

1969 Bill 34

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Second Session, 16th Legislature, 18 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

## **BILL 34**

**An Act respecting Liens of Builders,  
Material Suppliers, Wage-earners and Others**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 34

1969

An Act respecting Liens of Builders, Material Suppliers,  
Wage-earners and Others

(Assented to \_\_\_\_\_, 1969)

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

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

2. (1) In this Act,

- (a) "completion of the contract" means substantial performance, not necessarily total performance, of the contract;
- (b) "contractor" means a person contracting with or employed directly by an owner or his agent to do work upon or to furnish material for an improvement, but does not include a labourer;
- (c) "court" means the Supreme Court or a district court, as the case may be, having jurisdiction in the amount claimed in any proceedings under this Act, whether brought in respect of one or more than one lien;
- (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 with an existing lien under this Act;
- (g) "owner" means a person having an estate or interest in land at whose request, express or implied, and
  - (i) upon whose credit, or
  - (ii) upon whose behalf, or
  - (iii) with whose privity and consent, or

## **Explanatory Notes**

**1.** This Bill will revise The Mechanics Lien Act, 1960 as recommended in the Commission Report of N. V. Buchanan, retired Chief Judge of the District Court of Northern Alberta.

The more significant changes are:

1. The provisions governing the priority of mechanics liens over mortgages are revised to place all mortgages in the same position as that of N.H.A. mortgages under section 57 of the present Act.

2. The holdback provisions are changed to make it 15 per cent in all cases and to make it clear that contractors and sub-contractors do not have to make a holdback on their payments. Provision is also made for progressive release on the holdback.

3. The procedure for enforcing liens is revised for greater simplicity and certainty. Proceedings are to be commenced within 90 days after the lien is registered.

The section references in the Notes to each clause of the Bill are to the equivalent provisions in the present Act which is chapter 64 of the Statutes of Alberta, 1960. The page references are to the pages of the Commission Report where the provision is commented upon.

**2.** Present section 2. Clauses (a) and (f) and subsection (2) are new. Comment page 50.

- (iv) for whose direct benefit,  
work is done upon or material is furnished for an improvement to the land and includes all persons claiming under him whose rights are acquired after the commencement of the work or the furnishing of the material;
  - (h) "prescribed" means prescribed by the regulations;
  - (i) "Registrar" means a registrar of a land registration district under *The Land Titles Act*;
  - (j) "sub-contractor" means a person not contracting with or employed directly by an owner or his agent for the doing of any work but contracting with or employed by a contractor, or under him by a sub-contractor, but does not include a labourer;
  - (k) "wages" means money earned by a labourer for work done, whether by time or as piece-work or otherwise;
  - (l) "work" includes the performance of services upon the improvement.
- (2) Factors which the court may consider among others in determining whether there has been substantial performance of a contract are occupation by the owner and readiness for use.

#### **Creation and Extent of Lien**

**3.** (1) No agreement deprives any person otherwise entitled to a lien under this Act and not a party to the agreement, of the benefit of the lien and the lien attaches notwithstanding the agreement.

(2) An agreement by a labourer that this Act does not apply or that the remedies provided by it are not to be available for his benefit is against public policy and void.

(3) Subsection (2) does not apply

- (a) to a manager or officer, or
- (b) to any person whose wages are more than \$35 a day.

**4.** (1) Unless he signs an express agreement to the contrary and subject to subsection (2), a person who

- (a) does or causes to be done any work upon or in respect of an improvement, or
- (b) furnishes any material to be used in an improvement,

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

**3.** Present section 3 except subsection (3) which presently reads:

(3) Subsection (2) does not apply to a manager, officer or foreman or to any person whose wages are more than twenty-five dollars per day.

Comment pages 50 and 51.

**4.** Present section 4 but subsection (4) is new. Comment page 55.

(2) Where work is done or materials are furnished

(a) preparatory to, or

(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 fee simple estate 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) A person who rents equipment to an owner, contractor or sub-contractor for use on a contract site shall be deemed, for the purposes of this Act, to have performed a service and has a lien for a reasonable and just rental of the equipment while used on the contract site.

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

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

**6.** Where the same lien attaches to estates or interests in more than one lot, block or parcel, as the case may be, in respect of a separate improvement upon each such lot, block or parcel (hereinafter referred to as a "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 that lot less a proportionate share of any moneys 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.

**7.** (1) Material shall be considered to be furnished to be used within the meaning of this Act when it is delivered either on the land upon which it is to be used or on such

**5.** Present Section 5.

**6.** Present section 6 (3); for subsections (1) and (2) see clause 15. Comment page 57.

**7.** Present section 7.

land or in such place in the immediate vicinity thereof as is designated by the owner or his agent or by the contractor or sub-contractor.

(2) Notwithstanding that any material to be used in an improvement may not have been delivered in strict accordance with subsection (1), where the material is incorporated in the improvement the person furnishing the material has a lien as set out in section 4.

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

**9.** (1) A lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises.

(2) A registered mortgage has priority over a lien to the extent of the mortgage moneys *bona fide* secured or advanced in money prior to the registration of the statement of lien.

(3) Advances or payments made under a mortgage after a statement of lien has been registered rank after the lien, but any mortgagee who has applied mortgage moneys in payment of a statement of lien which has been registered is subrogated to the rights and priority of the lienholder who has been so paid to the extent of the moneys so applied.

(4) An agreement for sale of land in respect of which a caveat has been filed and any moneys *bona fide* secured or payable thereunder has the same priority over a lien as is provided for a mortgage and mortgage moneys in subsections (1) and (2), and for the purposes of this Act,

- (a) the seller shall be deemed to be a mortgagee, and
- (b) any moneys *bona fide* secured and payable under such an agreement shall be deemed to be mortgage moneys *bona fide* secured or advanced.

**10.** (1) A lien for the wages of a labourer has priority, to the extent of six weeks' wages, over all claims on that portion of the amount retained as required by section 15 to which the contractor or sub-contractor through whom the lien is derived is entitled, and all such labourers rank *pari passu*.

(2) Any device by an owner, contractor or sub-contractor to defeat the priority given by this Act to a labourer for his wages is against public policy and void.

**11.** (1) Where work is done or material is furnished in respect of land in which a married person has an estate or interest, if the work is done or the material is furnished

**8.** Present section 8.

**9.** Replaces present sections 9, 10, 11 and 57. Comment page 57 et seq. The nature of the existing provisions is indicated by section 9 and section 11 (2) (a) which read:

9. Except as provided in sections 11 and 57 a lien arising by virtue of this Act has priority over any unregistered mortgage and any mortgage that is registered, after the date on which the lien arose, against the land that is subject to the lien.

11. (2) Where work is done or material is furnished for an improvement upon land that is subject to a mortgage

(a) a lien has priority over the mortgage to the extent of the increase in value of the mortgaged land resulting from the work or improvement and from all subsequent work or improvements, and  
.....

**10.** Present section 12.

**11.** Present section 13.

with the privity of the spouse of the married person then, for the purposes of this Act, the spouse shall be conclusively presumed to be acting as the agent of the married person as well as for himself.

(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 is not the agent of the married person who has an estate or interest in the land.

**12.** (1) Where the estate upon 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 his 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 his agent, within five days after the receipt of the notice, gives notice that he will not be responsible for the doing of the work or the furnishing of the materials.

(2) Where the estate upon 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 sums so paid may be added to the claim of the lienholder.

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

**13.** Where 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 thereon 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.

**14.** (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 any 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.

**12.** Present section 14.

**13.** Present section 15 extended to cover losses by other perils in addition to fire. Comment page 72.

**14.** Present section 16.

**15.** (1) In this section and in section 18, the expression "the lien fund" means the percentage retained by the owner as required by this section, plus any amount which has not been paid by the owner under the contract in good faith prior to the registration of a lien, less any amount permitted by section 16 to be paid.

(2) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract an owner liable on a contract under which a lien may arise shall, when making payment thereunder, retain for the time limited by section 30, an amount equal to 15 per cent of the value of the work actually done.

(3) The value 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 done.

(4) Every lien is a charge upon the lien fund.

(5) An owner is not liable under this Act for more than the amount of the lien fund.

(6) A payment, other than of the percentage required by this section to be retained, made in good faith by an owner or mortgagee to a contractor before registration of any liens, is valid so that the lien fund is reduced by the amount of the payment.

(7) Where a contractor or sub-contractor defaults in completing his contract, the lien fund

(a) shall not, as against a lienholder, be applied to the completion of the contract or for any other purpose than the satisfaction of liens, and

(b) when distributed, shall be distributed in the manner prescribed by section 47.

(8) A person who in good faith underestimates the value of the work actually done 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 he 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.

**16.** (1) In this section, "supervisor" means an architect, engineer or other person upon whose certificates payments are to be made under a contract.

(2) Where a contract is under the supervision of a supervisor and a period of 35 days has elapsed after a certificate issued by the supervisor to the effect that the sub-contract has been completed has been given to the person primarily liable upon that contract and to the person who became a

**15.** Replaces present section 17. Comment page 74.

The section is revised to remove the implication that contractors and sub-contractors, as well as the owner, have to hold back the required percentage from any payments made by them. A provision making the holdback 20 per cent on contracts under \$15,000 is omitted.

**16.** Progressive release of holdback. A new section. Comment page 78.

sub-contractor by a sub-contract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced

(a) by 15 per cent of the sub-contract price, or

(b) if there is no specific sub-contract price, by 15 per cent of the actual value of the work done and materials furnished under that sub-contract,

but this subsection does not operate if and so long as any lien derived under that sub-contract is preserved by anything done under this Act.

(3) The contractor or sub-contractor may at any time after the completion of the contract demand a certificate of completion of the contract from the supervisor, which demand shall be made in writing and may be delivered to the supervisor or sent to him by registered mail with postage fully prepaid and a copy of the demand shall be given to the owner or his agent, or sent to the owner or his agent, as the case may be, by registered mail with postage fully prepaid.

(4) The supervisor of whom the demand is made shall within 10 days of the making of the demand issue and deliver to the applicant the required certificate of completion and if the supervisor neglects or refuses to issue or deliver the certificate of completion within the 10 days limited for so doing, the court

(a) upon the application of the contractor or a sub-contractor, and

(b) upon being satisfied that the contract has been completed,

may make an order that the contract has been completed upon such terms and conditions as to costs or otherwise as seem just, and the order has the same force and effect as a certificate of completion issued by the supervisor would have.

(5) Where a certificate issued by a supervisor to the effect that a sub-contract by which a sub-contractor became a sub-contractor has been completed has been given to that sub-contractor, then for the purposes of section 30, subsections (1), (2) (3) and (4) that sub-contract and any work done or to be done thereunder and any materials furnished or to be furnished thereunder shall, so far as concerns any lien thereunder of that sub-contractor, be deemed to have been completed, done or furnished not later than the time at which the certificate was so given.

(6) Where a contract is not under the supervision of a supervisor, the court,

(a) upon the application of the contractor or a sub-contractor, and



(b) upon being satisfied that the contract has been completed,  
may make an order that the contract has been completed upon such terms and conditions as to costs or otherwise as seem just, and the order has the same force and effect as a certificate of completion issued by a supervisor would have.

**17.** A mortgagee authorized by the owner to disburse the moneys secured by a mortgage may retain the amount required to be retained by the owner as the person primarily liable on the contract and the retention by the mortgagee of that amount shall be deemed to be a compliance with section 15, subsection (1) by the owner as the person primarily liable on the contract.

**18.** (1) Upon the expiration of the time limited by section 30, payment of the lien fund may be validly made so as to discharge every lien in respect thereof unless, in the meantime, a statement of lien has been registered.

(2) Where a statement of lien has been registered, the owner or a mortgagee authorized by the owner to disburse the moneys secured by a mortgage may,

(a) by interlocutory application in any proceedings that have been commenced to enforce a lien, or

(b) on application by originating notice of motion, pay into court the amount of the lien fund.

(3) On an application under subsection (2), notice shall be given as provided in section 38, subsection (1).

(4) Payment into court ordered under subsection (2) discharges the owner from any liability in respect of liens and

(a) the money when 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.

(5) On an application under subsection (2), the court

(a) may hear and receive such evidence, by affidavit or *viva voce* or otherwise, as it considers necessary in order 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.

**19.** (1) Where a lien becomes a charge on the amount required to be retained under section 15 and the contract

**17.** Present section 18.

**18.** Present section 19 revised. Subsection (5) is new. Comment page 74 et seq.

**19.** Present section 21. Comment page 83.

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 him.

(2) Where the owner or person primarily liable on the contract desires to avail himself of the provisions of section 18 and pay into court the amount to be retained and the contract price is not payable in money a judge may, on application by the owner on such notice, if any, as the judge directs, fix the amount of money that is to be paid into court with respect to the value of the percentage to be retained.

**20.** Where an owner, mortgagee, contractor or sub-contractor

(a) makes a payment to a person entitled to a lien for or on account of a debt due to the person for work done or materials furnished and for which the owner, mortgagee, contractor or sub-contractor is not primarily liable on the contract, and

(b) within three days afterwards gives written notice of the payment to the person primarily liable on the contract or his agent,

the payment shall be deemed to be a payment on his contract generally to the contractor or sub-contractor primarily liable on the contract, but not so as to affect the percentage to be retained by the owner as provided by section 15.

**21.** The right of a lienholder may be assigned by an instrument in writing and, if not assigned, passes upon his death to his personal representative.

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

(a) the taking of any security, or

(b) the acceptance of a promissory note or bill of exchange, or

(c) the taking of any acknowledgment of the claim, or

(d) the giving of time for payment, or

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

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

(2) Where a promissory note or bill of exchange issued in respect of the claim of a lienholder has been negotiated, the lienholder does not thereby lose his lien if he is the holder of the promissory note or bill of exchange

**20.** Present section 22.

**21.** Present section 23.

**22.** Present section 24.

- (a) at the time of beginning proceedings to enforce the lien, or
- (b) at the time of proving his claim therein, where proceedings are brought by another lienholder.

**23.** Where the period of credit in respect of a claim has not expired or where 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 his claim therein as if the period of credit or the extended time had expired.

#### **Right to Information**

**24.** (1) A registered lienholder, by notice in writing, may at any reasonable time demand

- (a) of the owner, or his agent, the production for inspection of the contract with the contractor,
- (b) of the contractor, the production for inspection of
  - (i) the contract with the owner, and
  - (ii) the contract with the sub-contractor through whom the lienholder's claim is derived, and
- (c) of the sub-contractor, through whom his claim is derived, the production for inspection of the contract with the contractor,

and the production for inspection of a statement of the state of accounts between the owner and contractor or contractor and sub-contractor, as the case may be.

(2) Where, at the time of the demand or within six days thereafter, the owner or his agent, the contractor or sub-contractor, as the case may be,

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

then, if the lienholder sustains loss by reason of the refusal or neglect or false statement, the owner, contractor or sub-contractor, as the case may be, is liable to him in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of his lien.

**23.** Present section 25.

**24.** Present section 26 amended. Comment page 85.

(3) A registered lienholder, by notice in writing, may at any reasonable time demand of a mortgagee or his agent or unpaid vendor or his 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 have been or are to be furnished, and

(b) a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be.

(4) Where the mortgagee or vendor or his agent fails to inform the lienholder at the time of the demand or within six days thereafter

(a) of the terms of the mortgage or agreement, and

(b) of the amount owing thereon,

then, if the lienholder sustains loss by the refusal or neglect or by reason of any misstatement by the mortgagee or vendor of the terms thereof or amount owing thereon, the mortgagee or vendor is liable to him in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of his lien.

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

(a) the owner or his agent, or

(b) the contractor, or

(c) a sub-contractor, or

(d) the mortgagee or his agent, or

(e) the unpaid vendor or his agent,

as the case may be, to produce and allow a lienholder to inspect any contract or agreement or mortgage or agreement for sale, upon such terms as to costs as the court considers just.

#### **Registration of Lien**

**25.** (1) A lien may be registered in the land titles office of the land registration district in which the land is situated 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,

**25.** Present section 27 in part and section 30 with a change in section 27 (6) which presently reads:

(6) Where the affidavit is made by some person other than the lienholder, it shall state that such person has a personal knowledge of the matters required to be verified.

Comment page 87.

- (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 sub-contract, 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 therein to be charged, and
  - (f) an address for service of the lienholder within Alberta.
- (3) In the case of a lien arising in connection with an oil or gas well 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.
- (4) Where 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.
- (5) The statement of lien shall be verified by an affidavit in the prescribed form of the lienholder or of his agent or assignee.
- (6) Where 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.
- (7) Where 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 his information and states that he believes the facts to be true.

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

(2) A Registrar shall decide whether his 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 \$20 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*

**26.** Present sections 27 in part and 56.

and subsection (5) does not apply thereto, he shall make a record of the lien in a book or such other manner as he considers advisable.

(5) Where 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 filed with the Minister of Mines and Minerals and not with the Registrar and this Act applies *mutatis mutandis* to all claims of lien so registered with the Minister of Mines and Minerals.

**27.** (1) A substantial compliance with section 25 is sufficient and a lien shall not be invalidated by failure to comply with any requirements of section 25 unless, in the opinion of the court, the owner, contractor, sub-contractor, mortgagee or some other person is prejudiced thereby.

(2) Where, in the opinion of the court, a person is prejudiced by a failure to comply with section 25, 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.

**28.** (1) A lienholder may change his address for service within Alberta by delivering to the Registrar of the appropriate land registration district a notice of change of address for service in the prescribed form.

(2) The Registrar shall

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

(b) upon receipt of his proper fee,

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

**29.** A person who has a lien against a particular estate or interest only and who registers a lien against an estate or interest in the lands to which his lien does not attach is liable for legal and other costs and any damages incurred by or resulting to the owner of any estate or interest in the land by reason of the wrongful registration of the lien against his estate or interest.

**27. Present section 28.**

**28. Present section 29.**

**29. Present section 31 amended to apply to any estate or interest in land and not just one in minerals. Comment page 88.**

**30.** (1) A lien in favour of a contractor or a sub-contractor in cases not otherwise provided for, may be registered at any time up to the completion or abandonment of the contract or sub-contract, as the case may be, and within 35 days after completion or abandonment.

(2) A claim of lien for materials may be registered at any time during the furnishing of the materials and within 35 days after the last of the materials is furnished.

(3) A lien for the performance of services may be registered at any time during the performance of the services and within 35 days after the performance of the services is completed.

(4) A lien for wages may be registered at any time during the performance of the work for which the wages are claimed and within 35 days after the completion of the work.

(5) Where, in respect of work done on or material furnished for an improvement,

(a) something is improperly done, or

(b) something that should have been done is not done,

at the time when the thing should have been done and if at a later date the thing improperly done is put right or the thing not done is done, the doing of the thing at the later date shall not be deemed to be the completion of the work or the furnishing of the last materials so as to enable a person to extend the time limited by this section for registering a lien.

#### **Expiry and Discharge of Lien**

**31.** Where a lien is not registered within the time limited by section 30, the lien ceases to exist.

**32.** (1) A lien that has been registered ceases to exist unless, within 90 days from the date of registration thereof,

(a) an action is commenced to realize upon the lien or in which the lien may be realized upon under this Act, and

(b) a certificate of *lis pendens* in the prescribed form is registered in the appropriate land titles office.

(2) The clerk of the court 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 filed in the appropriate land titles office.

**30.** Present section 32 revised to remove the 120-day period in connection with oil and gas wells and pipe lines and the 60-day period in connection with mines. Comment pages 31 to 38.

**31.** Present section 33.

**32.** This clause, together with clauses 33 and 34, replaces present sections 34 to 37. Comment pages 92 to 98. The major change is in the duration of a registered lien. Under present section 35, the registration of a lien is good for six years and can be renewed for another six.

- (4) Upon receiving
  - (a) a certificate under the seal of the clerk of the court 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,

the Registrar shall cancel registration of the certificate of *lis pendens*.

**33.** (1) Where a certificate of *lis pendens* is filed in accordance with section 32, any lien which has continued to exist by reason of registration of the certificate of *lis pendens* continues to exist until the proceedings are concluded.

(2) Notwithstanding subsection (1), if no trial has been held within two years from the date of the registration of the certificate of *lis pendens*, any interested party may apply *ex parte* to the court to have the certificate of *lis pendens* vacated and all liens depending thereon discharged.

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

- (a) upon receiving notification in a prescribed form signed by the claimant or his agent stating that the lien has been satisfied in whole or in part, or
- (b) upon receiving proof satisfactory to him that a lien which has been registered has ceased to exist.

(2) The Registrar shall cancel the registration of a lien in part only upon receiving notification in the prescribed form signed by the claimant or his 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) upon receiving a certified copy of an order or judgment of a court ordering the cancellation of the registration of a lien, or
- (b) upon receiving a certificate under the seal of the clerk of the court 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

**33.** See note to clause 32.

**34.** See note to clause 32.

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

**35.** (1) The court may, upon application by originating notice,

- (a) order that the registration of a lien be cancelled upon the giving of security for or the payment into court of the amount of the claim and such costs as the court may fix, or
- (b) order that the registration of a lien be cancelled on any proper ground.

(2) Money paid into court replaces the land discharged and is subject to the claim of all persons for liens to the same extent as if the money had been realized by a sale of the land in an action to enforce the lien.

#### **Enforcement of Lien**

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

(2) Lienholders shall not be named as defendants.

(3) Where 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.

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

- (a) the owner, and
- (b) the holder of any prior registered encumbrance.

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

(6) The procedure in adjudicating upon 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 thereof at the least expense.

**37.** (1) The statement of claim shall be served upon all persons who by the records of the land titles office appear to have an interest in the land in question and upon such other persons as the court may direct.

(2) All persons, including lienholders, served with a statement of claim are parties to the proceedings.

**35.** Present section 38.

**36.** Replaces present section 39. Comment pages 99 to 101.

**37.** Replaces present section 40. Comment page 102.

**38.** (1) The time within which a defendant may file a statement of defence or demand of 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 service of the statement of claim upon him, a party may file with the clerk of the court and serve upon 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 of the service of the notice upon him, file in the office of the clerk of the court in which the proceedings were commenced an affidavit providing detailed particulars of his lien.

(5) A lienholder upon whom a notice to prove lien is served and who does not file his affidavit

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

(b) within such further period as the court may order on application upon notice,

loses his lien.

(6) Any party to the action may examine the lienholder upon his affidavit filed pursuant to this section.

**39.** (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 upon all defendants and on any other persons as the court may direct, at least 10 days before the date of the application.

(3) Upon 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 such further judgment or order as the court 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 upon service of notice to prove lien and the transcript of any examination thereon, and may

(i) determine summarily the validity of the liens concerned,

(ii) hear evidence *viva voce*, and

**38.** New procedures. Comment page 103

**39.** New procedure. Comment page 106.

- (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 such further order or direction as the court considers necessary or desirable including, *inter alia*, 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 examinations for discovery be held, but no examinations for discovery shall be held without an order of the court.

**40.** (1) At any time after service of the statement of claim, any party 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 upon such terms and upon the giving of such security or without security as the court considers appropriate.

(2) At any time after service of the statement of claim, any party may apply to the court for the appointment of a trustee and the court may, upon the giving of such 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 upon approval of the court to complete or partially complete the improvement.

(3) Mortgage moneys advanced to the trustee as the result of any of the powers conferred upon him under this section take 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 in-

**40.** New procedure. Comment page 108.

terests of any kind including dower, except in cases where the sale is made subject to any mortgage, charge, encumbrance or interest.

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

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

**42.** Where more than one action is commenced to enforce liens in respect of the same land, the court

- (a) may, upon 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.

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

**44.** Upon the trial of the action, the court

- (a) shall decide all questions that arise therein 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 therein and to adjust the rights and liabilities of and give all necessary relief to all parties.

**45.** (1) Where a lien claimant fails to establish a valid lien, he may nevertheless be awarded personal judgment against any party to the proceedings for any sum that is due to the claimant and that he 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

**41.** Replaces present sections 41 and 42. Comment page 106.

**42.** Replaces present section 43. Comment page 109.

**43.** New Comment page 111.

**44.** Present section 45 (2) but clause (b) is new. Comment page 112.

**45.** Present section 45 (3) and 46. Comment page 114.

- (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.

**46.** (1) Where a sale takes place as provided in section 45, the moneys realized from the sale shall be paid into court to the credit of the action.

(2) Upon application by the plaintiff or any party, following the payment of moneys into court pursuant to subsection (1), the court shall,

- (a) where there is sufficient money realized to satisfy all claims, direct that the moneys be paid out of court to the claimants as they are entitled in respect of their claims, costs and disbursements, or
- (b) where sufficient moneys are 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 moneys in court, the amounts which the various persons interested are entitled to receive from the moneys in court, the persons adjudged to pay any moneys and any credits allowed to those persons under this Act.

**47.** (1) Where 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, and
- (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 moneys realized from a sale, receivership or trusteeship under this Act and insurance moneys to which section 13 applies shall be paid into court for distribution as provided in this section.

(3) Where a sale is made pursuant to subsection (1), clause (a), the moneys 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 six weeks' wages, if so much is owing, of all labourers employed by the owner, contractor or sub-contractor ;

**46.** Replaces present section 47. Comment page 115.

**47.** Replaces present section 51. Comment page 118.

- (c) in paying the several amounts owing to lienholders other than the contractor;
- (d) in paying the amount owing to the contractor.

(4) Where a sale is made pursuant to subsection (1), clause (b), the moneys 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 which 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 the several amounts owing to lienholders other than the contractor;
- (d) 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 moneys 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) Where a labourer has more than six weeks' wages owing to him by a sub-contractor, contractor or owner, the court

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

**48.** (1) Where 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 have become part of the land, or
- (b) the provisions of section 9,

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, upon 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.

**48.** Present section 49.

(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 thereon would be applied.

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

**50.** 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.

**51.** (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 his lien.

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

**52.** (1) An appeal lies to the Appellate Division of the Supreme Court 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 \$200 or more.

(2) Where the amount of the lien or the total amount of the liens joined is less than \$200 the decision of the court of first instance is final.

**53.** 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 therewith.

**54.** 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 his contract of engagement for the work in respect of which the liens are sought to be enforced, or

**49.** New. Comment page 122.

**50.** New. Comment page 122.

**51.** Present section 50.

**52.** Present section 52.

**53.** Present section 53.

**54.** Present section 54.

(b) to comply with the provisions of 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 sub-contract or wages due by him or them to any contractor, sub-contractor or labourer and may order a final judgment against the contractor and owner, or either of them, in default for those costs.

**55.** The Lieutenant Governor in Council may

- (a) prescribe rules to expedite and facilitate the business before any court under this Act, and to advance the interests of suitors therein,
- (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, and
- (c) prescribe forms to be used under this Act.

**56.** (1) *The Mechanics Lien Act, 1960*, being chapter 64 of the Statutes of Alberta, 1960, is repealed.

(2) The provisions of chapter 64 of the Statutes of Alberta, 1960, continue in effect and apply, notwithstanding its repeal, to any lien registered in a land titles office after June 30, 1961, and before the commencement of this Act.

(3) The provisions of chapter 197 of the Revised Statutes continue in effect and apply, notwithstanding its repeal, to any lien registered in a land titles office on or before June 30, 1961.

**57.** This Act comes into force upon a date to be fixed by Proclamation.

**55.** Present section 55 revised to include authority to prescribe forms instead of having the forms included in the Act.

**56.** Repeal of present Act.