispute arises:

(a) respecting the claim of a person for whose benefit a trust is constituted under this Part; or

(b) respecting the administration of the trust fund.

(2) An application under subsection (1) may be made by:

(a) the person with respect to whose claim the dispute has arisen;

(b) any person for whose benefit the trust fund is created by this Part; or

(c) the trustee.

1984-85-86, c.B-7.1, s.17.

Offence and penalty

18(1) Every person who is a trustee under this Part and who knowingly appropriates or converts any moneys constituting a trust under this Part to or for his own use or to or for any use inconsistent with the trust is guilty of an offence.

(2) Every director or officer of a corporation who knowingly assents to or acquiesces in an offence by the corporation under subsection (1) is guilty of an offence.

(3) Every person who is guilty of an offence under subsection (1) or (2) is liable to a fine of not more than $50,000, to imprisonment for a term of not more than two years or to both such fine and imprisonment.

(4) A director or officer of a corporation may be charged with an offence under this section whether or not the corporation has been charged or convicted of the offence.

(5) The time limit for laying an information under this section is two years from the time when the offence occurred.

1984-85-86, c.B-7.1, s.18.

When trust expires and limitation period

19(1) On the expiry of two years after the contract is completed or abandoned:

(a) a person who is a trustee under this Part is discharged from his obligations as trustee; and

(b) no action to enforce the trust may be commenced.

(2) Subsection (1) does not affect the ability to commence and maintain a prosecution.

1984-85-86, c.B-7.1, s.19, 2004, c.L-16.1, s.35; 2014, c.1, s.5.

Trust not affected

20 The trust is not affected by the fact that the time for registering a claim of lien under this Act has expired.

1984-85-86, c.B-7.1, s.20.

Payment pursuant to Act not breach of trust

21 Payment from or retention of trust funds when authorized or required to be made by this Act is not a breach of trust.

1984-85-86, c.B-7.1, s.21.

PART III
The Lien

Lien on land and materials and extension re minerals

22(1) A person who provides services or materials on or in respect of an improvement for an owner, contractor or subcontractor, has, except as otherwise provided in this Act, a lien on the estate or interest of the owner in the land occupied by the improvement, or enjoyed therewith, and on the materials provided to the improvement for as much of the price of the services or materials as remains owing to him.

(2) Where services or materials are provided:

(a) preparatory to;

(b) in connection with; or

(c) for an abandonment operation in connection with;

the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the services or materials, the lien given by subsection (1) is also a lien on:

(d) all the estates or interests in the mineral concerned, other than the estate in fee simple in the mines and minerals, unless the person holding that fee simple has expressly requested the services or materials;

(e) the mineral when severed and recovered from the land while it is in the hands of the owner, and to the proceeds of the mineral and to the amounts to be paid in lieu of the proceeds of the mineral to the owner by a person that operates the mine, oil well or gas well;

(f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines, mining claim or land, oil or gas well and the appurtenances thereto;

but, in all other respects, this Act applies to the lien existing by virtue of this subsection notwithstanding that the lien extended by clauses (e) and (f) is a lien on an interest in personal property.

1984-85-86, c.B-7.1, s.22.

23 Repealed. 1989-90, c.29, s.4.

No lien under $100

24 No lien exists for a claim less than $100.

1984-85-86, c.B-7.1, s.24.

No lien for interest

25 No person is entitled to a lien for interest on the amount owed to him in respect of the services or materials that have been provided by him, but nothing in this section affects any right that he may otherwise have to recover that interest.

1984-85-86, c.B-7.1, s.25.

Liens respecting interest of Crown in land

26(1) A lien does not attach to and cannot be registered against the estate or interest in land of the Crown.

(2) Where an improvement is made to land in which the Crown has an estate or interest but the Crown is not an owner, the lien may attach to the estate or interest of any other person in that land.

(3) Where the Crown is an owner, the lien does not attach to the land but constitutes a charge as provided in section 33, and this Act applies without requiring the registration pursuant to section 50 of a claim of lien against the land.

1984-85-86, c.B-7.1, s.26.

When lien arises

27 A person's lien arises and takes effect when he first provides his services or materials to the improvement.

1984-85-86, c.B-7.1, s.27.

Limit of lien and set off

28(1) Subject to Part IV, a lien does not attach so as to make an owner liable for a greater amount than the amount payable by the owner to the contractor.

(2) Subject to Part IV, where a lien is claimed by a person other than the contractor, the amount that may be claimed is limited to the amount owing to the contractor or subcontractor or other person for whom the services or materials have been provided.

(3) Subject to Part IV, in determining the amount of a lien under subsection (1) or (2), there may be taken into account the amount that is, as between a payer and the person he is liable to pay, equal to the balance in the payer's favour of all outstanding debts, claims or damages, that are related to the improvement.

1984-85-86, c.B-7.1, s.28.

General lien

29 Where an owner enters into a single contract for improvements on more than one parcel of land owned by him, any person providing services or materials under that contract, or under a subcontract under that contract, may choose to have his lien follow the form of the contract and be a lien against each parcel for the price of all services and materials provided by him to all of the parcels of land.

1984-85-86, c.B-7.1, s.29.

Joint or common interests charged

30 Where the estate or interest of the owner in land is held jointly or in common with another person who knew or ought reasonably to have known of the making of the improvement, the joint or common estate or interest in the land of that person is also subject to the lien unless the contractor receives actual notice, before the first lien arises on the improvement, that the person having the joint or common estate or interest assumes no responsibility for the improvement to be made.

1984-85-86, c.B-7.1, s.30.

Leasehold interests charged

31(1) For the purposes of this section, **"landlord"** includes any holder of a leasehold interest who has subleased his interest and the holder of the fee simple estate, but does not include the holder of any estate or interest in fee simple in mines or minerals.

(2) Where:

(a) the interest of the owner to which the lien attaches is leasehold; and

(b) the contractor serves the landlord, before the first lien arises, with written notice which may be in the prescribed form;

the interest of the landlord is also subject to the lien unless, within 10 days of service of the notice, he returns the notice or a copy of the notice to the contractor, at the address for service indicated in the notice, with a written endorsement stating that the landlord assumes no responsibility for the improvement.

(3) A lien against the interest of the landlord established by this section is limited to and does not attach so as to make the landlord liable for more than the value of the holdback that the owner is required to retain.

(4) Where the lien attaches to the interest of the landlord pursuant to this section, no forfeiture of a lease or termination of a lease by a landlord deprives any person who has a lien against the leasehold estate or the estate or interest of the landlord from the benefit of his lien.

(5) The written notice mentioned in subsection (2) shall be served on the landlord, and returned to the contractor, by any means by which a statement of claim may be served.

(6) The written notice mentioned in subsection (2) shall set out:

(a) the general nature of the contract;

(b) particulars of the improvement to be made;

(c) the name of the person with whom the contractor is contracting in relation to the improvement;

(d) the legal description or civic address of the land to which the improvement is to be made; and

(e) an address for service.

1984-85-86, c.B-7.1, s.31.

Services or materials provided to condominium property

32(1) In this section and in subsection 50(8), **"common property"**, **"condominium plan"**, **"corporation"**, **"owner"** and **"unit"** have the meanings ascribed to them by section 2 of *The Condominium Property Act, 1993*.

(2) Where services or materials are provided in respect of a unit, any lien that arises is on the estate or interest of the owner in that unit and his share in the common property and any claim of lien with respect to a unit is registrable as an interest against the owner's title in accordance with section 50.

(3) Where services or materials are provided in respect of the common property, any lien that arises attaches to the estates or interests of all the owners in all the units and the common property and any claim of lien with respect to common property is registrable as an interest against the titles issued pursuant to the condominium plan in accordance with section 50.

1984-85-86, c.B-7.1, s.32; 1993, c.C-26.1, s.115; 2000, c.L-5.1, s.209.

Lien a charge

33 Every lien is a charge on the holdback required to be retained by section 34, and subject to subsection 28(3), is a charge upon any additional amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the provision of services or materials giving rise to the lien.

1984-85-86, c.B-7.1, s.33.

PART IV
The Holdback

Holdback

34(1) Each payer on a contract or subcontract under which a lien may arise under this Act shall retain a holdback equal to 10% of the greater of:

(a) the value of the services or materials as they are actually provided under the contract or subcontract; or

(b) the amount of any payment made on account of the contract or subcontract price.

(2) The obligation to retain the holdback under subsection (1) applies irrespective of whether the contract or subcontract provides for periodic payments or payment on completion.

(3) The value mentioned in subsection (1) shall be calculated on the basis of the contract price or, if there is no specific price, on the basis of the actual value of the services or materials.

(4) Subject to subsection 38(9), a mortgagee, who is authorized by the owner to disburse the moneys secured by a mortgage, may retain the amount required to be retained by the owner as the payer on the contract and the retention by the mortgagee of such amount shall be deemed to be compliance with this section by the owner.

1984-85-86, c.B-7.1, s.34.

Holdback inviolable

35 Where the contractor or subcontractor defaults in the performance of his contract or subcontract, the holdback shall not be applied:

(a) to the completion of the contract or subcontract;

(b) to the payment of damages for non-completion of the contract or subcontract;

(c) in payment or satisfaction of any other claim against the person in default; or

(d) for any other purpose to remedy the default.

1984-85-86, c.B-7.1, s.35.

Cause of action for failure to release

36 Where a payer on a contract or subcontract is required by this Act to release the holdback and fails to do so within the time provided, he is liable to any lien claimant who suffers loss or damage as a result of the failure.

1984-85-86, c.B-7.1, s.36.

Owner personally liable

37(1) An owner is personally liable to each lien claimant who has a valid lien to the extent of that portion of the holdback to which that lien claimant is entitled under this Act.

(2) The personal liability of an owner under subsection (1) is to be determined under subsection 96(7) in an action under this Act.

1984-85-86, c.B-7.1, s.37.

Holdback trust account

38(1) In this section:

(a) **"condominium unit"** means a unit or additional unit in a condominium plan or a replacement plan intended to be used primarily for the residence of not more than one family but does not include a unit or additional unit that is used for a purpose other than a residence except where it is used for that other purpose by a person who resides in the unit or additional unit and that other purpose is subsidiary to the use of the unit or additional unit as a residence, and includes any structure or works used in conjunction with the unit or additional unit;

(b) **"four-plex"** means a structure intended to be used primarily for the residence of not more than four families but does not include a structure that is used for a purpose other than a residence except where it is used for that other purpose by a person who resides in the structure and that other purpose is subsidiary to the use of the structure as a residence, and includes any structure or works used in conjunction with the structure;

(c) **"house"** means a structure intended to be used primarily for the residence of not more than two families but does not include a structure that is used for a purpose other than a residence except where it is used for that other purpose by a person who resides in the structure and that other purpose is subsidiary to the use of the structure as a residence, and includes any structure or works used in conjunction with the structure.

(2) Subject to subsection (11), every owner shall:

(a) establish at a chartered bank, credit union or trust and loan corporation, a holdback trust account;

(b) pay the holdback into the holdback trust account; and

(c) administer the holdback trust account jointly with the contractor, as trustees.

(3) All amounts deposited into the holdback trust account shall be held in trust for all of those persons who have a lien.

(4) Where there is more than one contract with respect to the same improvement, the owner shall establish and maintain a single holdback trust account to be administered jointly by the owner and one other trustee who shall be:

(a) one of the contractors, other than a contractor who is an agent of the owner;

(b) a lawyer;

(c) an architect or engineer, other than the payment certifier;

(d) a member in good standing of a recognized accounting profession that is regulated by an Act;

(e) any person with experience in the construction industry; or

(f) a trust or loan corporation.

(5) Unless otherwise ordered by the court, all payments out of the holdback trust account require the signatures of both trustees and, where anyone has a lien at the time of payment out from the holdback trust account, the trustees shall, wherever possible, issue the cheques from the holdback trust account directly to the person who has a lien according to his proportionate share.

(6) A trustee under this section may apply to the court for directions respecting administration of the trust, and the court may order that the owner may establish and maintain a holdback trust account as sole trustee or make any other order it deems appropriate.

(7) Any lien claimant may apply to the court for an order removing a trustee, and the court may make an order removing the trustee and replacing the trustee with another person as trustee, or make any other order required to ensure that the holdback trust account is maintained for the benefit of the lien claimants.

(8) On an application under subsection (6) or (7), the court shall have regard to all circumstances including the relationship between the owner and any contractor or other person who provides services or materials to the improvement and who is dealing directly with the owner.

(9) Where the holdback is deposited in a holdback trust account, no mortgagee shall retain a holdback under subsection 34(4), and, if a mortgagee does retain such a holdback, the mortgagee is liable to any lien claimant who suffers loss or damage as a result.

(10) Where there is more than one owner, only one of the owners is required to establish and administer the holdback trust account with the contractor, or other trustee, as the case may be.

(11) This section does not apply to:

(a) the Crown, where the Crown is an owner;

(b) a contract for services or materials provided to a house, or provided in connection with repairs or renovations to a four-plex or condominium unit; or

(c) a contract with an architect or engineer.

1984-85-86, c.B-7.1, s.38; 1989-90, c.29, s.5; 2006, c.25, s.3.

Interest on holdback trust accounts

39(1) No distribution of interest accruing on amounts deposited in a holdback trust account shall be made until the holdback has been paid out in full.

(2) Subject to subsection (3), interest on the holdback trust account accrues in accordance with the agreement between the owner and the contractor, and in the absence of an agreement, to the owner.

(3) If there are unpaid lien claimants following payment out of the holdback, the accrued interest on the holdback trust account is deemed to be part of the holdback available for distribution to lien claimants, to the extent necessary to discharge the liens.

1984-85-86, c.B-7.1, s.39.

Payments above holdback

40(1) A payer may, without jeopardy, make payments on a contract or subcontract up to 90% of the contract or subcontract price unless, prior to making payment, the payer receives written notice of a lien.

(2) Where a payer receives written notice of a lien and he retains, in addition to the holdback, an amount sufficient to satisfy the lien, the payer may, without jeopardy, make payments on a contract or subcontract up to 90% of the contract or subcontract price, less the amount retained.

1984-85-86, c.B-7.1, s.40; 1986, c.8, s.3.

Certificate of substantial performance

41(1) At the request of the subcontractor, the payment certifier or, if there is no payment certifier, the owner and the contractor jointly shall, within seven days after the day of the request:

(a) determine, pursuant to section 3, whether the subcontract has been substantially performed; and

(b) where he, she or they determine that the subcontract has been substantially performed, certify the substantial performance by signing a certificate in the prescribed form and delivering it to the subcontractor.

(1.1) A request pursuant to subsection (1):

(a) may be made in the form prescribed in the regulations; and

(b) shall include a declaration by:

(i) the subcontractor; and

(ii) the payer on the subcontract;

that the subcontract has been substantially performed.

(1.2) At the request of the contractor, the payment certifier or, if there is no payment certifier, the owner shall, within seven days after the day of the request:

(a) determine pursuant to section 3, whether the contract has been substantially performed; and

(b) where he or she determines that the contract has been substantially performed, certify the substantial performance by signing a certificate in the prescribed form and delivering it to the contractor.

(1.3) A request made pursuant to subsection (1.2):

(a) may be made in the form prescribed in the regulations; and

(b) shall include a declaration by the contractor that the contract has been substantially performed.

(2) Where a contract or subcontract has been certified to be substantially performed, the payment certifier, by personal service or by registered mail within seven days after the day the certificate was signed, shall give a copy of the certificate:

(a) to the owner and the contractor; and

(b) to all persons providing services or materials in the performance of the contract or subcontract and who have requested the payment certifier in writing, by personal service of a request, with a return address, to give them a copy of the certificate;

and where there is no payment certifier the owner shall give a copy of the certificate in accordance with clauses (a) and (b).

(2.1) The contractor or, where there is no contractor, the owner shall post a copy of the certificate described in subsection (2) in a prominent spot on the main job site.

(3) **Repealed.** 1989-90, c.29, s.6.

(4) Where a dispute arises with respect to a refusal or failure to certify substantial performance that has not been referred to an arbitrator pursuant to section 85, the court may, on the application of any person, order that the contract or subcontract is substantially performed.

(5) Where, pursuant to this Act, the court or an arbitrator determines that a contract or subcontract is substantially performed, the decision of the court or the arbitrator, as the case may be, has the same effect as a certificate of substantial performance under subsection (1) or (1.2), as the case may be, and the owner shall give and post copies of the decision as required of a payment certifier and contractor with respect to a certificate under subsections (2) and (2.1).

(6) For the purposes of this Act, the day on which a contract or subcontract is substantially performed is deemed to be:

(a) the day on which the certificate is signed pursuant to subsection (1) or (1.2); or

(b) where, pursuant to this Act, the court or an arbitrator determines that the contract or subcontract is substantially performed, the day on which the decision of the court or arbitrator is rendered;

unless:

(c) the certificate expressly indicates a different day as the day of substantial performance; or

(d) the day of substantial performance is determined to be a different day by the court or by an arbitrator.

(7) Where a copy of the certificate of substantial performance is given by registered mail, it is deemed to be given to the addressee when the addressee actually receives it, or two clear days after the day of registration, whichever is earlier, which time shall be included in the days allotted for giving the certificate.

(8) Where a copy of the certificate of substantial performance is given pursuant to this Act to two or more persons, each of those persons shall be deemed to have been given a copy of the certificate on the day on which the person latest in time was given a copy and, where the person latest in time was given a copy by registered mail, subsection (7) applies.

1984-85-86, c.B-7.1, s.41; 1986, c.8, s.4; 1989-90, c.29, s.6.

Liability for refusal to certify

42(1) A person who receives a request pursuant to subsection 41(1) or (1.2) or subclause (1.1)(b)(ii) and who fails or refuses without reasonable excuse and within the time specified in that subsection or subclause, to certify the substantial performance of the contract or subcontract, is liable to anyone who suffers loss or damage as a result.

(2) A payment certifier, owner or contractor who fails or refuses to comply with subsection 41(2), (2.1) or (5) is liable to anyone who suffers loss or damage as a result.

1984-85-86, c.B-7.1, s.42; 1989-90, c.29, s.7.

Payment of holdback where certificate of substantial performance of contract

43(1) Subject to section 38, and except where a claim of lien is registered, where a contract has been certified to be substantially performed pursuant to section 41, each payer on the contract and any subcontract shall, if the money is otherwise due and payable under the contract or subcontract, without jeopardy, make payment:

(a) of the holdback, calculated as of the day of substantial performance of the contract, 40 clear days after the day a copy of the certificate of substantial performance of the contract is given pursuant to section 41; and

(b) of the holdback retained after the day of substantial performance of the contract, 40 clear days after the earlier of:

(i) the day the contract is completed; or

(ii) the day the contract is abandoned.

(2) The amount of the holdback mentioned in clause (1)(b) is to be distributed only to those persons who have provided services or materials after the day of substantial performance of the contract, and only to the extent of the value of those services or materials.

1984-85-86, c.B-7.1, s.43.

Payment of holdback where no certificate of substantial performance of contract

44 Subject to section 38, and except where a claim of lien is registered, where no certificate of substantial performance of the contract is given pursuant to section 41, each payer on the contract and any subcontract, shall, if the money is otherwise due and payable under the contract or subcontract, without jeopardy, make payment of the holdback, 40 clear days after the earlier of:

(a) the day the contract is completed; or

(b) the day the contract is abandoned.

1984-85-86, c.B-7.1, s.44.

Payment of holdback where certificate of substantial performance of subcontract

45 Subject to section 38, and except where a claim of lien is registered, where a subcontract has been certified to be substantially performed pursuant to section 41, each payer on the contract or any subcontract shall, if the money is otherwise due and payable on the contract or subcontract, without jeopardy, make payment reducing the holdback by the amount of the holdback retained in respect of the substantially performed subcontract 40 clear days after a copy of the certificate of substantial performance of the subcontract is given pursuant to section 41.

1984-85-86, c.B-7.1, s.45.

Payment of holdback on large contracts in excess of one year

46(1) Notwithstanding sections 43 and 44 but subject to section 38 and subsection (3) of this section, where:

(a) the contract price is in excess of $25,000,000 or any greater amount as may be prescribed;

(b) the contract provides for a completion schedule longer than one year;

(c) no claim of lien is registered; and

(d) notice of early release of holdback is given and posted in the manner provided for the giving and posting of a certificate under subsections 41(2) and (2.1);

each payer on the contract and any subcontract shall, following each yearly anniversary, if the money is otherwise due and payable under the contract or subcontract, without jeopardy, make payment of the amount that has been required to be retained, calculated as of the day of each yearly anniversary of the day services or materials were first provided, 40 clear days after the day notice of early release is given and posted.

(2) Whether a contract price is in excess of $25,000,000 or any greater amount as may be prescribed, is to be determined as of the day of execution of the contract, and not as a result of any amendments to the contract.

(3) Where the unexpired term of the contract is less than one year from the last anniversary date of the contract, sections 43 and 44 apply *mutatis mutandis* to the contract.

1984-85-86, c.B-7.1, s.46; 1989-90, c.29, s.8.

Direct payment to person having lien

47(1) An owner, contractor or subcontractor may give three clear days' written notice to the proper payer of a lien claimant, of intention to pay for, or on account of, an amount owing to that lien claimant for services or materials provided to the improvement.

(2) Where the proper payer fails to object within the time provided in subsection (1), the owner, contractor or subcontractor may pay the lien claimant directly and such payment is deemed to be a payment by the owner, contractor or subcontractor to the proper payer and the proper payer is estopped from claiming that the payment was improperly made.

(3) A payment made pursuant to subsection (2) does not reduce the amount of the holdback required to be retained by section 34.

1984-85-86, c.B-7.1, s.47.

Discharge, extent of

48 Payments made in accordance with this Part operate as a discharge of the lien to the extent of the amount paid.

1984-85-86, c.B-7.1, s.48.

PART V
Expiry, Registration and Discharge of Liens

Expiry of liens

49(1) Unless a claim of lien is registered pursuant to section 50, 51 or 52, the lien expires as provided in this section.

(2) Subject to subsection (4), the lien of a contractor:

(a) for services or materials provided on or before the day of the yearly anniversary of a contract mentioned in section 46, expires 40 clear days after the day on which notice of early release of the holdback is given as provided in section 46;

(b) for services or materials provided on or before the day of substantial performance of the contract, expires 40 clear days after the day on which a copy of the certificate of substantial performance is given pursuant to section 41; and

(c) for services or materials provided after the day of substantial performance of the contract, or where no certificate of substantial performance of the contract is given pursuant to section 41, expires 40 clear days after the earlier of:

(i) the day the contract is completed; or

(ii) the day the contract is abandoned.

(3) Subject to subsection (4), the lien of any person other than a contractor:

(a) for services or materials provided on or before the day of the yearly anniversary of a contract mentioned in section 46, expires 40 clear days after the day on which notice of early release of the holdback is given as provided in section 46;

(b) for services or materials provided on or before the day of substantial performance of the contract, expires 40 clear days after the earlier of:

(i) the day on which a copy of the certificate of substantial performance of the contract is given pursuant to section 41; and

(ii) the day on which a copy of the certificate of substantial performance of the subcontract is given pursuant to section 41 with respect to services or materials provided under or in respect of that subcontract on or before the day of substantial performance of the subcontract;

(c) for services or materials provided after the day of substantial performance of the contract, or where no certificate of substantial performance of the contract is given pursuant to section 41, expires 40 clear days after the earlier of:

(i) the day on which a copy of the certificate of substantial performance of the subcontract is given pursuant to section 41, with respect to services or materials provided under or in respect of that subcontract on or before the day on which the subcontract is certified to be substantially performed; or

(ii) the day the contract is completed or abandoned;

(d) for services or materials provided after the day of substantial performance of the subcontract and on or before the day of substantial performance of the contract, expires 40 clear days after the day on which a copy of the certificate of substantial performance of the contract is given pursuant to section 41;

(e) for services or materials provided after the day of substantial performance of the subcontract and after the day of substantial performance of the contract, or where no certificate of substantial performance of the contract is given pursuant to section 41, expires 40 clear days after the earlier of:

(i) the day the contract is completed; or

(ii) the day the contract is abandoned.

(4) Where a person has provided services or materials on or before the day of the yearly anniversary of a contract mentioned in section 46 or on or before the day of substantial performance of the contract or subcontract, and has also provided, or is to provide, services or materials after any of those days, his lien in respect of the services or materials provided on or before any of those days expires without affecting any lien that he may have for the provision of services or materials after the applicable day.

(5) Notwithstanding subsections (2), (3) and (4), a claim of lien may be registered and an action may be commenced after the expiration of the lien and the lien is valid except as against:

(a) intervening parties who become entitled to an estate or interest in the land that is registered before registration of the claim of lien; and

(b) an owner, mortgagee, contractor or subcontractor in respect of payments made to a contractor, subcontractor or lien claimant after the expiration of the lien and before registration of the claim of lien;

but the claim of lien so registered is a charge only against that portion of the contract price which has not yet been paid out and to which the lien claimant would have been entitled if the claim of lien had been registered before the expiry of the lien.

1984-85-86, c.B-7.1, s.49; 2000, c.L-5.1, s.210.

Registration of a claim of lien

50(1) A lien claimant may apply to the registrar to register an interest based on a claim of lien.

(2) Every claim of lien shall set out:

(a) the name and address of:

(i) the person claiming the lien;

(ii) the owner or the person who the claimant or the agent of the claimant believes to be the owner; and

(iii) the person for whom the materials or services were provided;

(b) a short description of the services or materials that have been provided;

(c) the amount claimed in respect of services or materials that have been provided;

(d) a description, sufficient for registration, or, where the Crown is the owner, sufficient for identification, of the land or the estate or interest affected; and

(e) the lien claimant's address for service.

(3) Every claim of lien shall be in the form prescribed executed by the lien claimant, his assignee or agent and verified by an affidavit of the lien claimant, or an assignee or an agent who has informed himself of the facts set out in the claim, and the affidavit of the lien claimant, agent or assignee shall state that he believes those facts to be true.

(4) Subject to subsection 56(3), a lien claimant may apply to the registrar to register an interest based on a general lien against the titles for each parcel of land that the lien claimant intends the lien to charge, and the claim against each parcel may be for the total amount owing for services or materials that have been provided to all lands that are subject to the lien.

(5) A claim of lien may include claims against any number of parcels of land owned by the same person and any number of persons claiming liens upon the same parcel of land may join in the claim, but where more than one lien is included in one claim each lien shall be verified by affidavit as provided in subsection (3).

(6) A lien claimant may change his or her address for service by submitting an application for change of address to the Land Titles Registry.

(7) On the registration of an interest based on a claim of lien, the registrar shall send notice of the registration by ordinary mail to:

(a) the registered owner of the title against which the claim of lien is registered; and

(b) any mortgagee who has a registered interest against the title prior to the registration of the claim of lien.

(8) Where an interest based on a claim of lien is registered against all titles issued pursuant to a condominium plan, the registrar shall also send the notice mentioned in subsection (7) to the condominium corporation, by ordinary mail.

1984-85-86, c.B-7.1, s.50; 2000, c.L-5.1, s.211.

Where claim of lien affects disposition (minerals) held from Crown

51(1) Where a claim of lien is intended to attach a disposition of any minerals or petroleum or natural gas rights held from the Crown, the claim of lien shall be filed with the Records Officer, Department of Energy and Mines at Regina, instead of with the registrar, and all the provisions of this Act respecting registration and procedure in the Land Titles Registry apply, with any necessary modification, to the lien.

(2) A claim of lien filed pursuant to subsection (1) shall be vacated on the surrender, forfeiture, termination or cancellation of the disposition and the Records Officer shall make all necessary entries in his records to give effect to this subsection.

(3) Where the Records Officer has made the changes mentioned in subsection (2) and the vacated disposition has been reinstated, the Records Officer shall restore the claim of lien in his records whereupon the claim of lien is reinstated and is of the same force and effect as if it had not been vacated pursuant to subsection (2).

(4) In this section, **"Crown"** means Her Majesty in right of Saskatchewan.

1984-85-86, c.B-7.1, s.51; 1989-90, c.29, s.9; 2000, c.L-5.1, s.212.

Claim of lien given to Crown

52(1) Where the Crown is the owner, a claim of lien may be given, together with the affidavit of verification required by subsection 50(3):

(a) to the agent, board, local authority or municipal corporation mentioned in clause 2(1)(d) which is the owner of the land; or

(b) where the owner is Her Majesty in right of Saskatchewan, to the department of the Government of Saskatchewan for which the services or materials were provided.

(2) A claim of lien mentioned in subsection (1) may be served personally or be sent by registered mail, in which case the claim of lien is deemed to be given two days after the day on which it is mailed.

1984-85-86, c.B-7.1, s.52.

Liability for exaggerated claim, etc.

53 In addition to any other ground on which he may be liable, any person who registers a claim of lien or who gives written notice of a lien:

(a) for an amount which he knows or ought to know is grossly in excess of the amount which he is owed; or

(b) where he knows or ought to know that he does not have a lien;

is liable to any person who suffers loss or damage as a result.

1984-85-86, c.B-7.1, s.53.

Action to be commenced

54 No action may be commenced under this Act to enforce a lien unless a claim of lien with respect to that lien is registered.

1984-85-86, c.B-7.1, s.54.

Lien expires unless action set down for trial

55(1) Subject to subsection (2), a lien, for which an action has been commenced, expires where an action in which that lien may be realized is not set down for trial within two years of the day the action was commenced.

(2) The court may extend the time mentioned in subsection (1).

(2.1) An order pursuant to subsection (2) extending the time for commencing an action may be registered as an interest in the Land Titles Registry.

(3) Where a lien has expired under subsection (1), the court shall, on application, make an order dismissing the action if there is no other registered claim of lien at the time of the application, otherwise the court shall make whatever order it deems appropriate for continuation of the action.

1984-85-86, c.B-7.1, s.55.

Vacating lien by payment into court

56(1) Any person may apply *ex parte* to the court for an order vacating any registered claim of lien or written notice of a lien, and where the person making the application pays into court, or posts security in an amount equal to, the total of:

(a) the full amount claimed as owing in any registered claim of lien or written notice of a lien to be vacated; and

(b) the lesser of $50,000 or 25% of the amount described in clause (a), as security for costs;

the court shall order that the registration of the claim of lien or written notice of a lien be vacated and give directions for service of the order on the person whose registered claim of lien or written notice of a lien is ordered to be vacated.

(2) Any person may apply to the court, on notice to such persons as the court may direct, for an order vacating a registered claim of lien or written notice of a lien, and where an application is made, the court may order that the registration of the claim of lien or written notice of a lien be vacated, on payment into court or posting of security in an amount that the court considers reasonable in the circumstances.

(3) Where an application is made to vacate the registration of a general lien against one or more of the lands but not all of the lands subject to that general lien, the court may apportion the general lien between the lands in respect of which the application is made and all other lands that are subject to the lien.

(4) Where an amount has been paid into court or security has been posted with the court, the court, on application and on notice to such persons as it may direct, may order:

(a) the reduction of the amount paid into court, and the payment of any part of the amount paid into court to the person entitled; or

(b) the reduction of the amount of security posted with the court, and the delivery up of the security posted with the court for cancellation or substitution, as the case may be.

(5) Money paid into court or security posted under this section does not reduce the amount required to be retained by the owner under section 34.

(6) Where an order is made under subsection (1) or (2);

(a) the lien:

(i) ceases to attach to the holdback and to the other amounts subject to a charge under section 33;

(ii) in the case of a claim of lien registered pursuant to section 50, ceases to attach to the land; and

(iii) becomes instead a charge on the amount paid into court or security posted; and

(b) the owner or payer shall be, in respect of the operation of sections 34, 37 and 40, in the same position as if the claim of lien had not been registered or written notice of a lien had not been given.

(7) Where an order is made under subsection (1) or (2), the lien claimant whose registered claim of lien or written notice of a lien has been vacated may proceed with an action to enforce his claim against the amount paid into court or security posted in accordance with the procedures set out in Part VIII, but no certificate of action with respect to that action shall be registered against the land.

(8) Where an order is made under subsection (1) or (2), the money paid into court or any security posted is subject to the claims of all lien claimants but such amount as is found owing to any lien claimant whose registered claim of lien or written notice of a lien has been vacated plus costs is a first charge on the money or security.

(9) Where a lien claimant whose registered claim of lien or written notice of a lien has been vacated is not able to prove his claim, the court, may on notice to persons affected, order that the money be paid out or security be delivered to the person found by the court to be entitled to the money or security.

(10) Where money paid into court under this section is ordered to be paid out to the person whose registered claim of lien or written notice of a lien has been vacated, the amount paid out is to be taken into account as between the person who paid the money into court and the person he is liable to pay.

1984-85-86, c.B-7.1, s.56.

Payment in of holdback

57(1) Where a claim of lien is registered, and where the owner would otherwise be entitled under this Act to pay out the holdback, any person may apply to the court for an order vacating the registration of the claim of lien, on notice to such persons as the court may direct.

(2) On an application under subsection (1) the court shall:

(a) determine the amount of the holdback;

(b) authorize or direct that the holdback be paid into court; and

(c) order that the registration of the claim of lien be vacated;

and the court may:

(d) make the order on the condition that the person making the application pays into court security for costs in an amount of $50,000 or 25% of the holdback, whichever is less;

(e) give directions respecting payment into court under clause (b); and

(f) in determining the holdback under clause (a), have regard to any agreement between the parties as to the amount of the holdback.

(3) Where it is proven at trial that a lien claimant unreasonably withheld his agreement as to the amount of the holdback, the court may award costs against the lien claimant whether or not he has proven his lien.

(4) Where an order is made under subsection (2):

(a) the lien:

(i) ceases to attach to the amounts subject to a charge under section 33;

(ii) in the case of a claim of lien registered pursuant to section 50, ceases to attach to the land; and

(iii) becomes instead a charge on the amount paid into court or security posted; and

(b) the owner or payer shall be, in respect of the operation of sections 34, 37 and 40, in the same position as if the claim of lien had not been registered.

(5) Where an order is made under subsection (2), the lien claimant whose registered claim of lien has been vacated may proceed with an action to enforce his claim against the amount paid into court or security posted in accordance with the procedures set out in Part VIII or the court may make any order to facilitate the resolution of all claims, but no certificate of action shall be registered against the land.

1984-85-86, c.B-7.1, s.57.

Lapsing of lien

58(1) Subject to subsection (2), a registered interest based on a claim of lien may be lapsed in accordance with *The Land Titles Act, 2000*.

(2) A registered interest based on a claim of lien may not be lapsed where any of the following interests have been registered:

(a) an interest based on a certificate of action issued pursuant to subsection 86(5);

(b) an interest based on a court order extending the time for commencing an action mentioned in subsection 55(4).

2000, c.L-5.1, s.214.

Discharging lien where registered against Crown land

59(1) A claim of lien is not registrable against title where the Crown is the registered owner of the land.

(2) Where a claim of lien is registered in contravention of subsection (1), within 30 days after the mailing of the notice mentioned in subsection 50(7), the Crown may apply to the registrar, in the prescribed form and in accordance with section 65 of *The Land Titles Act, 2000*, to discharge the registration.

2000, c.L-5.1, s.214.

General power to vacate liens

60 The court may, on application:

(a) order that the registration of;

(i) a claim of lien; or

(ii) a certificate of action;

or both, be vacated;

(b) declare that a written notice of a lien no longer binds the person to whom it was given; or

(c) dismiss an action;

on any terms and conditions that the court may order.

1984-85-86, c.B-7.1, s.60.

Certificate of action

61(1) Where:

(a) a certificate of action is registered;

(b) the registration of a claim of lien with respect to which the action relates is vacated; and

(c) there remain liens which may be enforced in the action to which that certificate of action relates;

the court may give directions in respect of the continuation of the action or otherwise.

(2) On application to the registrar, the registration of an interest based on a certificate of action in the Land Titles Registry may be discharged.

(2.1) An application pursuant to subsection (2) must include a certificate, in the prescribed form, of the registrar of the Court of Appeal, the local registrar of the court at the judicial centre in which the action is pending, or a deputy of either of them, certifying that:

(a) the plaintiff has filed a notice of discontinuance and all other lien claimants who are parties to the action have consented to discontinuance of the action; or

(b) the action has been finally determined at trial or on appeal, and any further right of appeal has expired.

(3) Where a certificate of action and only one claim of lien are registered, the person who submitted the certificate of action for registration and the person on whose behalf the claim of lien is registered may apply to the registrar, in the prescribed form, to discharge the registration of the certificate of action.

1984-85-86, c.B-7.1, s.61; 1989-90, c.29, s.12;
2000, c.L-5.1, s.215.

Land title requirements

62 The registration of an interest based on a claim of lien or an interest based on a certificate of action may be discharged on application to the registrar accompanied by an order or certificate vacating or discharging the interest.

2000, c.L-5.1, s.216.

Discharge or withdrawal of lien or written notice of a lien

63(1) Where an interest based on a claim of lien is registered pursuant to section 50, registration of the interest may be discharged:

(a) in whole or as to the whole of a parcel of land, by the registration of a discharge, in the prescribed form, executed by the lien claimant or his or her agent authorized under a power of attorney; or

(b) in part, by the registration of an amendment, in the prescribed form, executed by the lien claimant or his or her agent authorized under a power of attorney.

(1.1) Where a claim of lien is registered pursuant to section 51, the lien may be discharged either in whole or in part, or as to the whole or any part of the land, by the registration of a discharge, in the prescribed form, executed by the lien claimant or his or her agent authorized under a power of attorney.

(1.2) Where a claim of lien has been given pursuant to section 52, the lien may be discharged either in whole or in part, or as to the whole or any part of the land, by a discharge, in the prescribed form:

(a) executed by the lien claimant or his or her agent authorized under a power of attorney; and

(b) given to the owner in the manner set out in section 52 for the giving of the claim.

(2) Except where a discharge is executed by a corporation under seal, the discharge shall be verified by an affidavit of an attesting witness.

(3) A written notice of a lien may be withdrawn by giving a withdrawal in writing to the person to whom the written notice of a lien was given, and a payer given the withdrawal shall, in respect of the operation of subsection 40(2), be in the same position as if the written notice of a lien had never been given.

1984-85-86, c.B-7.1, s.63; 2000, c.L-5.1, s.217.

Discharge irrevocable

64(1) A discharge of a lien, when registered pursuant to section 50, is irrevocable and the discharged lien cannot be revived.

(2) A discharge of a lien, when registered pursuant to section 51 or 52, is irrevocable and the discharged lien cannot be revived.

(3) No discharge affects the right of a person whose lien was discharged to register a claim of lien with respect to services or materials provided by that person subsequent to the provision of services or materials with respect to which the discharge is registered.

2000, c.L-5.1, s.218.

PART VI
Priorities

Enforcement when contract abandoned

65 A lien claimant may enforce his lien notwithstanding the non-completion or abandonment of the contract or subcontract by any other person.

1984-85-86, c.B-7.1, s.65.

Assignment of lien rights

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

1984-85-86, c.B-7.1, s.66.

Continuation of general lien

67 Subject to section 76, where one or more parcels that are subject to a general lien are sold before registration of the claim of lien, or the claim of lien against one or more of the parcels is discharged or vacated, the general lien continues for the full amount of the lien against those parcels that are subject to the lien, that were not sold, or against which the lien has not been discharged or vacated.

1984-85-86, c.B-7.1, s.67.

Effect of taking security

68(1) A lien is not merged, waived, paid, satisfied, prejudiced or destroyed by:

(a) the taking of any security for the lien;

(b) the acceptance of a promissory note or other bill of exchange for the lien;

(c) the taking of any acknowledgement of the claim;

(d) the giving of time for payment of the lien; or

(e) the taking of any proceedings for the recovery of a personal judgment of the claim;

unless the lien claimant agrees in writing that it has that effect.

(2) Where any promissory note or bill of exchange has been negotiated, the lien claimant may enforce the lien if he is the holder of the promissory note or bill of exchange at the time when he proves his claim of lien.

(3) Notwithstanding that a person has given or extended time for payment of any claim for which he has a lien, he may, where an action is commenced by another person to enforce a lien against the same land, prove and obtain payment of his claim as if no time had been given for the payment of the claim.

1984-85-86, c.B-7.1, s.68.

Lien claimant deemed purchaser

69 Where a claim of lien is registered, the person entitled to the lien is considered a purchaser *pro tanto*.

1984-85-86, c.B-7.1, s.69.

Priority of liens over executions, etc.

70(1) The liens arising from an improvement have priority over all judgments, seizures, executions, attachments, garnishments and receiving orders except those executed or recovered on before the first lien arose in respect of the improvement.

(2) No assignment by a contractor or subcontractor of any moneys that may be or become payable under or in respect of any contract or subcontract to which this Act applies is valid as against any lien arising under this Act.

1984-85-86, c.B-7.1, s.70; 2010, E-9.22, s.144.

Priorities between mortgages, etc., and liens

71(1) The liens arising from an improvement have priority over all mortgages, conveyances or other agreements registered after a claim of lien is registered.

(2) In the case of an agreement for sale of land where the purchase money or part of the purchase money is unpaid and no transfer of title for the parcel of land has been made to the purchaser, for the purposes of this Act the purchaser shall be deemed to be a mortgagor and the seller a mortgagee whose mortgage was registered on the date of the agreement for sale.

(3) Subject to Part II:

(a) a lien has priority in respect of all payments or advances made on account of any conveyance or mortgage after written notice of a lien has been given to the person making the payments or advances or after a claim of lien is registered; and

(b) if no written notice of a lien is given or if no claim of lien is registered, all of the payments or advances have priority over the lien.

1984-85-86, c.B-7.1, s.71; 2000, c.L-5.1, s.219.

Persons who comprise class

72 All persons having a lien who have provided services or materials to the same payer comprise a class, and a person who has provided services or materials to more than one payer is a member of each class to the extent to which his lien relates to that class.

1984-85-86, c.B-7.1, s.72.

Priority between and within class

73 Except as otherwise provided by this Act:

(a) no person having a lien is entitled to any priority over another member of the same class;

(b) all amounts available to satisfy the liens in respect of an improvement shall be distributed rateably among the members of each class according to their respective rights; and

(c) the lien of every member of a class has priority over the lien of the payer of that class.

1984-85-86, c.B-7.1, s.73.

Where conveyance or mortgage void

74 Any conveyance or mortgage of the land to any person entitled to a lien on the land, in payment of or as security for that claim, whether given before or after that lien arises, is subject to all other liens on the land.

1984-85-86, c.B-7.1, s.74; 2000, c.L-5.1. s.220.

Labourer's lien

75(1) The lien of a labourer has priority over the lien of any other person providing services or materials to the improvement, other than for wages, to the extent determined pursuant to subsection (2), without a claim of lien being registered for the lien and without proof that all of the wages were earned on the land on which a lien is claimed if the labourer provided services on the land and was employed by the owner, contractor or subcontractor.

(2) The priority of a labourer under subsection (1) shall be determined by calculating the amount which the labourer would earn in one ordinary working day, exclusive of overtime, and multiplying that amount by 40.

(3) Every device to defeat the priority given to labourers by this section is void.

(4) Where a labourer is owed an amount greater than to the extent to which his lien has priority under this section, he is entitled:

(a) to be paid the additional amount out of any sum actually coming to the owner, contractor or subcontractor who has employed the labourer; and

(b) to share *pro rata* with any other lien claimant.

(5) This section applies notwithstanding anything in Part II of *The Saskatchewan Employment Act*.

(6) Except as modified by this section, this Act applies to the lien of a labourer.

1984-85-86, c.B-7.1, s.75; 2013, c.S-15.1, s.10-16.

Subordination of general lien claims

76 Where a general lien is realized against land in an action in which other liens are also realized against the land:

(a) the general lien shall rank with the other liens according to the rules of priority set out in section 73 only to the extent of the amount obtained when the total value of the general lien is divided by the total number of parcels of land to which the person having the general lien provided services or materials under his contract or subcontract; and

(b) in respect of the balance of the general lien, it shall rank next in priority to all other liens against the land, whether or not of the same class.

1984-85-86, c.B-7.1, s.76.

PART VII
Additional Remedies

Application of insurance proceeds

77 Where land that is subject to a lien is destroyed in whole or in part, any amount received by a payer on a contract or subcontract or a mortgagee by reason of any insurance on the land shall take the place of the land so destroyed and shall be subject to liens in accordance with the priorities set out in Part VI.

1984-85-86, c.B-7.1, s.77.

Distribution of proceeds of sale

78 Where an estate or interest in land is sold or leased pursuant to an order of the court or by a trustee appointed under this Part, the proceeds received as a result of that disposition, together with any amount paid into court under subsection 96(5), shall be distributed in accordance with the priorities set out in Part VI.

1984-85-86, c.B-7.1, s.78.

Distribution in trust action

79 Moneys found by a court to be trust funds pursuant to Part II shall be distributed among lien claimants who have proved their claims according to the priorities established by Part VI notwithstanding that such parties have not registered a claim of lien or a certificate of action.

1984-85-86, c.B-7.1, s.79.

Purchaser of leasehold interest considered an assignee

80 If the estate or interest in land sold pursuant to this Act is a leasehold interest, the purchaser at the sale is deemed to be an assignee of the lease.

1984-85-86, c.B-7.1, s.80.

Labour and material payment bonds

81(1) Where a labour and material payment bond is in effect in respect of an improvement, any person whose payment is guaranteed by that bond has a right of action to recover the amount of his claim, in accordance with the terms and conditions of the bond, against the surety on the bond, where the principal on the bond defaults in making the payment guaranteed by the bond.

(2) Nothing in this section makes the surety liable for an amount in excess of the amount that he undertakes to pay under the bond and the surety's liability under the bond shall be reduced by and to the extent of any payment made in good faith by the surety either before or after judgment is obtained against the surety.

(3) The surety, on satisfaction of its obligation to any person whose payment is guaranteed by the bond, shall be subrogated to all the rights of that person.

1984-85-86, c.B-7.1, s.81.

Right to information

82(1) Any person who is a lien claimant or a beneficiary of a trust under this Act may, at any time, by written request, require:

(a) from the owner or his agent:

(i) the terms of the contract including the names of the parties to the contract, the contract price and the state of accounts between the owner and the contractor;

(ii) the name and address of the bank, trust and loan corporation or credit union in which a holdback trust account has been opened and the account number thereof;

(iii) a statement as to the particulars of credits to and payments from the holdback trust account including the date of the credits and payments, and the balance at the time the information is given;

(iv) a copy of any labour and material payment bond posted by the contractor with the owner in respect of the contract;

(v) where the owner is the Crown, names and addresses of lien claimants who have given claims of lien to the Crown pursuant to section 52;

(b) from a mortgagee or an unpaid vendor, or the agent of either of them:

(i) the terms of the mortgage or agreement for sale;

(ii) a statement showing the amount advanced under the mortgage and the dates of those advances and of any arrears in payment including any arrears in the payment of interest;

(iii) a statement showing the amount secured under the agreement for sale and any arrears in payment including any arrears in the payment of interest.

(2) The owner may, by written request, require from a subcontractor when a claim of lien has been registered or a written notice of a lien has been received by him and, from the contractor, at any time:

(a) the terms of any subcontract including the names of the parties to the subcontract, the subcontract price and the state of accounts between the contractor and a subcontractor or between a subcontractor and another subcontractor, or any other person providing services or materials, which statement shall be verified by statutory declaration by the person from whom the information is requested or his agent;

(b) a copy of any labour and material payment bond posted by a subcontractor with the contractor or by a subcontractor with another subcontractor.

(3) The person of whom a request is made under subsection (1) or (2) shall comply with the request within 10 days after the day the request is served on him.

(4) If the person refuses or neglects to comply with a request within the time provided in subsection (3) or knowingly or negligently mis-states the information requested, he is liable to the person requesting the information for any loss or damage suffered in an action therefor or in any action for the enforcement of the lien.

(5) In addition to the remedy given to an owner under subsection (4), if a person refuses to comply with a request under subsection (2) within the time provided, the owner may:

(a) where the request is made of a contractor, withhold further payments to the contractor;

(b) where the request is made of a subcontractor, instruct the contractor or another subcontractor to withhold further payments to the subcontractor or to a subcontractor of the subcontractor;

until the contractor or subcontractor, as the case may be, has complied with the request.

(6) The court may on summary application at any time before or after an action is commenced for the enforcement of a lien make an order requiring the owner, mortgagee, vendor, contractor or subcontractor, as the case may be, to produce for inspection all contracts, subcontracts, documents, books or records relating to the contract or subcontract or to the payment of the contract or subcontract price, and to make any copies thereof, and may make an order as to costs of the application.

(7) No appeal lies from an order made under subsection (6).

1984-85-86, c.B-7.1, s.82.

Examination on claim of lien

83(1) A person who has verified a claim of lien that has been registered is liable to be examined on the claim of lien at any time, without an order, whether or not an action has been commenced.

(2) The court may, on application, authorize examination of a person other than the person who has verified the claim of lien that has been registered.

(3) Unless otherwise ordered, only one examination on a claim of lien can take place pursuant to this section, but the contractor, the payer of the lien claimant, and every person against whose estate or interest in land a lien is claimed are entitled to participate in the proceeding.

(4) Any person intending to examine a person under subsection (1) or (2) shall give at least seven days' notice of the examination to:

(a) the person to be examined;

(b) every other person against whose estate or interest in land a lien is claimed;

(c) the contractor; and

(d) the payer of the lien claimant.

(5) The Queen's Bench Rules pertaining to examinations for discovery apply *mutatis mutandis* to examinations under this section.

1984-85-86, c.B-7.1, s.83.

Appointment of trustee

84(1) Any lien claimant, or any other person having an estate or interest in land, may apply to the court for the appointment of a trustee and the court may appoint a trustee with or without terms as to the giving of security.

(2) Subject to the supervision and direction of the court, a trustee appointed under subsection (1) may:

(a) act as a receiver and manager and, subject to the approval of the court, mortgage, sell or lease the land or any part of the land;

(b) complete or partially complete the improvement;

(c) take appropriate steps for the preservation of the land; or

(d) with the approval of the court, take such other steps as are appropriate in the circumstances.

(3) Subject to subsection (4), all liens shall be a charge on any amount recovered by the trustee after payment of the reasonable expenses and management costs incurred by the trustee in the exercise of any power under subsection (2).

(4) Where an amount is advanced to a trustee as a result of the exercise of any powers conferred on him by this section:

(a) the mortgagee making the advance has priority, to the extent of the advance, over every lien for services or materials provided before the date of the appointment of the trustee;

(b) the amount received is not subject to any claim of trust or lien arising out of services or materials provided before the date of the appointment of the trustee.

(5) Any estate or interest in land that is to be sold may be offered for sale subject to any mortgage, charge, interest or other encumbrance that the court directs.

(6) The court may make all orders necessary for the completion of any mortgage, lease or sale by a trustee under this section.

1984-85-86, c.B-7.1, s.84.

Referral to arbitrator

85(1) Subject to subsection (1.1), where a dispute arises at any time during the construction of an improvement with respect to the payment of money, the dispute, with the consent of the parties to the dispute, may be referred to a single arbitrator chosen by the parties.

(1.1) Where a dispute arises:

(a) at any time during the construction of an improvement with respect to the failure or refusal to certify substantial performance pursuant to section 41; or

(b) with respect to the payment of moneys to a contractor or subcontractor who has obtained a certificate of substantial performance with respect to his or her contract or subcontract;

the person making the request, by personal service of a written notice in the prescribed form, may require that the dispute be referred to an arbitrator.

(1.2) Where the parties to the dispute are unable to agree on an arbitrator within three days of service of the notice pursuant to subsection (1.1), the person making the request may apply to the person specified in the regulations for the designation of an arbitrator.

(2) The arbitrator may be:

(a) a lawyer;

(b) an architect;

(c) an engineer;

(d) a member in good standing of a recognized accounting profession that is regulated by an Act; or

(e) any person with experience in the construction industry.

(3) The arbitrator:

(a) shall render his decision within seven days of hearing the matter or any further time as may be unanimously agreed to by the parties;

(b) shall give written reasons for his decision, but wherever possible the procedure shall be summary; and

(c) may certify that the contract or subcontract is substantially performed.

(4) The decision of the arbitrator is binding on the parties who have referred the matter to the arbitrator except that it may be appealed to the court on a question of law alone within 30 days of giving the decision.

(5) Unless otherwise agreed by the parties to the dispute, all costs of the arbitration are to be borne by the unsuccessful party on the arbitration.

1984-85-86, c.B-7.1, s.85; 1989-90, c.29, s.13; 2006, c.25, s.3.

PART VIII
Jurisdiction and Procedure

Commencement of action

86(1) An action to enforce a claim of lien or trust arising under this Act is to be commenced by a statement of claim and except as otherwise provided The Queen's Bench Rules apply to the proceedings.

(2) An action under this Act is to be commenced at the judicial centre nearest to which the land is situated.

(3) The court may direct that an action be transferred from the judicial centre in which the action was commenced to another judicial centre:

(a) with the consent of the parties;

(b) by reason of the balance of convenience, including the convenience of witnesses; or

(c) where another action is commenced or is pending in the court at another judicial centre with respect to, or arising substantially out of, the same subject-matter.

(4) No appeal lies from an order made under subsection (3).

(5) The local registrar of the court at the judicial centre in which an action is pending shall, on request, issue a certificate of action in the prescribed form.

1984-85-86, c.B-7.1, s.86; 2015, c.21, s.64.

Service of statement of claim

87 A statement of claim shall be served within 30 days of the date of issue, or within such further time as the court may allow on application, which may be made *ex parte*, before or after the expiry of the time for service.

1984-85-86, c.B-7.1, s.87.

Parties to the action

88(1) Any number of lien claimants may join in the same action.

(2) Subject to subsection (3), the following shall be joined as party defendants in the action:

(a) the owner and the contractor, if any;

(b) the person primarily liable on the contract or subcontract;

(c) each lien claimant other than a plaintiff who has registered his claim of lien as required by this Act;

(d) every other person who, by the records of the Land Titles Registry, appears to have an estate, interest in or charge on the land or trust in question and against whom any relief is claimed or who would be affected by any judgment, order or direction that may be made or given in the action or proceeding;

(e) the landlord, if any relief is claimed against the landlord; and

(f) every other person who, to the knowledge of the plaintiff, has or may have a lien.

(3) Where an action is in respect of a lien that, pursuant to section 26, does not attach to land, the following shall be joined as party defendants in the action:

(a) the owner and the contractor, if any;

(b) the person primarily liable on the contract or subcontract;

(c) each lien claimant other than the plaintiff who has given his claim of lien as required by section 52; and

(d) every other person who, to the knowledge of the plaintiff, has or may have a lien.

(4) Any person may, at any stage of the proceedings, be joined as a party on his own application or on the application of any party, which may be made *ex parte* or on such notice as the court may direct.

1984-85-86, c.B-7.1, s.88.

Procedure

89(1) A trust claim and a lien claim may be joined in the same action and, subject to subsection (2) and unless otherwise ordered, a party may join with his lien or trust claim a claim for breach of his contract or subcontract.

(2) A party may, within the time limited by The Queen's Bench Rules for delivery of a defence:

(a) counterclaim against the plaintiff;

(b) crossclaim against a co-defendant; or

(c) claim against a third party who is not already a party;

in respect of a matter related to the making of the improvement, whether or not the party against whom a claim is made delivers a statement of defence.

(3) A party who fails to make a counterclaim, crossclaim or third party claim pursuant to subsection (2) shall not be permitted to do so or to commence a separate action under this Act with respect to that claim, except with leave of the court.

(4) Where a defendant named in a statement of claim, counterclaim, cross claim or third party claim has been noted for default of defence, he shall not be permitted to contest a claim, to file a statement of defence, counterclaim, cross claim or third party claim or to take any proceeding under this Act except with leave of the court.

(5) Except where leave has been granted under subsection (4), a party who has been noted for default of defence shall be deemed to admit all allegations of fact made in the statement of claim, counterclaim, cross claim or third party claim, as the case may be.

(6) A party against whom no relief is sought may serve and file a demand for notice, and shall be entitled to receive notice of all subsequent proceedings in the action and to participate in the trial.

1984-85-86, c.B-7.1, s.89.

Use of examinations and limitation

90(1) Any part of an examination under section 83 or any part of an examination for discovery may, subject to all just exceptions, be used in evidence against the party on whose behalf the person was examined and all other parties of like interest.

(2) Where a person has been examined under section 83, no further examination for discovery of that person, or of the party on whose behalf the person was examined, shall be conducted without leave of the court.

1984-85-86, c.B-7.1, s.90.

Proceedings to be summary

91(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character having regard to the amount and nature of the liens in question.

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without an order of the court or the consent of all parties on the application.

1984-85-86, c.B-7.1, s.91.

Evidence

92 Any issue may be tried on *viva voce* or affidavit evidence, as the court may direct.

1984-85-86, c.B-7.1, s.92.

Technical assistance

93 The court may:

(a) obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or other person to enable the court to determine better any matter of fact in question;

(b) fix the remuneration of a person appointed under clause (a); and

(c) determine who shall pay the remuneration fixed under clause (b).

1984-85-86, c.B-7.1, s.93.

Representation by agent

94 A lien claimant whose claim of lien is for an amount within the monetary jurisdiction given to the Provincial Court of Saskatchewan under *The Small Claims Act, 1997* may be represented in the court by an agent who is not a barrister and solicitor.

1984-85-86, c.B-7.1, s.94; 1988-89, c.54, s.3; 1997, c.S-50.11, s.54.

Carriage of action

95 The court may at any time make an order respecting the conduct or carriage of the action.

1984-85-86, c.B-7.1, s.95.

Disposition by court

96(1) The court may:

(a) try the action, including any set off, crossclaim, counterclaim and third party claim, and all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it; and

(b) take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or in the action and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action.

(2) The court may award any lien claimant a personal judgment, whether he proves his lien or not, on any ground relating to his claim that is disclosed by the evidence against any party to the action for any amount that may be due to him and that he might have recovered in a proceeding against that party, subject to such conditions as to enforcement that the court may direct.

(3) The court may order that the estate or interest in land charged with the lien be sold and may give directions for the sale, and may make all necessary orders for the completion of the sale and vesting in the purchaser the estate or interest sold.

(4) The court may also direct the sale of any materials and authorize the removal of them.

(5) When a sale is held the moneys arising from the sale shall, unless otherwise ordered, be paid into court to the credit of the action, and the court shall direct to whom the moneys shall be paid and may add to the claim of the person conducting the sale his actual disbursements in connection with the sale, and where an amount sufficient to satisfy the liens and costs is not realized from the sale the court shall determine the amount of the deficiency and the persons who are entitled to recover the deficiency, and the amount to which each of them is entitled, and the person liable to pay the amounts.

(6) The court may make one or more interim orders for the distribution of moneys in court.

(7) Where land has been sold but the proceeds of sale are insufficient to satisfy the owner's liability under subsection 37(1), the court may award personal judgment to the extent of the deficiency in the holdback in favour of the lien claimants against the owner of the land.

1984-85-86, c.B-7.1, s.96.

Costs

97(1) Subject to subsection (2), an order as to costs may be made against:

(a) any party to the action or application;

(b) the solicitor or agent of any party to the action or application, where the solicitor or agent has:

(i) knowingly participated in the registration of a claim of lien, or represented a party in the commencement of or the trial of an action, where it is clear that the claim of lien is without foundation or is for a grossly excessive amount; or

(ii) by his conduct prejudiced or delayed the conduct of the action;

and any order as to costs may be made on a solicitor and client basis.

(2) Where the least expensive course is not taken by a party under this Act, the costs allowed to him shall not exceed what would have been incurred if the least expensive course had been taken by him.

(3) Where the registration of a claim of lien or a certificate of action is ordered to be discharged or where, in an action to realize a lien, judgment is given in favour of or against a lien claimant, the court may allow a reasonable amount for costs of drawing and registering the claim of lien or for discharging the registration but no such amount shall be allowed where the lien claimant fails to establish a valid lien.

1984-85-86, c.B-7.1, s.97; 2000, c.L-5.1, s.222.

PART IX
General Rules

Records by contractors and subcontractors

98(1) Every contractor and subcontractor shall maintain in Saskatchewan a true and correct record of the following particulars in respect of each contract and subcontract which he enters into under or by virtue of which a lien may arise under this Act:

(a) the whole or essential terms of the contract or subcontract;

(b) the amounts of payments and times for payments under the contract or subcontract;

(c) the name, last known address and business of the parties to the contract or subcontract;

(d) the dates on which payments are made under the contract or subcontract and the amount of each payment;

(e) the hours worked by any labourer on any parcel of land;

(f) the amount of each deduction made from each payment into any holdback trust account from the contract or subcontract and the particulars thereof;

(g) the date of commencement of work undertaken in the performance of the contract or subcontract; and

(h) the date and particulars of any certificate given by a payment certifier as to the substantial performance of the contract or subcontract and the name and address of the payment certifier.

(2) The records required to be maintained under subsection (1) in respect of a contract or subcontract shall be maintained and preserved by the contractor or subcontractor, as the case may be, for a period of not less than six years after the date of the completion of the improvement with respect to which the contract or subcontract relates.

(3) A separate record shall be maintained by contractors and subcontractors under subsection (1) in respect of each separate contract and subcontract.

(4) Every person who fails to comply with a provision of this section is guilty of an offence.

(5) Every director or officer of a corporation who knowingly assents to or acquiesces in an offence by the corporation under subsection (4) is guilty of an offence.

(6) Every person who is guilty of an offence under subsection (4) or (5) is liable to a fine of not more than $500, for a term of not more than three months or to both such fine and imprisonment.

(7) A director or officer of a corporation may be charged with an offence under this section whether or not the corporation has been charged or convicted of the offence.

(8) Where a person contravenes or fails to comply with a provision of this section for a period of more than one day, he is guilty of a separate offence for each day that the contravention or failure to comply continues.

1984-85-86, c.B-7.1, s.98.

No waiver of rights

99(1) Any covenant in any agreement by any person who provides services or materials to an improvement that this Act or any provision of this Act does not apply is void.

(2) Every contract or subcontract related to an improvement shall be deemed to be amended insofar as is necessary to be in conformity with this Act.

1984-85-86, c.B-7.1, s.99; 2015, c.21, s.64.

Substantial compliance only

100(1) No certificate of substantial performance, written notice of a lien, claim of lien or any other prescribed form is invalidated by reason only of a failure to comply strictly with the prescribed forms or subsection 50(2) unless, in the opinion of the court, a person has been prejudiced thereby and then only to the extent of the prejudice suffered.

(2) Nothing in subsection (1) shall be construed as dispensing with the registration of the claim of lien as required by this Act.

1984-85-86, c.B-7.1, s.100.

Removal of materials restrained

101 During the continuance of a lien, no portion of any of the materials or the property affected thereby shall be removed to the prejudice of the lien, and any attempt at such removal may be restrained on application to the court, *ex parte* or with such notice as the court may direct.

1984-85-86, c.B-7.1, s.101.

References

102(1) Subject to subsection (2), a reference in any Act other than a reference in *The Mechanics' Lien Act* to a mechanic's lien, to *The Mechanics' Lien Act* or to any provision of that Act is deemed to be a reference to a lien under this Act, to this Act, or to the corresponding provision of this Act, as the case may be.

(2) A reference in this Act to *The Mechanics' Lien Act* is deemed to be a reference to that Act as it existed on the day before the coming into force of this Act.

1984-85-86, c.B-7.1, s.102.

103 **Dispensed.** This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.

Regulations

104 The Lieutenant Governor in Council may make regulations:

(a) prescribing forms and providing for their use;

(b) specifying the person who has the authority to designate an arbitrator pursuant to subsection 41(3);

(c) increasing the amount of any contract for which there may be early release of the holdback pursuant to section 46;

(d) prescribing any place to which claims of lien may be given pursuant to subsection 52(1); and

(e) prescribing any other matter or thing authorized by this Act to be prescribed.

1984-85-86, c.B-7.1, s.104.

Application

105(1) This Act applies to all contracts entered into on or after the day section 103 comes into force and to the subcontracts arising under those contracts and to all services or materials provided thereunder.

(2) Notwithstanding section 103, *The Mechanics' Lien Act* continues to apply to all contracts entered into before the coming into force of this Act, and to the subcontracts arising under those contracts and to all services or materials provided thereunder.

(3) Notwithstanding section 103, where a contract entered into before the coming into force of this Act is amended in good faith on or after that day, *The Mechanics' Lien Act* applies to that amendment and to all subcontracts arising under it and to all services or materials provided thereunder.

1984-85-86, c.B-7.1, s.105.

Coming into force

106 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.

1984-85-86, c.B-7.1, s.106.

Editorial Appendix

Amendments made by *The Builders' Lien Amendment Act, 1989*, *Statutes of Saskatchewan, 1989-90* apply only to:

(a) contracts entered into on or after the day this Act comes into force; and

(b) subcontracts arising under, and all services and materials provided pursuant to, the contracts mentioned in clause (a).

All sections of chapter M-7, *The Buildiers' Lien Act,* have been repealed except for the following:

LIENS FOR IMPROVEMENT OF CHATTELS

Liens for improvement of chattels

61(1) Subject to any other Act that creates liens or charges and provides remedies for their enforcement, every person who has expended money or skill and materials upon any chattel or thing in the alteration and improvement of its properties or for the purpose of imparting an additional value to it so as thereby to be entitled to a lien upon the chattel or thing for the amount or the value of the money or skill and materials expended, shall while the lien exists but not afterwards, if the amount to which he is entitled remains unpaid for three months after the amount ought to have been paid, has the right, in addition to all other remedies provided by law, to sell the chattel or thing in respect of which the lien exists.

(2) One month's notice of the sale shall be given by advertisement in a newspaper published in the locality in which the work was done or if there is no newspaper published in that locality or within ten miles of the place where the work was done then by posting not less than five notices in the most public places within the locality for one month stating:

(a) the name of the person indebted;

(b) the amount of the debt;

(c) a description of the chattel of thing to be sold; and

(d) the time and place of sale and the name of the auctioneer;

and leaving a like notice in writing at the residence or last known place of residence, if any, of the owner, as the case may be, or by sending the notice to him be registered letter if his address is known.

(3) The person who causes the chattel or thing to be sold shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising the sale and shall upon application pay over any surplus to the person entitled thereto.

R.S.S. 1978, c.M-7, s.61.

Regina, Saskatchewan
Printed by the authority of
The Queen's Printer
Copyright©2015