

Bill No. 89 of 1955

A BILL TO AMEND THE MECHANICS' LIEN ACT

NOTE

This Bill amends *The Mechanics' Lien Act*, being chapter 236 of the Revised Statutes of Alberta, 1942.

Much of the money used in the construction business is advanced by mortgagees, that is, by mortgage companies, insurance companies and individuals by way of investment, and the advances from these sources are generally the funds from which mechanics, materialmen, and contractors will be paid. The hold-back and protective devices of *The Mechanics' Lien Act* are at present required to be exercised by the owners, contractors and sub-contractors. At the same time the mortgagees supplying the money for the construction are the parties in the most favourable position to retain the statutory hold-back during the statutory period.

This Act is being amended to require mortgagees in certain cases to retain amounts, as specified by the Act, until completion of the contract and thereafter advance the same or pay it into court for the benefit of claimants or lienholders.

In line with these new provisions the statutory hold-back is being reduced from 15% and 20% to 10% and the period in which liens may be registered is being reduced to fifteen days instead of thirty-five days.

The Act as it existed before the amendments of 1943 is still used for many mortgages and the amendments are made applicable thereto.

For the foregoing purposes, sections 11, 11*b*, 14, 15, 17 and 22 have been amended and sections 11*c*, 11*d* and 18*a* have been added. Section 10 of this Bill makes the amendments apply in respect of premises mortgaged under the provisions of the *National Housing Act* (Canada) and also interprets a term of the Act in existence only for these mortgages. The provision will remove from such mortgagees the task of searching out every person who may have a claim upon the mortgaged premises by reason of *The Mechanics' Lien Act*.

This Bill comes into force upon assent.

J. W. RYAN,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 89 of 1955

An Act to amend The Mechanics' Lien Act

(Assented to _____, 1955)

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

1. *The Mechanics' Lien Act*, being chapter 236 of the Revised Statutes of Alberta, 1942, is hereby amended.

2. Section 11 is amended by striking out the words "and prior to" and by substituting the words "and, subject to section 11c, prior to". Section 11
amended

3. Section 11b, subsection (1) is amended by striking out the words "shall be prior" and by substituting the words "shall, subject to section 11c, be prior". Section 11b
amended

4. The following new sections are added immediately after section 11b: New sections
11c and 11d

"11c. (1) Notwithstanding sections 11 and 11b or any other provision of this Act, where premises are subject to a registered mortgage, if the mortgage moneys are advanced in accordance with this section, the mortgage has to the extent of any moneys so advanced absolute priority over any liens arising by virtue of this Act and not registered before the advance is made. Priority of
mortgage

"(2) Before any advance of moneys is made under the mortgage, the mortgagee

"(a) shall obtain a statutory declaration from the contractor or from the owner, which shall set out the contractor's or owner's accounts payable at that time for labour or material on or supplied to the mortgaged premises, or which, if there are no such accounts, shall so state, and

"(b) shall search the title of the premises in the appropriate land titles office to ensure that no lien arising by virtue of this Act is registered.

"(3) If the statutory declaration or the search in the land titles office discloses any claim against the owner or his contractor or sub-contractor for labour or materials in respect of the mortgaged premises, the mortgagee before advancing any further or any moneys under the mortgage shall, subject to the approval of the mortgagor, satisfy the

claim or cause it to be satisfied, released or postponed and any moneys advanced by the mortgagee for this purpose shall be deemed to be an advance under the mortgage to the mortgagor.

“(4) Notwithstanding any term or stipulation to the contrary in any contract, a mortgagee making advances on a mortgage pursuant to this section shall retain, for fifteen days after completion or abandonment of the contract or the work, an amount equal to ten per cent of the value of the work done and of the material furnished.

“(5) The value mentioned in subsection (4) shall be calculated on the basis of the contract price, or, if there is no specific contract price, then on the basis of the actual value of the work and material.

“(6) When requested by the mortgagee, the contractor or the owner of the mortgaged premises, shall provide the mortgagee with a statutory declaration setting out

“(a) that the declarant is the contractor or that the declarant is the owner of the mortgaged premises and that there is no contractor, and

“(b) the date of the completion or abandonment of the contract or work, as the case may be.

“(7) After the expiration of the period specified in subsection (4) the mortgagee shall make a search of the title of the mortgaged premises in the appropriate land titles office, and thereafter shall disburse the amount retained under subsection (4) in the following manner, namely:

“(a) if the search discloses no liability for labour or material on or supplied to the mortgaged premises and if the mortgagee has no written notice of any claim for labour or material on or supplied to the mortgaged premises, the retained amount may be paid to the mortgagor as an advance under the mortgage,

“(b) if the mortgagee has written notice of any claim for labour or material on or supplied to the mortgaged premises, the retained amount or so much of it as is necessary to pay the amount of the claims of which he has written notice, shall be paid into court for the claimants and the balance, if any, may be paid to the mortgagor as an advance under the mortgage,

“(c) if the search discloses that a lien under this Act is registered against the mortgaged premises or that proceedings to enforce such a lien have been commenced, the retained amount shall be paid into court and shall be applied and distributed to claimants in accordance with section 37.

“(8) A payment into court pursuant to clauses (b) or (c) of subsection (7) operates to give priority to the mortgage in respect of the advance made thereby on the mortgage if in all other respects this section has been complied with by the mortgagee.

“(9) When a mortgagee retains for the prescribed period the amount required to be retained under subsection (4), such retention shall be deemed to be compliance by the mortgagor with subsection (1) of section 14.

“(10) This section applies only to mortgages in respect of residential, commercial or business premises. Application of section

“(11) Where a statutory declaration is required under this section to be made by a corporation, an officer, servant or agent thereof having knowledge of the facts may make the statutory declaration. Corporations

“11d. In any proceedings Priority of advances

“(a) upon a mortgage under which the mortgage moneys were or are being advanced in accordance with section 11c, and

“(b) leading to foreclosure or sale or both of the mortgaged premises,

or in any proceedings to enforce a lien arising under this Act in respect of premises subject to such a mortgage, the provisions of section 11a and subsections (2) to (12) of section 11b shall be so construed and modified that the priority given to advances under such mortgage by section 11c will prevail over liens arising under this Act and registered after the advances were made.”.

5. Section 14 is amended Section 14 amended

(a) as to subsection (1) by striking out the word “twenty” and by substituting the word “ten”,

(b) by striking out subsection (2) and by substituting the following:

“(2) A mortgagee of an owner may, when he cannot do so as an owner within the meaning of clause (g) of section 2, retain the amount required by subsection (1) to be retained by the owner as a person primarily liable on the contract, and the retention by the mortgagee of such amount shall be deemed to be compliance with subsection (1) by the owner, as a person primarily liable.”,

(c) by striking out subsection (4) and by substituting the following:

“(4) All payments, up to ninety per cent as fixed by subsection (1), made

“(a) in good faith by

“(i) an owner or his mortgagee to a contractor,

“(ii) a contractor to a sub-contractor, or

“(iii) a sub-contractor to another sub-contractor, and

“(b) before notice in writing of the lien is given to the owner, mortgagee, contractor or sub-contractor, as the case may be,

operate as a discharge *pro tanto* of the lien.”,

(d) as to subsection (5) by adding immediately before the words “may pay” the words “or his mortgagee”.

- Section 15 amended **6.** Section 15 is amended by adding immediately after the words "an owner" the words "or his mortgagee or a".
- Section 17 amended **7.** Section 17, subsection (1) is amended by striking out the words "twenty per cent or fifteen per cent, as the case may be," and by substituting the word "percentage".
- Section 22 amended **8.** Section 22 is amended by striking out the words "thirty-five" wherever they occur in subsections (1) to (4) and by substituting the word "fifteen".
- Application of *The National Housing Loans Act* (Alberta) **9.** For the purposes of *The National Housing Loans Act* (Alberta)
- (a) subsection (1) of section 11 of *The Mechanics' Lien Act* as it existed immediately before the thirtieth day of March, 1943, shall be construed as if the reference therein to notice were a reference to written notice,
 - (b) *The Mechanics' Lien Act* as it existed immediately before the thirtieth day of March, 1943, shall be read and construed subject to
 - (i) section 11c of *The Mechanics' Lien Act*, as added thereto by this Act,
 - (ii) chapter 72 of the Statutes of Alberta, 1953, and
 - (iii) sections 5, 6, 7, and 8 of this Act.
- Coming into force **10.** This Act comes into force on the day upon which it is assented to.

THIRD SESSION
TWELFTH LEGISLATURE
4 ELIZABETH II
1955

BILL

An Act to amend The Mechanics'
Lien Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MAYNARD
