



Builders' Liens

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Overview

At Field Law, our comprehensive knowledge of the *Builders' Lien Act* is what sets us apart. This legislation is complicated, and our team is experienced with not only the registration of liens, but in litigating builders' liens, whether it be proving the validity of and enforcing a lien or assisting clients in disputing liens registered against a project and holding up funding.

We have extensive experience in registering liens at Land Titles, as well as liens registered against mineral leases or other agreements at the Minister of Energy. We provide advice and assistance as to the most effective and efficient ways to deal with liens in order to maintain required cash flow while preserving statutory lien rights.

We are pleased to answer any questions and provide assistance regarding any aspect of the builders' lien process, including issues such as, who has the ability to file liens, what lands can be liened, when the lien period commences, what steps are required to preserve a lien once it is registered, taking or forcing action on a lien, or removing wrongfully registered liens from title. Whatever the situation, our lawyers are well equipped to assist you with any builders' lien problems that arise.

Experience

Golden Triangle Construction Management Inc v Nuwest Interior Systems Inc, 2019 ABQB 292

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Industries

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[Construction Liens: Resolving Costs in Default Actions](#)

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[How Much is Too Much: Extraordinary Remedies for Excessive Liens](#)

November 2023

[Construction Lien Dilemma: Landlord Liability in Tenant-Driven Renovations](#)

September 2023

[Legal Notes: Correct names on Both Contracts and Liens can Save Headaches](#)

August 2023 - 4 min read

[Substantial Indemnity Costs in the Context of Liens](#)

Helpful Links

- [Builders' Lien Acta](#)
- [Woodsmen's Lien Acta](#)
- [Garage Keeper's Lien Acta](#)

Holdbacks

Holdbacks are the process by which owners of land can limit their exposure on a secured lien. The 10% holdbacks kept by the owners (or contractors) are the first part of the lien fund. The second part of the lien fund is work that has been done on the property but has not yet been paid for (ie. amounts owing). The lien fund can ultimately be paid into court to discharge liens from the owners property, and thereby avoid collection proceedings taken against the land.

The problem arises when payment is made to the contractor, who does not pay his subcontractors. In such a case, the subcontractors may file liens against the owners' property, despite the fact that payment has been made to the contractor. In such cases, the owners liability is limited to 10% of the value of the work done plus any amounts unpaid. If at the time the owner made payment to the general contractor there were no liens registered, then that payment will serve to reduce the lien fund. If there were liens registered, the payment will not reduce the lien fund. Hence, no payment should be made by the owners on any contract when there are builders' liens on title.

Client Stories

Builder's Lien Precedent

Anthony Burden's client was the general contractor for two school construction projects in Alberta. Several builders' liens were registered by various sub-contractors, creating additional expense for our client. The schools in question were designated as "municipal reserve" lands, which impacts what use can be made of the lands on sale.

Previous case law indicated that such lands could not be subject to forced sale and therefore builders' liens on those lands were unenforceable.

Anthony advised his client not to make the payments on these liens. Instead, he recommended arguing that all builders' liens registered on both projects were invalid - setting a precedent for future work. Several liens were withdrawn by consent as a result of our approach.

During this process, three lienholders disputed our interpretation, and a contested Court application was held to determine if these liens were valid. The Court accepted our interpretation of the law and held that the builders' liens, in this case, were invalid.

The Court decision provided certainty to our client for this project and in the future that any lands designated as "municipal reserve" cannot be validly liened.

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