

# **CONSOLIDATED *PROMPT PAYMENT AND CONSTRUCTION LIEN ACT***

Revised Statutes of Alberta 2000  
Chapter B-7

Current as of July 1, 2012

**as modified by and consolidated with**

**Bill 37, Builder's Lien (Prompt Payment) Amendment Act, 2020**

Prepared by:

Gowling WLG (Canada) LLP

## **Note on the Text:**

The following is a consolidation of the currently in force *Builders' Lien Act* with all amendments made pursuant to Bills 37 and 62, the *Builders' Lien (Prompt Payment) Amendment Act, 2020* and the *Red Tape Reduction Implementation Act, 2021*, respectively.

This consolidation is prepared only for convenience of use. Users are advised to rely only upon official online or print publications of the Province of Alberta of the *Prompt Payment and Construction Lien Act*, Chapter P-26.4 for definitive legislative provisions, and not this consolidation.

- Underlined text reflects amendments in Bill 37, *Builders' Lien (Prompt Payment) Amendment Act, 2020*, SA 2020, c 30
- **Red text** reflects Amendment A1 to Bill 37 (November 4, 2020)
- Blue underlined text reflects amendments in Bill 62, *Red Tape Reduction Implementation Act, 2021*, SA 2021, c. 16 (June 17, 2021)

**PROMPT PAYMENT**  
**AND CONSTRUCTION LIEN ACT**  
**Chapter P-26.4**

*Table of Contents*

1.	Definitions
<a href="#">1.1</a>	<a href="#">Application</a>
2.	Substantial performance
3.	Work not completed
4.	Valuation of work done
5.	Waiver prohibited
6.	Creation of lien
7.	Highways and irrigation districts
8.	Limitation of lien
9.	Furnishing material
10.	Date of lien
11.	Priorities
12.	Advancing of money
13.	Priority for wages
14.	Land owned by married person or adult interdependent partner
15.	Liens on lease or life estate
16.	Insurance money
17.	Removal of material
18.	Major lien fund
19.	Certificate of substantial performance
20.	Posting of certificate of substantial performance
21.	Money required to be retained
22.	Money held in trust
23.	Minor lien fund
24.	Major lien fund and minor lien fund
<a href="#">24.1</a>	<a href="#">Payment of amount retained under section 18, 21 and 23</a>
25.	Liability of owner
26.	Holdback by mortgagee
27.	Payment from lien fund
28.	Payment where contract price not money
29.	Payment to lienholder by owner, etc.
30.	Assignment
31.	Merging of lien
32.	Proving claim
<a href="#">32.1</a>	<a href="#">Proper Invoice</a>
<a href="#">32.2</a>	<a href="#">Payment deadline – owner to contractor</a>
<a href="#">32.3</a>	<a href="#">Payment deadlines – contractor to subcontractor</a>
<a href="#">32.4</a>	<a href="#">Notice of non-payment</a>
<a href="#">32.5</a>	<a href="#">Payment deadlines – subcontractor to subcontractor</a>
<a href="#">32.6</a>	<a href="#">Interest on late payments</a>
<a href="#">32.7</a>	<a href="#">No effect on wages</a>

- 33. Inspection of contract or subcontract
- 33.1 Definitions
- 33.2 Nominating Authority
- 33.3 Minister as interim Nominating Authority
- 33.4 Adjudication of dispute
- 33.5 Adjudication procedures
- 33.6 Hearing and determination by adjudicator
- 33.7 Judicial review
- 33.8 Limitation
- 33.9 Immunity
- 34. Registration of lien
- 35. Forms for registering lien
- 36. Estate or interest in minerals
- 37. Validity of lien
- 38. Reinstatement of lien
- 39. Change of address
- 40. Wrongful registration
- 41. Time for registration
- 42. Expiry of unregistered lien
- 43. Expiry of registered lien
- 44. Lien as charge against money
- 45. Notice to commence an action
- 46. Continuation of lien
- 47. Cancellation of lien
- 48. Lien removed
- 49. Enforcement of lien
- 50. Deemed parties to proceedings
- 51. Service of statement of claim
- 52. Time for filing defence
- 53. Pre-trial application
- 54. Appointment of receiver and trustee
- 55. Uncompleted or abandoned contract
- 56. Consolidation of actions
- 57. Entering action for trial
- 58. Adjudication of claims
- 59. Failure to establish valid lien
- 60. Payment of sale proceeds into court
- 61. Application of money realized
- 62. Order for removal and sale of structure
- 63. Enforcement of judgment
- 64. Alberta Rules of Court
- 65. Proof of claim after proceedings
- 66. Appeal
- 67. Service of documents
- 68. Fees
- 69. Costs
- 70. Regulations
- 71. Application of former Acts

- 72. Transitional
- 73. Transitional
- 74. Transitional

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

**Part 1**  
**General**

**Definitions**

**1** In this Act,

- (a) “certificate of substantial performance” means a certificate of substantial performance issued under section 19;
- (b) “contractor” means a person contracting with or employed directly by an owner or the owner’s agent to do work on or to furnish materials for an improvement, but does not include a labourer;
- (c) “court” means the Court of Queen’s Bench;
- (d) “improvement” means anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land except a thing that is neither affixed to the land nor intended to be or become part of the land;
- (e) “labourer” means a person employed for wages in any kind of labour whether employed under a contract of service or not;
- (f) “lienholder” means a person who has a lien arising under this Act;
- (g) “lien fund” means, as the case may be, the major lien fund, the minor lien fund or both the major lien fund and the minor lien fund;
- (h) “major lien fund” means
  - (i) where a certificate of substantial performance is not issued, the amount required to be retained under section 18(1), (1.1) and (1.2) plus any amount payable under the contract
    - (A) that is over and above the 10% referred to in section 18(1), (1.1) and (1.2), and
    - (B) that has not been paid by the owner in good faith while there is no lien registered;
  - (ii) where a certificate of substantial performance is issued, the amount required to be retained under section 18(1), (1.1) and (1.2) plus any amount payable under the contract
    - (A) that is over and above the 10% referred to in section 18(1), (1.1) and (1.2), and

- (B) that, with respect to any work done or materials furnished before the date of issue of the certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;
- (i) “minor lien fund” means the amount required to be retained under section 23(1), (1.1) or (1.2) plus any amount payable under the contract
  - (i) that is over and above the 10% referred to in section 23(1), (1.1) or (1.2), and
  - (ii) that, with respect to any work done or materials furnished on and after the date of issue of a certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;
- (j) “owner” means a person having an estate or interest in land at whose request, express or implied, and
  - (i) on whose credit,
  - (ii) on whose behalf,
  - (iii) with whose privity and consent, or
  - (iv) for whose direct benefit,

work is done on or material is furnished for an improvement to the land and includes all persons claiming under the owner whose rights are acquired after the commencement of the work or the furnishing of the material;
- (k) “prescribed” means prescribed by the regulations;
- (l) “registered lienholder” means a lienholder who has registered a statement of lien in the appropriate land titles office and includes a lienholder who has registered a statement of lien that has been removed pursuant to section 27 or 48(1);
- (m) “Registrar” means the Registrar of Land Titles;
- (n) “subcontractor” means a person other than
  - (i) a labourer,
  - (ii) a person engaged only in furnishing materials, or
  - (iii) a person engaged only in the performance of services,

who is not a contractor but is contracted with or employed under a contract;
- (o) “wages” means money earned by a labourer for work done, whether by time or as piece-work or otherwise;

- (p) “work” includes the performance of services on the improvement.

RSA 2000 cB-7 s1;2001 c20 s2;  
2006 c21 s26

## Application

1.1 (1) This Act or a provision of this Act may, in accordance with the regulations, apply to a prescribed class of professionals acting in a consultative capacity.

(2) This Act does not apply in respect of

- (a) public works as defined in the *Public Works Act*,
- (b) agreements to finance and undertake an improvement in which either of the following is a party:
  - (i) the Crown in right of Alberta;
  - (ii) a provincial corporation as defined in the *Financial Administration Act* that is an agent of the Crown in right of Alberta, and
- (c) any other agreement, entity, undertaking or work or class of agreements, entities, undertakings or works as may be prescribed for the purposes of this section.

(3) Subject to the regulations, this Act does not apply in respect of a prescribed person or entity, whether incorporated or not, that enters into a prescribed project agreement to finance and undertake an improvement or to a prescribed class of such persons, entities or project agreements.

## **Substantial performance**

- 2 For the purposes of this Act, a contract or a subcontract is substantially performed
- (a) when the work under a contract or a subcontract or a substantial part of it is ready for use or is being used for the purpose intended, and
  - (b) when the work to be done under the contract or subcontract is capable of completion or correction at a cost of not more than
    - (i) 3% of the first \$500 000 of the contract or subcontract price,
    - (ii) 2% of the next \$500 000 of the contract or subcontract price, and
    - (iii) 1% of the balance of the contract or subcontract

RSA 1980 cB-12 s2;1985 c14 s3

## **Work not completed**

- 3 For the purposes of this Act, if

- (a) the work under a contract or a subcontract or a substantial part of it is ready for use or is being used for the purpose intended, and
- (b) the work under a contract or a subcontract cannot be completed expeditiously for reasons beyond the control of the contractor or the subcontractor,

the value of the work to be completed or materials to be furnished is to be deducted from the contract price in determining substantial performance.

1985 c14 s3

### **Valuation of work done**

- 4** For the purposes of this Act, the value of the work actually done and materials actually furnished shall be calculated on the basis of
- (a) the contract price, or
  - (b) the actual value of the work done and materials furnished, if there is not a specific contract price.

1985 c14 s3

## **Part 2** **Creation of Lien**

### **Waiver prohibited**

- 5** An agreement by any person that this Act does not apply or that the remedies provided by it are not to be available for the person's benefit is against public policy and void.

RSA 1980 cB-12 s3

### **Creation of lien**

- 6** **(1)** Subject to subsection (2), a person who
- (a) does or causes to be done any work on or in respect of an improvement, or
  - (b) furnishes any material to be used in or in respect of an improvement,

for an owner, contractor or subcontractor has, for so much of the price of the work or material as remains due to the person, a lien on the estate or interest of the owner in the land in respect of which the improvement is being made.

**(2)** When work is done or materials are furnished

- (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 work to be done or the material to be furnished, the lien given by subsection (1) attaches to all estates and interests in the mineral concerned, other than the estate in fee simple in the mines and minerals, unless the person holding the estate in fee simple in the mines and minerals has expressly requested the work or the furnishing of material, in which case the lien also attaches to the estate in fee simple in the mines and minerals but not to that person's estate, if any, in the rest of the land.

**(3)** A lien attaching to an estate or interest in mines and minerals also attaches to the minerals when severed from the land.

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

RSA 1980 cB-12 s4;1985 c14 s4

### **Highways and irrigation districts**

**7** **(1)** No lien exists with respect to a public highway or for any work or improvement caused to be done on it by a municipal corporation.

**(2)** No lien exists with respect to land held by an irrigation district or for any work or improvement caused to be done by an irrigation district.

RSA 1980 cB-12 s5;1999 cl-11.7 s214

### **Limitation of lien**

**8** **(1)** When the same lien attaches to estates or interests in more than one lot in respect of a separate improvement on each such lot, the lien does not apply so as to make the owner of any one lot liable in respect of that lot for a sum in excess of the price of the work done or material furnished in respect of the improvement on the lot less a proportionate share of any money paid to the person claiming the lien in respect of the work done on or the material furnished for all the lots to which the lien attaches.

**(2)** In this section, "lot" means a lot, block or parcel.

RSA 1980 cB-12 s6

### **Furnishing material**

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

**(2)** Notwithstanding that material to be used in an improvement may not have been delivered in strict accordance with subsection (1), if the material is incorporated in the improvement the person furnishing the material has a lien as set out in section 6.

RSA 1980 cB-12 s7

### **Date of lien**

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

RSA 1980 cB-12 s8

### **Priorities**

- 11 (1)** A lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises.
- (2)** Notwithstanding subsection (1), a payment made pursuant to an assignment, attachment, garnishment or receiving order that is paid, before a lien is registered, to a person for whose benefit the assignment, attachment, garnishment or receiving order is made or issued, takes priority over the lien.
- (3)** Notwithstanding subsection (2), no judgment, execution, assignment, attachment, garnishment or receiving order shall affect the amount required to be retained under sections 18(1), (1.1) or (1.2) and 23(1), (1.1) or (1.2).
- (4)** A registered mortgage or a mortgage registered by way of a caveat has priority over a lien to the extent of the mortgage money in good faith secured or advanced in money prior to the registration of the statement of lien.
- (5)** Advances or payments made under a mortgage after a statement of lien has been registered rank after the lien, but a mortgagee who has applied mortgage money in payment of a statement of lien that has been registered is subrogated to the rights and priority of the lienholder who has been so paid to the extent of the money so applied.
- (6)** An agreement for sale of land in respect of which a caveat has been filed and any money in good faith secured or payable under the agreement has the same priority over a lien as is provided for a mortgage and mortgage money in subsections (1) and (2), and for the purposes of this Act,
- (a) the seller is deemed to be a mortgagee, and
  - (b) any money in good faith secured and payable under such an agreement is deemed to be mortgage money in good faith secured or advanced.

RSA 2000 cB-7 s11;2001 c20 s3

### **Advancing of money**

- 12** Where

- (a) a search is made of a certificate of title,
- (b) at the time of the search there is not any statement of lien endorsed on that certificate of title, and
- (c) on the day that search is made, in reliance on that search,
  - (i) mortgage money is advanced under a mortgage registered against that certificate of title, or
  - (ii) money is paid under a contract or subcontract for work done or materials furnished in respect of the land for which the certificate of title was issued,

that money is deemed to have been advanced before the registration of any statement of lien not disclosed by that search notwithstanding that a statement of lien was registered against that certificate of title on the day that the search was made.

1985 c14 s6

### **Priority for wages**

- 13 (1)** A lien for the wages of a labourer has priority, to the extent of 6 weeks' wages, over all claims on that portion of the amount retained as required by section 18 or 23, as the case may be, to which the contractor or subcontractor through whom the lien is derived is entitled, and all such labourers rank without preference.
- (2)** Any device by an owner, contractor or subcontractor to defeat the priority given by this Act to a labourer for the labourer's wages is against public policy and void.

RSA 1980 cB-12 s10;1985 c14 s7

### **Land owned by married person or adult interdependent partner**

- 14 (1)** When work is done or material is furnished in respect of land in which a married person or an adult interdependent partner has an estate or interest, if the work is done or the material is furnished with the privity of the spouse of the married person or the other adult interdependent partner then, for the purposes of this Act, the spouse or other adult interdependent partner is conclusively presumed to be acting as the agent of the married person or the adult interdependent partner as well as for himself or herself.
- (2)** The presumption arising under subsection (1) applies only in respect of that part of the work done or portion of the materials furnished before the person doing the work or furnishing the materials has had actual notice that the spouse or the other adult interdependent partner is not the agent of the married person or the adult interdependent partner who has an estate or interest in the land.

RSA 2000 cB-7 s14;2002 cA-4.5 s21

## Liens on lease or life estate

**15 (1)** When the estate on which a lien attaches is a freehold estate for a life or lives or a leasehold estate then, if the person doing the work or furnishing the material gives to the person holding the fee simple, or that person's agent, notice in writing of the work to be done or materials to be furnished, the lien also attaches to the estate in fee simple unless the person holding that estate, or that person's agent, within 5 days after the receipt of the notice, gives notice that the person holding that estate will not be responsible for the doing of the work or the furnishing of the materials.

**(2)** When the estate on which a lien attaches is leasehold, no forfeiture or cancellation of a lease, except for non-payment of rent, is effective to deprive a lienholder of the benefit of the lien, but the lienholder may, in order to avoid forfeiture or termination of the lease for non-payment of rent, pay any rent due or accruing due on the lease and continue the lease to its term and the sum so paid may be added to the claim of the lienholder.

**(3)** This section applies in respect of land other than minerals.

RSA 1980 cB-12 s12

## Insurance money

**16** If any improvement on land in respect of which a lien attaches is wholly or partly destroyed, any money received or receivable by the owner by reason of any insurance on the land is subject to all claims for liens to the same extent as if the money had been realized by a sale of the land in proceedings to enforce a lien.

RSA 1980 cB-12 s13

## Removal of material

**17 (1)** During the continuance of a lien no part of the material giving rise to the lien shall be removed to the prejudice of the lien.

**(2)** Material actually delivered and to be used for an improvement

(a) is subject to a charge in favour of the person furnishing the material until incorporated in the improvement, and

(b) is not subject to execution or other process to enforce a debt other than a debt for the purchase of the material due to the person furnishing the material.

RSA 1980 cB-12 s14

## Major lien fund

**18 (1)** Irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 60 days from

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

**(1.1)** Notwithstanding subsection (1) and irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract with respect to improvements to an oil or gas well or to an oil or gas well site under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 90 days from

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

**(1.2)** Notwithstanding subsection (1) and irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract with respect to improvements primarily related to the furnishing on concrete as a material or work done in relation to concrete under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 90 days from

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

**(2)** In addition to the amount retained under subsection (1), (1.1) and (1.2), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 10% referred to in subsection (1), (1.1) and (1.2).

**(3)** Except as provided in section 13(1), when a lien is claimed by a person other than the contractor, it does not attach so as to make the major lien fund liable for a sum greater than the total of

- (a) 10% of the value of the work actually done or materials actually furnished by the contractor or subcontractor for whom and at whose request the work was done or the materials were supplied giving rise to the claim of lien, and
- (b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished.

**(4)** Except as provided in section 13(1), when, in respect of liens to which this section applies, there is more than one lien claim arising from work done or materials furnished for and at the request of the contractor or the same subcontractor, they do not attach so as to make the major lien fund liable in their cumulative total for a sum greater than the total of

- (a) 10% of the value of the work actually done or materials actually furnished by the contractor or subcontractor, as the case may be, and
- (b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished.

**(5)** A payment of an amount, other than that required to be retained under subsection (1), (1.1) and (1.2), that is made in good faith by an owner or mortgagee to a contractor at a time when there is not any lien registered is valid, so that the major lien fund is reduced by the amount of the payment.

**(6)** If a contractor or subcontractor defaults in completing the contractor's or subcontractor's contract, the major lien fund

- (a) shall not, as against a lienholder, be applied to the completion of the contract or for any purpose other than the satisfaction of liens, and
- (b) when distributed, shall be distributed in the manner prescribed by section 61.

**(7)** A person who in good faith underestimates the value of the work actually done or materials actually furnished at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated value, does not lose the protection afforded by this Act if the person provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

RSA 2000 cB-7 s18;2001 c20 s4

## **Certificate of substantial performance**

**19 (1)** Where a contractor is of the opinion that the contractor's contract is substantially performed, the contractor may issue and deliver to the owner a certificate of substantial performance in respect of the contract.

**(2)** Where a contractor or a subcontractor is of the opinion that the subcontractor's contract is substantially performed, the contractor or subcontractor may issue and deliver to the owner a certificate of substantial performance in respect of that subcontractor's contract.

**(3)** The certificate of substantial performance shall set out the date on which the certificate is issued.

1985 c14 s8

## Posting of certificate of substantial performance

**20 (1)** A person issuing a certificate of substantial performance under section 19 shall, within 3 days from the date of issuing the certificate, ensure that the persons working or furnishing materials have a reasonable opportunity of seeing the certificate by:

- (a) posting a signed copy of it in a conspicuous place on the job site which the certificate relates, or
- (b) providing an electronic copy of the signed certificate in accordance with the applicable contract or agreement.

**(2)** Where the person issuing a certificate of substantial performance fails to comply with this section, that person issuing the certificate is liable for legal and other costs and damages incurred by and resulting to a person by reason of the non-compliance.

1985 c14 s8

## Money required to be retained

**21 (1)** Notwithstanding section 18(1), if

- (a) a certificate of substantial performance is issued for a contract,
- (b) a period of 60 days has expired from the date of issue of the certificate of substantial performance, and
- (c) no lien has been registered,

the amount that the owner is required to retain under section 18 is reduced by 10% of the value of the work actually done and materials actually furnished under the contract at the date of issue of the certificate of substantial performance.

**(2)** Notwithstanding section 18(1), if

- (a) a certificate of substantial performance is issued for a subcontract,
- (b) a period of 60 days has expired from the date of issue of the certificate of substantial performance, and
- (c) no lien has been registered,

the amount that the owner is required to retain under section 18 is reduced by 10% of the value of the work actually done and materials actually furnished under the subcontract at the date of issue of the certificate of substantial performance.

**(3)** Notwithstanding section 18(1.1), if, with respect to improvements to an oil or gas well or to an oil or gas well site,

- (a) a certificate of substantial performance is issued for a contract,

(b) a period of 90 days has expired from the date of issue of the certificate of substantial performance, and

(c) no lien has been registered,

the amount that the owner is required to retain under section 18 is reduced by 10% of the value of the work actually done and materials actually furnished under the contract at the date of issue of the certificate of substantial performance.

**(4)** Notwithstanding section 18(1.1), if, with respect to improvements to an oil or gas well or to an oil or gas well site,

(a) a certificate of substantial performance is issued for a subcontract,

(b) a period of 90 days has expired from the date of issue of the certificate of substantial performance, and

(c) no lien has been registered,

the amount that the owner is required to retain under section 18 is reduced by 10% of the value of the work actually done and materials actually furnished under the subcontract at the date of issue of the certificate of substantial performance.

**(4.1)** Notwithstanding section 18(1.2), if, with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete,

(a) a certificate of substantial performance is issued for a contract or a subcontract, as the case may be,

(b) a period of 90 days has expired from the date of issue of the certificate of substantial performance, and

(c) no lien has been registered,

the amount that the owner is required to retain under section 18 is reduced by 10% of the value of the work actually done and materials actually furnished under the contract or the subcontract, as the case may be, at the date of issue of the certificate of substantial performance.

RSA 2000 cB-7 s21;2001 c20 s5

## Money held in trust

### 22 (1) Where

(a) a certificate of substantial performance is issued, and

(b) a payment is made by the owner after a certificate of substantial performance is issued



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

**(2)** When a person other than a person who received the payment referred to in subsection (1)

- (a) is entitled to the money held in trust under this section, and
- (b) receives payment pursuant to that trust,

the person, to the extent that the person owes money to other persons who provided work or furnished materials for the work or materials in respect of which the payment referred to in clause (b) was made, holds that money in trust for the benefit of those other persons.

**(3)** A person who is subject to the obligations of a trust established under this section is released from any obligations of the trust when that person pays the money to

- (a) the person for whom that person holds the money in trust, or
- (b) another person for the purposes of having it paid to the person for whom the money is held in trust.

1985 c14 s8

## Minor lien fund

**23 (1)** When a certificate of substantial performance is issued in respect of a contract, the owner shall retain for a period of 60 days from the date of the completion of the contract an amount equal to 10% of the value of the work actually done and materials actually furnished on or after the date of issue of the certificate of substantial performance.

**(1.1)** Notwithstanding subsection (1), with respect to improvements to an oil or gas well or to an oil or gas well site, when a certificate of substantial performance is issued in respect of a contract, the owner shall retain for a period of 90 days from the date of the completion of the contract an amount equal to 10% of the value of the work actually done and materials actually furnished on or after the date of issue of the certificate of substantial performance.

**(1.2)** Notwithstanding subsection (1), with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, when a certificate of substantial performance is issued in respect of a contract, the owner shall retain for a period of 90 days from the date of completion of the contract an amount equal to 10% of the value of the work actually done and materials actually furnished on or after the date of issue of the certificate of substantial performance.

**(2)** In addition to the amount retained under subsection (1), (1.1) or (1.2), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 10% referred to in subsection (1), (1.1) or (1.2) for work done and materials furnished on and after the date of issue of the certificate of substantial performance of the contract.

**(3)** Except as provided in section 13(1), when a lien to which this section applies is claimed by a person other than the contractor, it does not attach so as to make the minor lien fund liable for a sum greater than the total of

- (a) 10% of the value of the work actually done or materials actually furnished on and after the date of issue of the certificate of substantial performance by the contractor or subcontractor for whom and at whose request the work was done or the materials were furnished giving rise to the claim of lien, and
- (b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished on and after the date of issue of the certificate of substantial performance.

**(4)** Except as prescribed in section 13(1) when, in respect of liens to which this section applies, there is more than one lien claim arising from work done or materials furnished for and at the request of the contractor or the same subcontractor, they do not attach so as to make the minor lien fund liable in their cumulative total for a sum greater than the total of

- (a) 10% of the value of the work actually done or materials actually furnished on and after the date of issue of the certificate of substantial performance by the contractor or subcontractor, as the case may be, and
- (b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished on and after the date of issue of the certificate of substantial performance.

**(5)** A payment of an amount, other than that required to be retained under subsection (1), (1.1) or (1.2), that is made in good faith by an owner or mortgagee to a contractor at a time when there is not any lien registered is valid, so that the minor lien fund is reduced by the amount of the payment.

**(6)** If a contractor or subcontractor defaults in completing the contractor's or subcontractor's contract, the minor lien fund

- (a) shall not, as against a lienholder, be applied to the completion of the contract or for any purpose other than the satisfaction of liens, and
- (b) when distributed, shall be distributed in the manner prescribed by section 61.

**(7)** A person who in good faith underestimates the value of the work actually done or materials actually furnished at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated

value, does not lose the protection afforded by this Act if the person provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

RSA 2000 cB-7 s23;2001 c20 s6

### **Major lien fund and minor lien fund**

- 24 (1)** When a certificate of substantial performance is issued,
- (a) any lien arising out of work done or materials furnished before the date of issue of a certificate of substantial performance is a charge on the major lien fund, and
  - (b) any lien arising out of work done or materials furnished on and after the date of issue of a certificate of substantial performance of the contract is a charge on the minor lien fund.
- (2)** When a minor lien fund does not arise under section 23, any lien arising out of work done or materials furnished is a charge on the major lien fund

RSA 1980 cB-12 s15(4);1985 c14 s8

### **Payment of amount retained under section 18, 21 and 23**

**24.1 (1)** Subject to subsection (2), an owner **must** make a payment of the amount retained under section 18(1), (1.1) or (1.2), 21(1), (1.1) or (1.2).

**(2)** Subsection (1) applied if the following conditions are met:

- (a) The contract provides
  - (i) for a completion schedule that is longer than one year and for the payment of accrued amounts under section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2) on an annual basis, or
  - (ii) for the payment of amounts accrued under section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2) on a phased basis specified in the contract;
- (b) the contract price at the time the contract is entered into exceeds the prescribed amount;
- (c) as of the payment date, as may be applicable under clause (a)(i) or (ii),
  - (i) there are no liens filed in respect of the contract, or
  - (ii) all liens filed in respect of the contract have been satisfied, discharged or otherwise provided for under this Act;
- (d) any other conditions as may be prescribed.

## Liability of owner

- 25** An owner is not liable under this Act for more than
- (a) the total of the major lien fund and the minor lien fund, or
  - (b) the major lien fund, where a minor lien fund does not arise under section 23.

RSA 1980 cB-12 s15(5);1985 c14 s8

## Holdback by mortgagee

- 26** A mortgagee authorized by the owner to disburse money secured by a mortgage may retain the amount required to be retained by the owner as the person primarily liable on the contract and the retention by the mortgagee of that amount is deemed to be a compliance with section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2), as the case may be, by the owner as the person primarily liable on the contract.

RSA 2000 cB-7 s26;2001 c20 s7

## Payment from lien fund

- 27** **(1)** On the expiration of 60 days from the day that the contract is completed, payment of the major lien fund may be validly made so as to discharge the owner's liability in respect of all liens that are a charge on the major lien fund, unless a statement of lien is registered.
- (2)** Notwithstanding subsection (1), on the expiration of 60 days
- (a) from the date of issue of a certificate of substantial performance, payment of the major lien fund may be validly made, and
  - (b) from the day that the contract is completed, payment of the minor lien fund may be validly made,

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

**(2.1)** Notwithstanding subsection (1), with respect to improvements to an oil or gas well or to an oil or gas well site, on the expiration of 90 days from the day that the contract is completed, payment of the major lien fund may be validly made so as to discharge the owner's liability in respect of all liens that are a charge on the major lien fund, unless a statement of lien is registered.

**(2.11)** Notwithstanding subsection (1), with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, on the expiration of 90 days from the day that the contract is completed, payment of the major lien fund may be validly made so as to discharge the owner's liability in respect of all liens that are a charge on the major lien fund, unless a statement of lien is registered.

**(2.2)** Notwithstanding subsection (2.1), with respect to improvements to an oil or gas well or to an oil or gas well site, on the expiration of 90 days

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

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

**(2.21)** Notwithstanding subsection (2.11), with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, on the expiration of 90 days

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

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

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

- (a) by interlocutory application in any proceedings that have been commenced to enforce a lien, or
- (b) on application in any other case,

give security for or pay into court the amount of the major lien fund, the minor lien fund, or both, as the case may be.

**(4)** On an application under subsection (3), notice shall be given as provided in section 51.

**(5)** Security given or payment into court under subsection (2) discharges the owner from any liability in respect of liens and

- (a) the security or money when given or paid into court stands in the place of the land, and
- (b) the order shall provide that the liens be removed from the title to the land concerned.

**(6)** On an application under subsection (3), the court

- (a) may hear and receive any evidence, by affidavit, orally or otherwise, it considers necessary to determine the proper amount of the lien fund to be paid into court,
- (b) may direct the trial of an issue to determine the amount of the lien fund to be paid into court, and
- (c) may refuse the application if it is of the opinion that the determination of the amount of the lien fund should be made at the trial of the action.

RSA 2000 cB-7 s27;2001 c20 s8;2009 c53 s28

### **Payment where contract price not money**

**28 (1)** If a lien becomes a charge on the amount required to be retained under section 18 or 23 and the contract price is not payable in money, the owner or the person primarily liable on the contract shall pay in money the percentage of the value to be retained by the owner or the person primarily liable on the contract.

**(2)** When the owner or the person primarily liable on the contract desires to avail himself or herself of the provisions of section 27 and give security for or pay into court the amount to be retained and the contract price is not payable in money, the court may, on application by the owner on any notice, if any, that the court directs, fix the amount of the security that is to be given or money that is to be paid into court with respect to the value of the percentage to be retained.

RSA 1980 cB-12 s19;1985 c14 s11

### **Payment to lienholder by owner, etc.**

**29 (1)** If an owner, mortgagee, contractor or subcontractor

(a) gives written notice to

(i) the person liable on the contract or the person's agent, and

(ii) the persons liable on any intervening contracts or their agents,

of the intention of the owner, mortgagee, contractor or subcontractor to make payment to a person who has a lien for or on account of a debt due to that person for work done or materials furnished and for which the person giving notice is not liable on the contract, and

(b) does not receive from any person to whom a notice was given under clause (a), or the person's agent, within 5 days from the day on which the notice was given, an objection to the making of the payment,

the owner, mortgagee, contractor or subcontractor may, subject to subsection (2), make the payment and the payment is a payment on the contract or, in the case of a mortgagee, an advance on the mortgage, and on the intervening contracts, as the

case may be, but not so as to affect the percentage required to be retained by the owner under section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2), as the case may be.

**(2)** A payment shall not be made under subsection (1) if the person intending to make the payment receives from any person to whom a notice was given under subsection (1)(a), or the person's agent, an objection to the making of the payment before the payment is made.

RSA 2000 cB-7 s29;2001 c20 s9

### **Assignment**

**30** The right of a lienholder may be assigned in writing and, if not so assigned, passes on the lienholder's death to the lienholder's personal representative.

RSA 1980 cB-12 s21

### **Merging of lien**

**31 (1)** A lien is not merged, paid, satisfied, prejudiced or destroyed by

- (a) the taking of any security,
- (b) the acceptance of a promissory note or bill of exchange,
- (c) the taking of any acknowledgment of the claim,
- (d) the giving of time for payment, or
- (e) the taking of proceedings for the recovery of a personal judgment,

unless the lienholder agrees in writing that such an action is to have that effect.

**(2)** If a promissory note or bill of exchange issued in respect of the claim of a lienholder has been negotiated, the lienholder does not by that negotiation lose the lienholder's lien if the lienholder is the holder of the promissory note or bill of exchange

- (a) at the time of beginning proceedings to enforce the lien, or
- (b) at the time of proving the lienholder's claim in proceedings, when those proceedings are brought by another lienholder.

RSA 1980 cB-12 s22

### **Proving claim**

**32** If the period of credit in respect of a claim has not expired or if there has been an extension of time for payment of the claim then, if proceedings are commenced by any other person to enforce a lien against the same property, the lienholder may, nevertheless, prove and obtain payment of the lienholder's claim in those proceedings as if the period of credit or the extended time had expired.

RSA 1980 cB-12 s23

## Part 3

### Prompt Payment

#### Proper invoice

**32.1 (1)** For the purposes of this Part, “proper invoice” means a written bill or other request for payment for the work done or materials furnished in respect of an improvement under a contract if the written bill or request for payment contains the following information and, subject to subsection (4), meets any other requirements as may be specified in the contract:

- (a) the contractor’s name and business address;
- (b) the date of the proper invoice and the period during which the work was done or materials were furnished;
- (c) information identifying the authority, whether in a written or verbal contract or otherwise, under which the work was done or materials were furnished;
- (d) a description of the work done or materials furnished;
- (e) the amount requested for payment and the corresponding payment terms broken down for the work done or materials furnished;
- (f) the name, title and contact information of the person to whom the payment is to be sent;
- (g) a statement indicating that the invoice provided is intended to constitute a proper invoice;
- (h) any other information that may be prescribed.

**(2)** A requirement to pay an amount in accordance with this Part is subject to any requirement to retain an amount according to Part 2.

**(3)** Subject to subsection (4), a provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a person or prior approval of the owner to give the invoice is of no force or effect.

**(4)** Subject to the regulations, subsection (3) does not apply to a provision in a contract that provides for the testing and commissioning of the improvement or of the work done or materials furnished under the contract.

**(5)** A proper invoice may be revised if

- (a) the parties to the proper invoice agree to a revision,
- (b) the date of the proper invoice is not changed, and



- (c) the proper invoice continues to meet the requirements referred to in subsection (1).

(6) Subject to the regulations, proper invoices must be given to an owner at least every 31 days unless the contract includes a provision for the testing and commissioning of the improvement or of the work done or materials furnished under the contract and the conditions of testing and commissioning are not met.

### **Payment deadline – owner to contractor**

**32.2 (1)** Subject to subsection (2), an owner who owes money under a proper invoice must pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice.

**(2)** An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice within the time specified in subsection (1) if, no later than 14 days after receiving the proper invoice, **the owner gives the contractor** a notice of dispute, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing any reasons for non-payment.

**(3)** Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice of dispute under subsection (2).

### **Payment deadlines – contractor to subcontractor**

**32.3 (1)** Subject to the giving of a notice of non-payment under subsection (6), a contractor who received full payment of a proper invoice within the time specified in section 32.2(1) must, no later than 7 days after receiving payment, pay each subcontractor the amount payable to the subcontractor for the work done or materials furnished under a subcontract with the contractor that were included in the proper invoice.

**(2)** Subject to the giving of a notice of non-payment under subsection (6), if the payment received by the contractor from the owner is only for a portion of the amount payable under a proper invoice, the contractor must, no later than 7 days after receiving payment, pay each subcontractor the amount paid by the owner for the work done or materials furnished under a subcontract with the contractor that were included in the proper invoice.

**(3)** For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment must be made in accordance with the following rules:

- (a) if the amount not paid by the owner is specific to the work done or materials furnished by a particular subcontractor or subcontractors,
- (i) the other subcontractors must be paid, and
  - (ii) any amount paid by the owner with respect to the subcontractor or subcontractors who are implicated in the dispute mentioned in section

32.2(2) must be paid to the subcontractor or subcontractors on a proportionate basis, as applicable;

(b) in any other case, all subcontractors must be paid on a proportionate basis.

(4) Subject to subsection (5) or (6), as the case may be, if the owner does not pay some or all of the amount payable under a proper invoice within the time specified in section 32.2(1), the contractor must, no later than 35 days after giving the proper invoice to the owner, pay each subcontractor the amount payable to each subcontractor for the work done or materials furnished under a subcontract with the contractor that were included in the proper invoice to the extent that the contractor was not paid in full under subsection (2).

(5) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (7), the contractor provides to the subcontractor the following:

(a) a notice of non-payment, in the prescribed form and manner,

(i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment  
b) the owner, and

(ii) specifying the amount not being paid;

(b) an undertaking to refer the matter to adjudication under Part 5 no later than 21 days after giving the notice to the subcontractor;

(c) a copy of any notice of dispute given by the owner under subsection 32.2(2).

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1) or (2), as the case may be, if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all the reasons for non-payment.

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than

(a) 7 days after receiving a notice of dispute from the owner under subsection 32.2(2), or

(b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4).

(8) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice of non-payment under subsection (5), once the amount is paid by the owner.

## **Notice of non-payment**

**32.4** (1) Subject to the regulations, a contractor who receives a notice of dispute under section 32.2(2) must, without delay, advise its subcontractors of the receipt of that notice.

(2) Subject to the regulations, a subcontractor who receives a notice of non-payment under section 32.3(6) must, without delay, advise its subcontractors of the receipt of that notice.

## **Payment deadlines – subcontractor to subcontractor**

**32.5** (1) Subject to subsection (7), a subcontractor who receives full payment from a contractor in respect of a proper invoice within the time specified in section 32.3(1) must, no later than 7 days after receiving payment, pay each subcontractor the amount payable to the subcontractor for the work done or materials furnished under a subcontract between them that were included in the proper invoice.

(2) Subject to the giving of a notice of non-payment under subsection (7), if the payment received by the subcontractor from the contractor is only for a portion of the amount payable to the subcontractor in respect of a proper invoice, the subcontractor must, no later than 7 days after receiving payment, pay each subcontractor the amount paid by the contractor for the work done or materials furnished under a subcontract between the subcontractor and the other subcontractors that were included in the proper invoice.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment must be made in accordance with the following rules:

- (a) if the amount not paid by the contractor is specific to the work done or materials furnished by a particular subcontractor or subcontractors,
  - (i) the other subcontractors must be paid; and
  - (ii) any amount paid by the owner with respect to the subcontractor or subcontractors who are implicated in the dispute mentioned in subsection 32.2(2) must be paid to the subcontractor or subcontractors on a proportionate basis, as applicable;
- (b) in any other case, all subcontractors must be paid on a proportionate basis.

(4) Subject to subsections (6) and (7), if the contractor does not pay some or all of the amount payable to a subcontractor in respect of a proper invoice within the time specified in section 32.3(1), the subcontractor must, no later than the date specified in subsection (5), pay each subcontractor the amount payable to each subcontractor for the work done or materials furnished under a subcontract with that subcontractor that were included in the proper invoice to the extent that the subcontractor was not paid in full under subsection (2).

(5) For the purposes of subsection (4), the subcontractor must pay the amounts no later than

- (a) 7 days after the subcontractor receives payment from the contractor, or
- (b) if no payment is made by the contractor to the subcontractor, 42 days after the proper invoice was given to the owner.

(6) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (8), the subcontractor required to pay under subsection (4) gives to the other subcontractor, the following:

- (a) a notice of non-payment, in the prescribed form and manner,
  - (i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (5) due to non-payment by the contractor, and
  - (ii) specifying the amount not being paid;
- (b) unless the failure of the contractor to pay is as a result of non-payment by the owner, an undertaking to refer the matter to adjudication under Part 5 no later than 21 days after giving the notice to the subcontractor;
- (c) a copy of any notices of dispute or non-payment, as the case may be, received by the subcontractor in relation to the proper invoice.

(7) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1) or (2), as the case may be, if, no later than the date specified in subsection (8), the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all the reasons for non-payment.

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than

- (a) 7 days after receiving a notice of non-payment from the contractor under section 32.3(5) or (6), or
- (b) if no notice was given by the contractor, before the expiry of the period referred to in subsection (5)(b).

(9) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (6), once the amount is paid by the contractor.

(10) On the request of a subcontractor who is required to make payments in accordance with this section, a contractor must, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

(11) This section applies, with necessary modifications, in respect of a subcontractor who is entitled to payment in accordance with this section and any amounts payable by that subcontractor to any other subcontractor under a subcontract in respect of the work done or materials furnished.

### **Interest on late payments**

**32.6** Interest begins to accrue in accordance with the prescribed rates on any amounts included in a proper invoice that are unpaid and due.

### **No effect on wages**

**32.7** Nothing in this Part in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages to an employee as provided for by statute, contract or collective bargaining agreement.

## **Part 4** **Right to Information**

### **Inspection of contract or subcontract**

**33** **(1)** In this section, “applicable person” means a person who falls under any of the categories of persons specified in subsection (2).

**(2)** The following persons, by notice in writing, may at any reasonable time demand the production for inspection of the contract and statement of the state of accounts referred to in subsection (3):

(a) a lienholder;

(b) a beneficiary of a trust;

(c) a contractor or subcontractor currently working under a contract for an owner, contractor or subcontractor, if requesting information about a particular project under the contract.

**(3)** A demand under subsection (2) may be

(a) of the owner or the owner’s agent, for the contract with the contractor,

(b) of the contractor,

(i) for the contract with the owner, or

(ii) for the contract with the subcontractor through whom the applicable person’s claim is derived,

(c) of the subcontractor, for the contract with the contractor through whom the applicable person’s claim is derived, or

(d) for a statement of the state of accounts between the owner and contractor or between contractor and subcontractor, as the case may be, containing all information prescribed.

(4) If, at the time of the demand or within 6 days after the demand is made under this section, the owner or the owner's agent, the contractor or the subcontractor, as the case may be,

- (a) does not produce the written contract or statement of the state of accounts, or
- (b) if the contract is not in writing,
  - (i) does not, in writing, inform the person making the demand of the terms of the contract or the amount due and unpaid on the contract, or
  - (ii) knowingly and falsely states the terms of the contract or the amount due or unpaid on the contract,

then, if the applicable person sustains loss by reason of the refusal, neglect or false statement, the owner, contractor or subcontractor, as the case may be, is liable to the applicable person in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of a lienholder's lien.

(5) An applicable person, by notice in writing, may at any reasonable time demand of a mortgagee or the mortgagee's agent or unpaid vendor or the unpaid vendor's agent

- (a) the terms of any mortgage on the land or any agreement for sale of the land in respect of which the work is or is to be done or in respect of which materials are or are to be furnished, and
- (b) a statement showing the amount advanced and the amount currently due and owing on the mortgage or the amount owing on the agreement, as the case may be.

(6) If the mortgagee or vendor or the mortgagee's or vendor's agent fails to inform the applicable person within 6 days after the date of the demand

- (a) of the terms of the mortgage or agreement, and
- (b) of the amount owing on it,

then, if the applicable person sustains loss by reason of the failure or any misstatement by the mortgagee or vendor of the terms or amount owing, the mortgagee or vendor is liable to the applicable person in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of the lienholder's lien.

(7) The court may on application at any time before or after proceedings are commenced for the enforcement of the lien make an order requiring

- (a) the owner or the owner's agent,
- (b) the contractor,

- (c) a subcontractor,
- (d) the mortgagee or the mortgagee's agent, or
- (e) the unpaid vendor or the unpaid vendor's agent,

as the case may be, to produce and allow an applicable person to inspect any contract, agreement, mortgage, agreement for sale, statement of the amount advanced or statement of the amount due and owing, or such other document as the court considers appropriate, on any terms as to costs that the court considers just.

## **Part 5** **Dispute Adjudication**

### **Definitions**

#### **33.1** In this Part,

- (a) "adjudication" means construction dispute adjudication with respect to a prescribed matter;
- (b) "adjudicator" means a person who is qualified by a Nominating Authority as an adjudicator;
- (c) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (d) "Nominating Authority" means a Nominating Authority designated under section 33.2(1).

### **Nominating Authority**

**33.2 (1)** The Minister may designate one or more entities to act as a Nominating Authority for the purposes of this Part.

**(2)** A Nominating Authority must perform the following duties:

- (a) qualify persons who meet the prescribed requirements as adjudicators;
- (b) appoint adjudicators for the purposes of this Part;
- (c) arrange for the hearing by adjudicators of prescribed matters for which that Nominating Authority is responsible;
- (d) develop and oversee programs for the training of persons as adjudicators;
- (e) establish and maintain a publicly available registry of adjudicators;
- (f) perform any other duties as may be prescribed for the purposes of this Part.

## **Minister as interim Nominating Authority**

**33.3** The Minister may act as a Nominating Authority on an interim basis for any period during which no entity is designated under section 33.2(1).

## **Adjudication of dispute**

**33.4** (1) Provided that no party has commenced an action in court with respect to a dispute, a party to a contract or subcontract may refer to adjudication a dispute with the other party to the contract or subcontract, as the case may be, respecting any prescribed matter in accordance with this section and the regulations or the procedures established by the Nominating Authority responsible for that matter.

(2) An adjudication may not be commenced if the notice of adjudication is given after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise.

(3) If a party commences an action in court with respect to a dispute on the same date that the dispute is referred to adjudication under subsection (1), the adjudicator shall discontinue the adjudication and the action shall proceed.

## **Adjudication procedures**

**33.5** (1) An adjudication must be conducted in accordance with the adjudication procedures set out in the regulations or established by the responsible Nominating Authority.

(2) Adjudication procedures set out in a contract or subcontract apply only to the extent that they do not conflict with the procedures set out by the regulations or established by the responsible Nominating Authority.

(3) In the event of a conflict between the procedures set out by the regulations and those established by a Nominating Authority, the procedures set out by the regulations prevail.

## **Hearing and determination by adjudicator**

**33.6** (1) Subject to subsections (2) and (3), an adjudicator may hear a dispute regarding any matter prescribed under this Part.

(2) An adjudicator may refer any matter to the court if the adjudicator does not have the jurisdiction to hear the matter or where, in the opinion of the adjudicator, the court is the more appropriate forum for hearing the matter.

(3) An adjudicator may refuse to hear a dispute if, in the opinion of the adjudicator, the dispute is frivolous or vexatious.

(4) The adjudicator shall issue a written notice of determination accompanied by the adjudicator's order, if any, concerning the matter.

(5) The determination of a matter by the adjudicator is binding on the parties to the adjudication, except where



- (a) a court order is made in respect of the matter,
- (b) a party applies for a judicial review of the decision under section 33.7,
- (c) the parties have entered into a written agreement to appoint an arbitrator under the *Arbitration Act*, or
- (d) the parties have entered into a written agreement that resolves the matter.

(6) Except in the case of an application for judicial review under section 33.7, nothing in this Part restricts the authority of the court of an arbitrator to consider the merits of a matter determined by an adjudicator.

33.61 (1) If a party meets all of the following requirements, the clerk of the court shall register an adjudicator's order referred to in section 33.6(4) as an order of the court:

- (a) the order is submitted to the clerk of the court not less than 30 days after the parties have received the order;
- (b) neither party has applied for a judicial review of the decision under section 33.7;
- (c) the parties have not entered into a written agreement to appoint an arbitrator under the *Arbitration Act*;
- (d) the parties have not entered into a written agreement that resolves the matter;
- (e) the additional requirements, if any, set out in the regulations.

(2) On being registered, the order has, from the date it is registered, the same effect as if it were an order made by an Alberta court.

(3) The registration of an order pursuant to subsection (1) may not be made after the later of the following:

- (a) 2 years after the date of the written notice referred to in section 33.6(4);
- (b) if applicable, 2 years after the date of the final determination of an application for judicial review under section 33.7, if the application did not result in the adjudicator's order being set aside.

(4) A party shall serve written notice on the other party no later than 10 days after the clerk of the court registered an adjudicator's order the subsection (1).

(5) If an order registered under subsection (1) requires that an amount be paid to a contractor or subcontractor, any related requirement of the contractor or subcontractor, as the case may be, to make payment to a subcontractor is deferred pending the outcome of the enforcement of the order.

## **Judicial review**

**33.7** An application for judicial review of a determination of an adjudicator may be made in accordance with this Part, [the regulations](#) and the *Alberta Rules of Court* (AR 124/2010).

## **Limitation**

**33.8** An application for judicial review of the determination of an adjudicator shall be filed with the court and served no later than 30 days from the date of the notice of determination.

## **Immunity**

**33.9** (1) No action or other proceeding lies against a Nominating Authority, an adjudicator or any employee of a Nominating Authority for any act done or omitted to be done by the Nominating Authority, adjudicator or employee, as the case may be, in good faith while exercising any power or performing any duty under this Part or the regulations.

(2) An adjudicator shall not be compelled to give evidence in an action or other proceeding in respect of an adjudication conducted by that adjudicator.

## **Part 6** **Registration**

### **Registration of lien**

**34** (1) A lien may be registered in the land titles office by filing with the Registrar a statement of lien in the prescribed form.

(2) The statement of lien shall set out

(a) the name and residence of

(i) the lienholder,

(ii) the owner or alleged owner, and

(iii) the person for whom the work was or is being done or the materials were or are being furnished,

(b) the date when the work was completed or the last materials were furnished, or if the statement of lien is filed before the completion of the contract or subcontract, as the case may be, a statement that the work is not yet completed or the materials have not yet all been furnished,

(c) a short description of the work done or to be done or of the materials furnished or to be furnished,

(d) the sum claimed as due or to become due,

(e) a description, sufficient for registration, of the land and estate or interest in the land to be charged, and

(f) an address for service of the lienholder in Alberta.

**(3)** A statement of lien shall be signed by the lienholder or the lienholder's agent.

**(4)** In the case of a lien arising in connection with an oil or gas well or an oil or gas well site it is not necessary to set out in the statement of lien the name of the owner or alleged owner of the oil or gas well or the oil or gas well site.

**(5)** When a lienholder desires to register a lien against a railway, it is a sufficient description of the land to describe it as the land of the railway company.

**(6)** The statement of lien shall be verified by an affidavit in the prescribed form of the lienholder or of the lienholder's agent or assignee.

**(7)** When the statement of lien is made by a corporation, it shall be verified by the affidavit of an officer or employee of the corporation or its agent.

**(8)** When the affidavit is made by a person other than the lienholder it may be made not only as to the facts within the personal knowledge of the deponent, but also as to the facts of which the deponent is informed, if the deponent gives the source of the deponent's information and states that the deponent believes the facts to be true.

RSA 2000 cB-7 s34;2001 c20 s10

### Forms for registering lien

**35 (1)** A Registrar shall be supplied with printed forms of statements of lien and affidavits, in blank, which must be supplied to every person requesting them and desiring to register a lien.

**(2)** A Registrar shall decide whether the Registrar's office is or is not the appropriate office for the registration of the statement of lien and shall direct the applicant accordingly.

**(3)** No lien shall be registered unless the claim or joined claims amount to or aggregate \$700 or more.

**(4)** The Registrar shall, in accordance with the *Land Titles Act*, register the lien as an encumbrance against the estate or interest in the land affected, or if the land affected has not been registered under the *Land Titles Act*, the Registrar shall make a record of the lien in a book or in any other manner that the Registrar considers advisable.

RSA 1980 cB-12 s26;1985 c14 s14;1986 cD-18.1 s14;1990 c28 s12

## Estate or interest in minerals

**36 (1)** When a lien attaches to an estate or interest in minerals held directly from the Crown in right of Alberta and the estate or interest

- (a) is less than a fee simple estate, and
- (b) is not registered under the *Land Titles Act*,

the statement of lien shall be registered with the Minister of Energy and not with the Registrar and this Act applies to all claims of lien so registered with the Minister of Energy.

**(2)** In subsections (3) to (6),

- (a) “agreement”, “lessee” and “location” have the meanings given to them by the *Mines and Minerals Act*,
- (b) “Minister” means the Minister of Energy.

**(3)** If

- (a) a lien is registered against an agreement,
- (b) the Minister, as a consequence of a right of lease selection conferred on the lessee of the agreement, issues one or more leases for all or part of the location of the agreement, and
- (c) the lien attaches to any part of the location of the agreement that becomes the location of any lease so issued,

the registration of the lien shall be continued in respect of each lease so issued as though the lien referred to it and as though the lease had been issued prior to the registration of the lien.

**(4)** If a lien is registered against an agreement and

- (a) a transfer of part of the location of the agreement is registered under Part 6, Division 1 of the *Mines and Minerals Act*, a new agreement is issued for the part of the location so transferred and the lien attaches to the part of the location so transferred,
- (b) the agreement is divided by the Minister into 2 or more agreements pursuant to that Act and the lien attaches to any part of the location of the agreement that becomes the location of a new agreement issued as a consequence of the division, or
- (c) the agreement and one or more other agreements are consolidated by the Minister into one agreement pursuant to that Act,

the registration of the lien shall be continued in respect of the new agreement or the consolidated agreement, as the case may be, as though the lien referred to it and as though the issuance of the agreement or the consolidation had occurred prior to the registration of the lien.

**(5)** When an agreement is reinstated pursuant to section 8(1)(e) of the *Mines and Minerals Act*, the agreement is subject to all the liens registered against the agreement when it was surrendered or cancelled as though the agreement had not been surrendered or cancelled.

**(6)** When the term of an agreement is extended pursuant to section 8(1)(h) of the *Mines and Minerals Act* after the expiration of the term, the agreement is subject to all liens registered against the agreement immediately before the expiration of the term so extended as though the term had not expired.

RSA 2000 cB-7 s36;2003 c42 s2

### Validity of lien

**37 (1)** A substantial compliance with section 34 is sufficient and a lien shall not be invalidated by failure to comply with any requirements of section 34 unless, in the opinion of the court, the owner, contractor, subcontractor, mortgagee or some other person is prejudiced by the failure.

**(2)** When, in the opinion of the court, a person is prejudiced by a failure to comply with section 34, the lien shall be invalidated only to the extent that the person is prejudiced by the default.

**(3)** Nothing in this section dispenses with the requirement of registration of a lien.

RSA 1980 cB-12 s27

### Reinstatement of lien

**38 (1)** On an application to the court by a lien claimant whose lien has been invalidated by an order or judgment for failure to comply with section 155 or 156 of the *Land Titles Act*, the court may order the reinstatement of the lien or make any other order that is just in the circumstances subject to the order not prejudicing

(a) any rights acquired in good faith for valuable consideration subsequent to the discharge of the lien at the land titles office as a result of the order or judgment invalidating the lien, or

(b) any person who has acted in reliance on

(i) the order or judgment invalidating the lien, or

(ii) the discharge of the lien at the land titles office as a result of the order or judgment invalidating the lien.

**(2)** In a proceeding under this section, the court may extend any time limits provided for under this Act as the court considers proper in the circumstances.

**(3)** The application shall be served on all persons who by the records of the land titles office appear to have an interest in the land in question and on any other persons that the court may direct.

**(4)** All persons, including lienholders, served with an application are parties to the proceeding.

**(5)** A court clerk in the judicial centre in which a proceeding is begun under this section may grant a certificate of lis pendens to a lien claimant

(a) who is a party to the proceeding, and

(b) whose lien was invalidated for failure to comply with section 155 or 156 of the *Land Titles Act*.

**(6)** A lien claimant who is granted a certificate of lis pendens under subsection (5) may cause the certificate of lis pendens to be registered in the appropriate land titles office.

**(7)** On receiving

(a) a certificate from a court clerk stating that the proceeding for which a certificate of lis pendens was granted is discontinued, or

(b) a withdrawal of a certificate of lis pendens signed by the person on whose behalf the certificate was registered,

(c) the Registrar shall cancel registration of the certificate of lis pendens.

**(8)** No order or judgment shall be made or granted in any action, including any action commenced before the coming into force of this section, invalidating a lien for the failure of the statement of lien to comply with section 155 or 156 of the *Land Titles Act*.

RSA 2000 cB-7 s38;2009 c53 s28;2011 c14 s2;  
2011 c20 s2

## **Change of address**

**39 (1)** A lienholder may change the lienholder's address for service within Alberta by delivering to the Registrar a notice of change of address for service in the prescribed form.

**(2)** The Registrar shall

(a) on receipt of a notice of change of address for service, and

(b) on receipt of the proper fee,

enter the notice of change of address in the day book and make a memorandum setting out the new address for service on the registered statement of lien.

## Wrongful registration

- 40** In addition to any other grounds on which the person may be liable, a person who registers a lien against a particular estate or interest in land or a particular parcel of land
- (a) for an amount grossly in excess of the amount due to the person or that the person expects to become due to the person, or
  - (b) when the person knows or ought reasonably to know that the person does not have a lien,

is liable for legal and other costs and damages incurred as a result of it unless that person satisfies the court that the registration of the lien was made or the amount of the lien was calculated in good faith and without negligence.

RSA 1980 cB-12 s29;1985 c14 s15

## Time for registration

- 41** **(1)** A lien for materials may be registered at any time within the period commencing when the lien arises and
- (a) subject to clauses (b) and (c), terminating 60 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned,
  - (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned, or
  - (c) with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, terminating 90 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned.
- (2)** A lien for the performance of services may be registered at any time within the period commencing when the lien arises and
- (a) subject to clauses (b) and (c), terminating 60 days from the day that the performance of the services is completed or the contract to provide the services is abandoned,
  - (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the performance of the services is completed or the contract to provide the services is abandoned, or
  - (c) with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, terminating 90 days from the day that the performance of the services is completed or the contract to provide the services is abandoned.

**(3)** A lien for wages may be registered at any time within the period commencing when the lien arises and

- (a) subject to clauses (b) and (c), terminating 60 days from the day that the work for which the wages are claimed is completed or abandoned,
- (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the work for which the wages are claimed is completed or abandoned, or
- (c) with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, terminating 90 days from the day that the work for which the wages are claimed is completed or abandoned.

**(4)** In cases not referred to in subsections (1) to (3), a lien in favour of a contractor or subcontractor may be registered at any time within the period commencing when the lien arises and

- (a) subject to clauses (b) and (c), terminating 60 days from the day the contract or subcontract, as the case may be, is completed or abandoned,
- (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day the contract or subcontract, as the case may be, is completed or abandoned, or
- (c) with respect to improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete, terminating 90 days from the day the contract or subcontract, as the case may be, is completed or abandoned.

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

RSA 2000 cB-7 s41;2001 c20 s11

## **Part 7** **Expiry and Discharge of Lien**

### **Expiry of unregistered lien**

- 42** If a lien is not registered within the time limited by section 41, the lien ceases to exist.

RSA 1980 cB-12 s31

### **Expiry of registered lien**

- 43** **(1)** A lien that has been registered ceases to exist unless, within 180 days from the date it is registered,



(a) an action is commenced under this Act

(i) to realize on the lien, or

(ii) in which the lien may be realized,

and

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

**(2)** A court clerk in the judicial centre in which an action is begun may grant a certificate of lis pendens to any lienholder who is a party to the proceedings.

**(3)** Any lienholder who is a party to the proceedings may cause a certificate of lis pendens to be registered in the appropriate land titles office.

**(4)** On receiving

(a) a certificate from a court clerk stating that proceedings for which a certificate of lis pendens was granted are discontinued, or

(b) a withdrawal of a certificate of lis pendens signed by the person on whose behalf the certificate was registered or the person's agent, if the claim was signed by that agent, the Registrar shall cancel registration of the certificate of lis pendens.

**(5)** The Registrar without charge may on the Registrar's own initiative, and shall on request, cancel registration of a lien where the lien has ceased to exist under subsection (1).

RSA 2000 cB-7 s43;2011 c20 s2

### **Lien as charge against money**

**44** Notwithstanding section 43, if the court has ordered that a lien be removed under section 27 or 48(1) the lien, as a charge against the money paid into court or the security given, does not cease to exist by reason that

(a) a certificate of lis pendens is not registered in the appropriate land titles office, or

(b) an action has not been commenced within 180 days from the date that the lien is registered.

1985 c14 s18

### **Notice to commence an action**

**45 (1)** Notwithstanding section 43 or 44, if an owner or another person affected by a lien serves written notice on the registered lienholder to commence an action to realize on the lienholder's lien and the registered lienholder does not

- (a) commence an action to realize on the lien and pursuant to that action register in the appropriate land titles office a certificate of lis pendens, or
- (b) where the lienholder is a party to an action commenced by another registered lienholder to realize on a lien, register in the appropriate land titles office a certificate of lis pendens in respect of the lienholder's lien,

within 30 days from the day that the registered lienholder is served with the notice, the lien ceases to exist.

**(2)** Subsection (1) does not apply, with respect to the registration of a certificate of lis pendens, where

- (a) security is given or payment is made into court, and
- (b) the lien is removed from the title to the land concerned.

**(3)** Notwithstanding section 67, for the purposes of this section, service of a notice under subsection (1) shall be made only by

- (a) personal service,
- (b) single registered mail sent to the address for service set out in the statement of lien, or
- (c) delivery to the address that is the address for service set out in the statement of lien.

1985 c14 s18

### **Continuation of lien**

**46 (1)** A lien that has continued to exist by reason of registration of the certificate of lis pendens relating to that lien continues to exist until

- (a) the proceedings are concluded, or
- (b) the certificate of lis pendens is discharged, whichever occurs later.

**(2)** Notwithstanding subsection (1), if no trial has been held within 2 years from the date of the registration of the certificate of lis pendens, any interested party may apply to the court to have the certificate of lis pendens vacated and the lien to which it relates discharged.

RSA 2000 cB-7 s46;2009 53 s28

### **Cancellation of lien**

**47 (1)** The Registrar shall cancel the registration of a lien either in whole or in part

- (a) on receiving notification in a prescribed form signed by the lienholder or the lienholder's agent stating that the lien has been satisfied in whole or in part, or

(b) on receiving proof satisfactory to the Registrar that a lien that has been registered has ceased to exist.

**(2)** The Registrar shall cancel the registration of a lien in part only on receiving notification in the prescribed form signed by the lienholder or the lienholder's agent

(a) stating that the lien has been satisfied in part only, and

(b) describing that part of the land described in the statement of lien as to which the lien has been satisfied.

**(3)** The Registrar shall cancel the registration of a lien and of any certificate of lis pendens

(a) on receiving a certified copy of an order or judgment of a court ordering the cancellation of the registration of a lien, or

(b) on receiving a certificate from a court clerk stating that pursuant to an order or judgment of the court

(i) the amount due by an owner in respect of a lien has been ascertained and paid into court, or

(ii) the land, improvement or material has been sold in satisfaction of the lien.

RSA 2000 cB-7 s47;2011 c20 s2

## **Lien removed**

**48 (1)** The court may, on application, order that the registration of a lien be removed from the title to the land concerned

(a) where security is given or payment is made into court for

(i) the amount of the claim,

(ii) the maximum amount for which the lien may properly attach under section 18(3) or (4) or 23(3) or (4), or

(iii) such lesser amount as the court determines, and any costs that the court may fix,

(b) where the relevant lien fund has been paid out under this Act, or

(c) on any ground not referred to in clause (a) or (b) as the court considers proper.

**(2)** Money paid into court or any security given under subsection (1)

(a) stands in place of the land,

(b) is subject to the claims of the person whose lien has been removed, and

(c) shall not affect the amount required to be retained under section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2).

**(3)** At any time following service of an application, a party may file with the court and serve on the registered lienholder a notice to prove the lien.

**(4)** A registered lienholder served with a notice to prove lien shall, within 15 days from the day of the service of the notice on the lienholder, file with the court in which the proceedings were commenced an affidavit providing detailed particulars of the lienholder's lien.

**(5)** A registered lienholder on whom a notice to prove lien is served and who does not file the lienholder's affidavit

(a) within 15 days from the day of the service of the notice, or

(b) within any further period that the court may order on application,

loses the lienholder's lien.

**(6)** Any party to the application may question the registered lienholder on the lienholder's affidavit filed pursuant to this section.

RSA 2000 cB-7 s48;2001 c20 s12;2009 c53 s28;2011 c20 s2

## **Part 8** **Enforcement of Liens**

### **Enforcement of lien**

**49 (1)** Proceedings to enforce a lien shall be commenced by a statement of claim.

**(2)** Lienholders shall not be named as defendants.

**(3)** When the party issuing the statement of claim is not the contractor, the statement of claim shall name as defendants

(a) the owner,

(b) the contractor, and

(c) the holder of any prior registered encumbrance against whom relief is sought.

**(4)** When the person issuing the statement of claim is the contractor, the person shall name as defendants

(a) the owner, and

(b) the holder of any prior registered encumbrance against whom relief is sought.

**(5)** In this section, "prior registered encumbrance" does not include a lien.

**(6)** The procedure in adjudicating on the claims shall be of a summary character, so far as is possible, having regard to the amount and nature of the liens in question and the enforcement of them at the least expense.

RSA 1980 cB-12 s36;1985 c14 s21

### **Deemed parties to proceedings**

**50** All persons named as parties in the statement of claim and all registered lienholders are parties to the proceedings.

1985 c14 s22

### **Service of statement of claim**

**51 (1)** Unless otherwise ordered, the statement of claim shall be served on

- (a) all persons who are parties to the proceedings,
- (b) all persons who by the records of the land titles office appear to have an interest in the land against which the lien is registered, and
- (c) any person not referred to in clauses (a) and (b) that the court may direct.

**(2)** The court may on application dispense with service of the statement of claim on any person subject to those conditions, if any, that it considers proper.

1985 c14 s22

### **Time for filing defence**

**52 (1)** The time within which a defendant may file a statement of defence or demand for notice is the period limited for the filing of defence by the *Alberta Rules of Court*.

**(2)** A party not named as a defendant is not required to file a statement of defence.

**(3)** At any time following the issuance of the statement of claim, a party may file with the court and serve on any lienholder a notice to prove lien in the prescribed form.

**(4)** A lienholder served with a notice to prove lien shall, within 15 days from the day of the service of the notice on the lienholder, file with the court in which the proceedings were commenced an affidavit providing detailed particulars of the lienholder's lien.

**(5)** A lienholder on whom a notice to prove lien is served and who does not file the lienholder's affidavit

- (a) within 15 days from the day of the service of the notice, or
- (b) within any further period that the court may order on application,

loses the lienholder's lien.

(6) Any party to the action may question the lienholder on the lienholder's affidavit filed pursuant to this section.

RSA 2000 cB-7 s52;2009 c53 s28;2011 c20 s2

### **Pre-trial application**

- 53** (1) At any time following the expiry of the time limited for defence, the plaintiff may, and before setting the action down for trial the plaintiff shall, make a pre-trial application.
- (2) The plaintiff shall serve notice of the pre-trial application on all other parties to the proceedings, at least 10 days before the date of the application.
- (3) On the hearing of the pre-trial application,
- (a) if no defence has been filed and no notice to prove lien has been filed and served, the court may declare the liens valid and make any further judgment or order that it considers appropriate,
  - (b) if defence has been filed, the court may give judgment declaring valid any liens in respect of which no notice to prove lien has been filed,
  - (c) the court may consider the affidavits filed on service of notice to prove lien and the transcript of any questioning on them, and may
    - (i) determine the validity of the liens concerned,
    - (ii) hear oral evidence, and
    - (iii) direct that at the trial of the action any particular issue or issues arising on the application be determined,
  - (d) the court may make any further order or direction that it considers necessary or desirable including, among other things, an order that the property be sold pursuant to this Act and an order that the action be entered for trial,
  - (e) the court may order that any lienholder or other party be given the carriage of the proceedings, and
  - (f) the court may order that questioning under Part 5 of the *Alberta Rules of Court* be conducted in the action, but no questioning may be conducted without an order of the court.

RSA 2000 cB-7 s53;2009 c53 s28

### **Appointment of receiver and trustee**

- 54** (1) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a receiver of the rents and profits from the property against which the claim of lien is registered, and

the court may order the appointment of a receiver on any terms and on the giving of any security or without security, as the court considers appropriate.

**(2)** At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a trustee and the court may, on the giving of any security or without security, as the court considers appropriate, appoint a trustee

- (a) with power to manage, sell, mortgage or lease the property subject to the supervision, direction and approbation of the court, and
- (b) with power, on approval of the court, to complete or partially complete the improvement.

**(3)** Mortgage money advanced to the trustee as the result of any of the powers conferred on the trustee under this section takes priority over all liens existing at the date of the appointment of the trustee.

**(4)** Any property directed to be sold under this section may be offered for sale subject to any mortgage or other charge or encumbrance if the court so directs.

**(5)** The net proceeds of any receivership and the proceeds of any sale made by a trustee under this section shall be paid into court and are subject to the claims of all lienholders, mortgagees and other parties interested in the property sold as their respective rights may be determined.

**(6)** The court shall make all necessary orders for the completion of the sale, for the vesting of the property in the purchaser and for possession.

**(7)** A vesting order under subsection (6) vests the title of the property free from all liens, encumbrances and interests of any kind including dower, except in cases where the sale is made subject to any mortgage, charge, encumbrance or interest.

RSA 1980 cB-12 s40;1985 c14 s24

### **Uncompleted or abandoned contract**

**55 (1)** Subject to subsection (2), a lienholder may enforce the lienholder's lien notwithstanding the non-completion or abandonment of any contract under which that lien arises.

**(2)** Subsection (1) does not apply in favour of a contractor or subcontractor whose contract provides that nothing is to be paid until completion of the contract.

RSA 1980 cB-12 s41

### **Consolidation of actions**

**56** If more than one action is commenced to enforce liens in respect of the same land, the court

- (a) may, on the application of any person interested, consolidate the actions into one action, and
- (b) may give the conduct of the consolidated action to any plaintiff as it considers fit.

RSA 1980 cB-12 s42

### **Entering action for trial**

- 57** When a defence has been filed and no order is made on the pre-trial application for the holding of a trial, the plaintiff or any other party may enter the action for trial.

RSA 1980 cB-12 s43

### **Adjudication of claims**

- 58** On the trial of the action, the court
- (a) shall decide all questions that arise in the trial that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the parties, and
  - (b) shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising in it and to adjust the rights and liabilities of and give all necessary relief to all parties.

RSA 1980 cB-12 s44

### **Failure to establish valid lien**

- 59** (1) If a lien claimant fails to establish a valid lien, the claimant may nevertheless be awarded personal judgment against any party to the proceedings for any sum that is due to the claimant and that the claimant might recover in an action against that party.
- (2) The court may in its judgment order that the estate or interest in land that is charged with a lien be sold.
- (3) When the court orders a sale, the court may
- (a) direct that the sale take place at any time after the judgment, allowing a reasonable time for advertising,
  - (b) direct what advertising of the sale is required, and
  - (c) make all necessary orders and directions for the completion of the sale and the vesting of the estate or interest in the purchaser.
- (4) The court may direct the sale and removal of any materials.

RSA 1980 cB-12 s45



## Payment of sale proceeds into court

- 60 (1)** When a sale takes place as provided in section 59, the money realized from the sale shall be paid into court to the credit of the action.
- (2)** On application by the plaintiff or any party, following the payment of money into court pursuant to subsection (1), the court shall,
- (a) if there is sufficient money realized to satisfy all claims, direct that the money be paid out of court to the claimants as they are entitled in respect of their claims, costs and disbursements, or
  - (b) if sufficient money is not realized to satisfy all claims, costs and disbursements, certify the amount of the deficiency, the names of the persons who are entitled to share the money in court, the amounts that the various persons interested are entitled to receive from the money in court, the persons adjudged to pay any money and any credits allowed to those persons under this Act.

RSA 1980 cB-12 s46

## Application of money realized

- 61 (1)** When a mortgage or other registered encumbrance is prior to a lien under this Act, the court may order that in a sale under this Act
- (a) the property be sold subject to the mortgage or encumbrance, or
  - (b) the property be sold at an upset price of not less than the amount secured under the mortgage or encumbrance, costs, and the costs of the sale.
- (2)** All money realized from a sale, receivership or trusteeship under this Act and insurance money to which section 16 applies shall be paid into court for distribution as provided in this section.
- (3)** When a sale is made pursuant to subsection (1)(a), the money in court shall be distributed in the following order:
- (a) in paying the costs of those parties to whom costs have been awarded by the court
    - (i) of and incidental to the proceedings, and
    - (ii) of registering and proving the liens;
  - (b) in paying 6 weeks' wages, if so much is owing, of all labourers employed by the owner, contractor or subcontractor;
  - (c) in paying the several amounts owing to lienholders other than the contractor;
  - (d) in paying the amount owing to the contractor.

**(4)** When a sale is made pursuant to subsection (1)(b), the money in court shall be distributed in the following order:

- (a) in payment of all amounts due, including costs and costs of sale, to the holders of mortgages or other registered encumbrances that are prior to liens under this Act;
- (b) in paying the costs of all lienholders
  - (i) of and incidental to the proceedings, and
  - (ii) of registering and proving the liens;
- (c) in paying 6 weeks' wages, if so much is owing, of all labourers employed by the owner, contractor or subcontractor;
- (d) in paying the several amounts owing to lienholders other than the contractor;
- (e) in paying the amount owing to the contractor.

**(5)** Each class of lienholders, as between themselves, rank without preference for their several amounts and the portion of the money available for distribution to each class shall be distributed among the lienholders in that class proportionately according to the amounts of their respective claims as proved.

**(6)** If a labourer has more than 6 weeks' wages owing to the labourer by a subcontractor, contractor or owner, the court

- (a) shall cause the sum additional to 6 weeks' wages to be deducted out of any sum actually coming to the subcontractor, contractor or owner under a distribution pursuant to subsection (1), and
- (b) shall order the sum to be paid to the labourer.

RSA 1980 cB-12 s47

### **Order for removal and sale of structure**

**62 (1)** When the work performed or material furnished in respect of which the lien arose results in the creation of an improvement consisting of a structure, erection or building, then notwithstanding

- (a) that the structure, erection or building may be affixed to or has become part of the land, or
- (b) section 11,

the court, if of the opinion that having regard to the value of the improvement and the amount owing on the lien it is proper to do so, may, on application of the lienholder in proceedings to enforce the lien or in any other proceedings affecting

the lien, order the structure, erection or building removed and sold and the proceeds of the sale applied on the lien that arose in respect of the improvement.

(2) If the proceeds of the sale exceed the amount owing, the excess shall be applied in the same manner as the proceeds of the sale of the land and improvements remaining on it would be applied.

RSA 1980 cB-12 s48

### **Enforcement of judgment**

63 Any judgment given by the court pursuant to this Act may be enforced by execution or otherwise as a judgment of the court.

RSA 1980 cB-12 s49

### **Alberta Rules of Court**

64 The *Alberta Rules of Court* apply in all actions brought under this Act except where and to the extent that they are inconsistent with this Act or the rules prescribed under this Act.

RSA 1980 cB-12 s50

### **Proof of claim after proceedings**

65 (1) At any time before the amount realized in the proceedings for the satisfaction of liens has been distributed, a lienholder who has not been served with notice of the proceedings may, on application to the court and on such terms as to costs and otherwise as may be just, be allowed to prove the lienholder's lien.

(2) When a lien under subsection (1) is proved and allowed, the court shall amend the judgment to include the lien.

RSA 1980 cB-12 s51

### **Appeal**

66 (1) An appeal lies to the Court of Appeal from a decision of the court under this Act in all matters where the amount of the lien or the total amount of the liens joined in one action or proceedings is \$5000 or more.

(2) When the amount of the lien or the total amount of the liens joined is less than \$5000, the decision of the court of first instance is final.

RSA 1980 cB-12 s52;1985 c14 s25

### **Service of documents**

67 In addition to any method of service permitted by law, any document or statement of claim respecting matters coming under this Act may be served on a lienholder

(a) by personal service,

- (b) by single registered mail sent to the address for service set out in the statement of lien, or
- (c) by delivery to the address that is the address for service set out in the statement of lien.

1985 c14 s26

## **Fees**

**68** No fees are payable to a Registrar or to a court

- (a) in connection with the registration or discharge of any proceedings taken by a labourer to realize a claim for wages under this Act, or
- (b) on the filing of an order, record or judgment or other proceeding in connection with it.

RSA 1980 cB-12 s53

## **Costs**

**69** When it appears to the court in a proceeding to enforce a lien under this Act that the proceedings have arisen from the failure of an owner or contractor

- (a) to fulfil the terms of the owner's or contractor's contract of engagement for the work in respect of which the liens are sought to be enforced, or
- (b) to comply with this Act,

the court may order the owner and contractor, or either of them, to pay all the costs of the proceedings in addition to the amount of the contract or subcontract or wages due by the owner or contractor, or both, to any contractor, subcontractor or labourer and may order a final judgment against the owner and contractor, or either of them, in default for those costs.

RSA 1980 cB-12 s54

## **Part 9** **Regulations and Transitional Provisions**

### **Regulations**

**70** The Lieutenant Governor in Council may

- (a) [Make regulations for the purpose of section 1.1](#)
  - (i) [prescribing a class of professionals acting in a consultative capacity referred to in section 1.1\(1\);](#)
  - (ii) [respecting the application of any part or all of this Act to one or more prescribed classes of professionals acting in a consultative capacity;](#)

- (iii) respecting an agreement, entity, undertaking or work or a class of agreements, entities, undertakings or works for the purposes of section 1.1(2)(c);
- (iv) prescribing persons or entities, or classes of persons or entities, whether incorporated or not, for the purposes of section 1.1(3);
- (v) prescribing a project agreement or a class of project agreements to finance and undertake an improvement for the purposes of section 1.1(3);
- (vi) respecting the application of any part or all of this Act to a prescribed person, entity or project agreement or to a prescribed class of persons, entities or project agreements for the purposes of section 1.1(3);

(a.01) make regulations for the purposes of Part 2;

(a.11) without limiting the generality of clause (a.1), make regulations for the purposes of Part 3

- (i) prescribing the information referred to in section 32.1(1)(h);
- (ii) respecting the application of section 32.1(3);
- (iii) respecting the requirement to give an owner proper invoices every 31 days under section 32.1(6);
- (iv) prescribing the form and manner for a notice of dispute referred to in section 32.2(2);
- (v) prescribing the form and matter of a notice of non-payment referred to in section 32.3(5)(a) and (6);
- (vi) respecting notices of non-payment for the purposes of section 32.4;
- (vii) prescribing the form and manner of a notice of non-payment referred to in section 32.5(6)(a) and (7);
- (viii) prescribing the rates referred to in section 32.6;

(a.1) make regulations for the purposes of Part 3;

(a.2) make regulations for the purposes of Part 5;

- (i) respecting the appointment of any officered or employees required for the administration of a Nominating Authority;
- (ii) subject to section 33.2(2), respecting the powers and duties of a Nominating Authority;
- (iii) respecting the payment of remuneration and expenses to the officers or employees of a Nominating Authority;

- (iv) respecting qualifications for the appointment of adjudicators;
  - (v) specifying the matters in respect of which an adjudicator may hear a dispute;
  - (vi) respecting the powers and duties of adjudicators;
  - (vii) respecting the determination of disputes, including the making of orders and any relief or remedies an adjudicator may order;
  - (viii) respecting procedures for making applications for adjudication, including any procedures, fees and forms required;
  - (ix) respecting the service of notices, documents and orders for adjudication;
  - (x) respecting the additional requirements referred to in section 33.61(1)(e);
  - (xi) respecting judicial reviews for the purposes of section 33.7;
  - (xii) respecting the management and administration of the adjudication process;
  - (xiii) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of Part 5.
- (a.3) prescribe rules to expedite and facilitate the business before any court under this Act, and to advance the interests of suitors in it;
- (b) prescribe a tariff of costs
- (i) as between parties, and
  - (ii) as between solicitor and client,
- payable for services rendered in respect of a lien under this Act;
- (c) prescribe forms to be used under this Act.
- (d) prescribe rules for the purpose of remedying any confusion, difficulty or inconsistency in applying any provision, including transitional issues, of this Act and any regulation prescribed under this Act.
- (e) define terms used but not defined in this Act.

RSA 1980 cB-12 s55

## Application of former Acts

- 71** (1) *The Mechanics Lien Act, 1960*, SA 1960 c64, continues in effect and applies, notwithstanding its repeal, to any lien registered in a land titles office after June 30, 1961 and before July 1, 1970.

**(2)** *The Mechanics' Lien Act*, RSA 1955 c197, continues in effect and applies, notwithstanding its repeal, to any lien registered in a land titles office on or before June 30, 1961.

RSA 1980 cB-12 s56

### **Transitional**

- 72** All references in sections 1, 18, 21 and 23 to “10%” are deemed to be references to “15%” with respect to the following contracts or subcontracts under which a builders’ lien may arise:
- (a) any contract or subcontract entered into before September 1, 1997;
  - (b) any contract solely for the furnishing of materials, the performance of services or the provision of work by a labourer entered into before September 1, 1997;
  - (c) any subcontract entered into on or after September 1, 1997 that is made under a contract entered into before September 1, 1997;
  - (d) any contract solely for the furnishing of materials, the performance of services or the provision of work by a labourer entered into on or after September 1, 1997 that is made in respect of a contract entered into before September 1, 1997.

1997 c24 s1

### **Transitional**

- 73** In sections 18(1.1), 21(3) and (4), 23(1.1), 27(2.1) and (2.2) and 41(1)(b), (2)(b), (3)(b) and (4)(b) all references to “90 days” are deemed to be references to “60 days” with respect to the following contracts or subcontracts under which a builder’s lien may arise:
- (a) any contract or subcontract entered into before April 1, 2002;
  - (b) any contract solely for the furnishing of materials, the performance of services or the provision of work by a labourer entered into before April 1, 2002;
  - (c) any subcontract entered into on or after April 1, 2002 that is made under a contract entered into before April 1, 2002;
  - (d) any contract solely for the furnishing of materials, the performance of services or the provision of work by a labourer entered into on or after April 1, 2002 that is made in respect of a contract entered into before April 1, 2002.

2001 c20 s13

## **Transitional**

**74 (1)** In this section,

- (a) “former provisions” means the provisions of this Act as they read immediately before the coming into force of the *Builders’ Lien (Prompt Payment) Amendment Act, 2020*
- (b) “new provisions” means the provisions of this Act as they read on the coming into force of the *Builders’ Lien (Prompt Payment) Amendment Act, 2020*.

**(2)** Any contract or subcontract entered into on or after the coming into force of the *Builders’ Lien (Prompt Payment) Amendment Act, 2020* must conform to the new provisions.

**(3)** Subject to the regulations, any contracts or subcontracts entered into prior to the coming into force of the *Builders’ Lien (Prompt Payment) Amendment Act, 2020* are governed by the former provisions until expired, terminated or amended in order to conform to the new provisions.

## **Consequential Amendments and Coming into Force**

### **Amends RSA 2000 cC-22**

- 28 (1) *The Condominium Property Act* is amended by this section.
- (2) Section 78(1) is amended by striking out “Builders’ Lien Act” and substituting “Prompt Payment and Construction Lien Act”.

### **Amends RSA 2000 cL-4**

- 29 (1) *The Land Titles Act* is amended by this section.
- (2) Sections 27(5), 104(4) and 153(1) are amended by striking out “Builders’ Lien Act” and substituting “Prompt Payment and Construction Lien Act”

### **Amends RSA 2000 cM-17**

- 30 (1) *The Mines and Minerals Act* is amended by this section.
- (2) Sections 5(1)(w)(ii) and 95(5) are amended by striking out “Builders’ Lien Act” and substituting “Prompt Payment and Construction Lien Act”

31 *This Act comes into force on Proclamation*