

2020 Bill 37

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 37

**BUILDERS' LIEN (PROMPT PAYMENT)
AMENDMENT ACT, 2020**

THE MINISTER OF SERVICE ALBERTA

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 37

2020

BUILDERS' LIEN (PROMPT PAYMENT) AMENDMENT ACT, 2020

(Assented to _____, 2020)

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

Amends RSA 2000 cB-7

1 The *Builders' Lien Act* is amended by this Act.

2 The title and chapter number of the Act are repealed and the following is substituted:

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

3 The following heading is added before section 1:

**Part 1
General**

4 Section 1 is amended

- (a) In clause (h) by striking out "section 18(1) or (1.1)"
wherever it occurs and substituting "section 18(1), (1.1)
or (1.2)";

Explanatory Notes

1 Amends chapter B-7 of the Revised Statutes of Alberta 2000.

2 The title and chapter number of the Act presently read:

BUILDERS' LIEN ACT
Chapter B-7

3 Adds new heading.

4 Section 1 presently reads in part:

1 In this Act,

(h) "major lien fund" means

(b) In clause (i) by striking out “section 23(1) or (1.1)” wherever it occurs and substituting “section 23(1), (1.1) or (1.2)”.

5 The heading before section 5 is repealed and the following is substituted:

**Part 2
Creation of Lien**

6 Section 11(3) is amended by striking out “sections 18(1) or (1.1) and 23(1) or (1.1)” and substituting “sections 18(1), (1.1) or (1.2) and 23(1), (1.1) or (1.2)”.

- (i) *where a certificate of substantial performance is not issued, the amount required to be retained under section 18(1) or (1.1) plus any amount payable under the contract*
 - (A) *that is over and above the 10% referred to in section 18(1) or (1.1), 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) or (1.1) plus any amount payable under the contract*
 - (A) *that is over and above the 10% referred to in section 18(1) or (1.1), 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) or (1.1) plus any amount payable under the contract*
 - (i) *that is over and above the 10% referred to in section 23(1) or (1.1), 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;*

5 The heading before section 5 presently reads:

Creation and Extent of Lien

6 Section 11(3) presently reads:

(3) Notwithstanding subsection (2), no judgment, execution, assignment, attachment, garnishment or receiving order shall affect

7 Section 18 is amended

(a) by adding the following after subsection (1.1):

(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 of 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.

(b) in subsection (2) by striking out “subsection (1) or (1.1)” wherever it occurs and substituting “subsection (1), (1.1) or (1.2)”;

(c) in subsection (5) by striking out “subsection (1) or (1.1)” and substituting “subsection (1), (1.1) or (1.2)”.

8 Section 21 is amended by adding the following after subsection (4):

(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

the amount required to be retained under sections 18(1) or (1.1) and 23(1) or (1.1).

7 Section 18 presently reads in part:

(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.*

(2) In addition to the amount retained under subsection (1) or (1.1), 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) or (1.1).

(5) A payment of an amount, other than that required to be retained under subsection (1) or (1.1), 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.

8 Section 21 presently reads in part:

(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,*

(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.

9 Section 23 is amended

(a) by adding the following after subsection (1.1):

(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 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.

(b) in subsection (2) by striking out “subsection (1) or (1.1)” wherever it occurs and substituting “subsection (1), (1.1) or (1.2)”;

(c) in subsection (5) by striking out “subsection (1) or (1.1)” and substituting “subsection (1), (1.1) or (1.2)”.

10 The following is added after section 24:

Payment of amount retained under sections 18, 21 and 23

24.1(1) Subject to subsection (2), an owner may make a payment of the amount retained under section 18(1), (1.1) or (1.2), 21 or 23(1), (1.1) or (1.2).

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

(a) the contract provides

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.

9 Section 23 presently reads in part:

(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.

(2) In addition to the amount retained under subsection (1) or (1.1), 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) or (1.1) for work done and materials furnished on and after the date of issue of the certificate of substantial performance of the contract.

(5) A payment of an amount, other than that required to be retained under subsection (1) or (1.1), 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.

10 Payment of amount retained under sections 18, 21 and 23.

- (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.

11 Section 26 is amended by striking out “section 18(1) or (1.1) or 23(1) or (1.1)” and substituting “section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2)”.

12 Section 27 is amended

(a) by adding the following after subsection (2.1):

(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.

11 Section 26 presently reads:

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) or (1.1) or 23(1) or (1.1), as the case may be, by the owner as the person primarily liable on the contract.

12 Section 27 presently reads in part:

(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.

(2.2) 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

(b) by adding the following after subsection (2.2):

(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.

13 Section 29(1) is amended by striking out "section 18(1) or (1.1) or 23(1) or (1.1)" **and substituting** "section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2)".

- (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.

13 Section 29(1) presently reads:

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

14 The following is added after section 32:

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 or a subcontract, 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 or subcontractor’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.

owner under section 18(1) or (1.1) or 23(1) or (1.1), as the case may be.

14 Part 3 Prompt Payment.

(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).

Payment deadline

32.2(1) Subject to subsection (2), an owner, contractor or subcontractor 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, contractor or subcontractor 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 party receiving the invoice gives the other party 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).

No effect of prohibition on pay

32.3 Any provision of a contract that provides that a contractor or subcontractor will only be obligated to pay a subcontractor with whom they have a contract after they have received payment for work done or materials furnished is of no force or effect.

Interest on late payments

32.4 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

32.5 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.

15 The heading before section 33 is repealed and the following is substituted:

**Part 4
Right to Information**

16 Section 33 is repealed and the following is substituted:

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,

15 The heading before section 33 presently reads:

Right to Information

16 Section 33 presently reads:

33(1) A lienholder, by notice in writing, may at any reasonable time demand,

(a) of the owner or the owner's 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 subcontractor through whom the lienholder's claim is derived,

and

(c) of the subcontractor through whom the lienholder's 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 subcontractor, as the case may be.

(2) If, at the time of the demand or within 6 days after it, the owner or the owner's agent, the contractor or the subcontractor, as the case may be,

- (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

- (a) *does not produce the written contract and statement 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 and 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 it,*

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

(3) A lienholder, 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 have been 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.*

(4) If the mortgagee or vendor or the mortgagee's or vendor's agent fails to inform the lienholder 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 lienholder sustains loss by reason of the failure or by reason of any misstatement by the mortgagee or vendor of the terms or amount owing, the mortgagee or vendor is liable to the lienholder in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of the lienholder's lien.

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.

(5) 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 a lienholder to inspect any contract, agreement, mortgage, agreement for sale, statement of the amount advanced or statement of the amount due and owing, on any terms as to costs that the court considers just.

17 The following is added after section 33:

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;

17 Part 5 Dispute Adjudication.

- (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 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 the regulations or the procedures established by the Nominating Authority responsible for that matter.

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) Subject to section 33.7, the determination of a matter by the adjudicator is final and binding on the parties to the adjudication.

Judicial review

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

Grounds

33.8 The determination of an adjudicator may be set aside on an application for judicial review if the applicant establishes one or more of the following grounds:

- (a) the adjudicator committed a mistake of law;
- (b) the adjudicator did not have the jurisdiction to decide the matter;
- (c) the contract or subcontract is invalid or did not exist at the time the dispute arose;
- (d) the determination was of a matter for which adjudication under this Part was not permitted, or of a matter entirely unrelated to the subject of the adjudication;
- (e) the adjudication was conducted by someone other than a duly qualified adjudicator;
- (f) the procedures followed in the adjudication did not accord with the procedures to which the adjudication was subject under the regulations or established by the responsible Nominating Authority;
- (g) there is a reasonable apprehension of bias on the part of the adjudicator;
- (h) the determination was made as a result of fraud.

No stay

33.9 An application for judicial review of a decision of an adjudicator does not operate as a stay of the operation of the determination unless the court orders otherwise.

Immunity

33.91(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.

18 The heading before section 34 is repealed and the following is substituted:

**Part 6
Registration**

19 Section 35(3) is amended by striking out “\$300” and substituting “\$700”.

20 Section 41 is amended

- (a)** by striking out “subject to clause (b)” wherever it occurs and substituting “subject to clauses (b) and (c)”;
- (b)** in subsection 1 by striking out “or” at the end of clause (a), adding “or” at the end of clause (b) and by adding the following after clause (b):
- (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.

18 The heading before section 34 presently reads:

Registration of Lien

19 Section 35(3) presently reads:

(3) No lien shall be registered unless the claim or joined claims amount to or aggregate \$300 or more.

20 Section 41 presently reads in part:

41(1) A lien for materials may be registered at any time within the period commencing when the lien arises and

- (a) subject to clause (b), terminating 45 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned, or*
- (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.*

(c) in subsection (2) by striking out “or” at the end of clause (a), adding “or” at the end of clause (b) and by adding the following after clause (b):

(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.

(d) in subsection (3) by striking out “or” at the end of clause (a), adding “or” at the end of clause (b) and by adding the following after clause (b):

(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.

(e) in subsection (4) by striking out “or” at the end of clause (a), adding “or” at the end of clause (b) and by adding the following after clause (b):

(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.

21 The heading before section 42 is repealed and the following is substituted:

(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 clause (b), terminating 45 days from the day that the performance of the services is completed or the contract to provide the services is abandoned, or

(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.

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

(a) subject to clause (b), terminating 45 days from the day that the work for which the wages are claimed is completed or abandoned, or

(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.

(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 clause (b), terminating 45 days from the day the contract or subcontract, as the case may be, is completed or abandoned, or

(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.

21 The heading before section 42 presently reads:

Expiry and Discharge of Lien

Part 7
Expiry and Discharge of
Lien

22 Section 48(2)(c) is amended by striking out “section 18(1) or (1.1) or 23(1) or (1.1)” and substituting “section 18(1), (1.1) or (1.2) or 23(1), (1.1) or (1.2)”.

23 The heading before section 49 is repealed and the following is substituted:

Part 8
Enforcement of Liens

24 The following heading is added before section 70:

Part 9
Regulations and
Transitional Provisions

25 Section 70 is amended

(a) by renumbering clause (a) as clause (a.3) and by adding the following before clause (a.3):

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

(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 officers 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;

22 Section 48(2)(c) presently reads:

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

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

23 The heading before section 49 presently reads:

Enforcement of Lien

24 Adds new heading.

25 Section 70 presently reads in part:

70 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 in it;*

(c) prescribe forms to be used under this Act.

- (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 any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of Part 5.

(b) by adding the following after clause (c):

- (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.

26 The following is added after section 73:

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*;

26 Transitional.

(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.

27 The following provisions are amended by striking out “45 days” wherever it occurs and substituting “60 days”:

section 18(1);
section 21(1)(b) and (2)(b);
section 23(1);
section 27(1) and (2);
section 41(1)(a), (2)(a), (3)(a) and (4)(a).

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*”.

27 Updates provisions (quantity of days).

Consequential Amendments and Coming into Force

28(1) Amends chapter C-22 of the Revised Statutes of Alberta 2000.++

(2) Section 78(1) presently reads in part:

78(1) For the purposes of the Builders' Lien Act,

29(1) Amends chapter L-4 of the Revised Statutes of Alberta 2000.

(2) Sections 27(5), 104(4) and 153(1) presently read:

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*”.

27(5) Notwithstanding subsections (1) to (4), the Registrar may register a lien under the Builders' Lien Act by an extra-provincial corporation that is not registered in Alberta.

104(4) The rights given under the Builders' Lien Act and the Personal Property Security Act are not affected by this section.

153(1) On receipt of a claim for registration of a lien under the Builders' Lien Act and the entry and registration of the lien as an encumbrance against the estate or interest in the land described in the claim, the Registrar shall forthwith send a notice of the lien and of the amount claimed

- (a) to the registered owner of the land,*
- (b) to the person alleged on the claim for lien to be the owner of the land, and*
- (c) to the person for whom the work referred to in the claim for lien was done or proposed to be done, or the materials were furnished or to be furnished.*

(2) The notice may be addressed to the registered owner of the land and sent through the post office to the person alleged in the claim to be the owner of the land and to the person for whom the work was or was proposed to be done, or the materials to be supplied, each at their respective residences as stated in the claim for lien.

30(1) Amends chapter M-17 of the Revised Statutes of Alberta 2000.

(2) Sections 5(1)(w)(ii) and 95(5) presently read:

5(1) The Lieutenant Governor in Council may make regulations

- (w) establishing a tariff of fees*
- (ii) for the filing of any documents that may be filed with the Minister under the Builders' Lien Act,*

95(5) Notwithstanding subsection (4), if a security interest is acquired by a person other than a bank and a security notice is registered in respect of that security interest, the priority of that

31 This Act comes into force on Proclamation.

security interest is, in relation to a builder's lien, subject to the Builders' Lien Act.

31 Coming into force.

