

1989

CHAPTER 29
An Act to amend The Builders' Lien Act

(Assented to August 25, 1989)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title 1 This Act may be cited as The Builders' Lien Amendment Act, 1989.

S.S. 1984-85-86, c.B-7.1 amended 2 The Builders' Lien Act is amended in the manner set forth in this Act.

Section 2 amended "architect" 3(1) Clause 2(1)(a) is repealed and the following substituted:
"(a) 'architect' means an architect registered pursuant to The Architects Act and includes a corporation licensed to practise architecture pursuant to the bylaws of The Saskatchewan Association of Architects;

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

- (2) Clause 2(1)(d) is amended:
 - (a) in subclause (iii):
 - (i) by adding the following paragraph after paragraph (C):
"(C.1) clause 17(a) or Part V.1 of The Housing and Special-care Homes Act";
 - (ii) by adding the following paragraph after paragraph (D):
"(D.1) The Lloydminster Hospital Act, 1948";
 - (iii) by adding the following paragraph after paragraph (F):
"(F.1) section 85 of The Public Health Act"; and
 - (iv) by adding the following paragraph after paragraph (N):
"(N.1) The Wascana Rehabilitation Centre Act"; and
 - (b) by adding the following subclause after subclause (iii):
"(iv) the Saskatchewan Cancer Foundation established pursuant to The Cancer Foundation Act".

"engineer" (3) The following clause is added after clause 2(1)(d):
"(d.1) 'engineer' means a member of The Association of Professional Engineers of Saskatchewan practising professional engineering as defined in The Engineering Profession Act and includes a partnership, association of persons or corporation that holds a certificate of authorization to practise professional engineering pursuant to The Engineering Profession Act".

(4) Clause 2(1)(h) is amended:

- (a) by adding "or intended to be constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled" after "drilled"; and
- (b) by adding the following subclause after subclause (ii):
 "(iii) services provided by an architect or engineer".

Section 23 repealed

4 Section 23 is repealed.

Section 38 amended

5 Section 38 is amended:

- (a) by repealing subsection (4) and substituting the following:
 "(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 chartered accountant;
 - (e) any person with experience in the construction industry; or
 - (f) a trust or loan corporation"; and
- (b) by striking out "or" after clause (11)(a);
- (c) by adding "or" after clause (11)(b); and
- (d) by adding the following clause after clause (11)(b):
 "(c) a contract with an architect or engineer".

Section 41 amended

6 Section 41 is amended:

- (a) by repealing subsections (1) to (3) and substituting the following:
 "(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";

- (b) subsection (4) is amended by adding "pursuant to section 85" after "arbitrator";
- (c) in subsection (5):
 - (i) by adding "or (1.2), as the case may be" after "(1)";
 - (ii) by adding "and contractor" after "certifier"; and
 - (iii) by striking out "subsection (2)" and substituting "subsections (2) and (2.1)"; and
- (d) by adding "or (1.2)" after "(1)" in clause (6)(a).

Section 42 amended

7 Section 42 is amended:

- (a) in subsection (1):
 - (i) by adding "or (1.2) or subclause (1.1)(b)(ii)" after "(1)"; and
 - (ii) by adding "or subclause" after "that subsection"; and

(b) by repealing subsection (2) and substituting the following:

"(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".

Section 46 amended

8 Clause 46(1)(d) is amended by striking out "subsection 41(2)" and substituting "subsections 41(2) and (2.1)".

Section 51 amended

9 The following subsection is added after subsection 51(3):

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

Section 58 amended

10 Section 58 is amended:

(a) by adding the following subsections after subsection (1):

"(1.1) Subject to subsection (1.2), where:

(a) a person described in subsection (1) requires the registrar to send a notice to a lien claimant that the registration of the claim of lien be vacated as to certain specified land only; and

(b) the description of the land mentioned in clause (a) is acceptable to the registrar;

the notice described in subsection (2) shall be sent as to that land only and the registration of the claim of lien shall be vacated, pursuant to subsection (3), as to that land only.

"(1.2) Where the land description mentioned in subsection (1.1) is not acceptable to the registrar, no notice is to be sent"; and

(b) by adding "or (1.1)" after "(1)" in subsection (2).

Section 59 amended

11 Section 59 is amended by striking out "the registration of the claim of lien" where it occurs for the second time and substituting "the mailing of notice of the registration mentioned in subsection 50(7)".

Section 61 amended

12 Subsection 61(2) is repealed and the following substituted:

"(2) Where a certificate of action has been registered, 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 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;
may be registered and, when registered, the certificate has the same effect as an order of the court vacating the registration of the certificate of action".

Section 85 amended

13 Subsection 85(1) is repealed and the following substituted:

"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".

Application rules

14 The amendments to The Builders' Lien Act being enacted by this Act 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).

Coming into force

15 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.