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Your Lien Rights as a Contractor, Subcontractor, Supplier, or Other Party Providing Services or Materials to a Project under the Construction Act (the “Act”)

On any kind of construction project, getting paid when you have provided services or materials can be difficult.

These situations can be at minimum annoying, and at their extremes, unbearably stressful. What can a party do to make sure that they are properly paid as quickly as possible? A construction lien can be a very helpful tool to ensure that a party is paid appropriately.

What is a Construction Lien?

A construction lien is essentially a right that a person has in a property that is created when they provide materials and/or services to that property, that are “lienable” under the Act.

How Can it Help me Collect Payment?

The lien helps you collect payment by tying-up the owner’s title to the property, ultimately giving you a right to sell it in satisfaction of the amount owing (although claims are normally resolved before getting that far).

What Can I Lien for?

Under the Act you are permitted to lien for services and materials supplied to an improvement to land. “Improvement” is defined under the Act and has a fairly broad definition spanning from any alteration, addition or capital repair to the land, to any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land (within certain exceptions), to demolition.

Importantly, routine maintenance to prevent wear and tear of land and maintain in an ordinary state are not applicable.

Materials and Supply of Services also have specific definitions which should be consulted.

How Much Can I Lien for?

Your lien is limited to the price of the services and materials provided. You cannot claim ancillary costs involved in enforcing the lien.

What is My Deadline for Registering a Construction Lien?

For Contractors:

Defined under the Act as essentially anyone who deals directly with the owner of the land.

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Your deadline is **60 days** following the occurrence of the earlier of:

- (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published.
- (ii) the date the contract is completed, and
- (iii) the date the contract is abandoned or terminated.

If a certificate of substantial performance is not published, or for work completed after date of substantial performance, the deadline is 60 days from the earliest of ii-iii above.

For Subcontractors or other persons (with certain exceptions):

Your deadline is **60 days** from the earliest of:

- (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published;
- (ii) the date on which the person last supplies services or materials to the improvement,
- (ii.1) the date the contract is completed, abandoned or terminated, and
- (iii) the date a subcontract is certified to be completed (usually by the "Consultant" if using the CCA 1 2008 Stipulated Price Subcontract) where the services or materials were supplied under or in respect of that subcontract

If a certificate of substantial performance is not published, or for work completed after date of substantial performance, the deadline is 60 days from the earliest of ii-iii above.

For contracts that were entered into before July 1, 2018 (and for certain other limited exceptions) the deadline is **45 days** from the above instead of 60 days.

How do I Register a Construction Lien?

To register a lien, contact your lawyer who is capable of having these liens registered on title and give them the information listed in Form 12, found here: <http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>. It is best to get this information to your lawyer as soon as you can, complete with all relevant documentation including purchase orders, contracts, invoices, and anything else that you have, so that they can assist you with your claim.

Your lawyer will need to conduct a title search and confirm some important information with you. You will also need to sign a document called an "Acknowledgment and Direction". All of this must be done before a lien can be registered.

Once the lien is registered, the owner of the property and individual responsible for paying you are contacted with copies of the lien and a demand for payment. If payment is still not forthcoming, your lawyer will take further steps to initiate a legal proceeding and register a "Certificate of Action" on title to the property to further protect your lien rights.

Often these steps are enough to get the parties talking to settle the action or "vacate" the lien. Vacating the lien occurs when the party who is responsible for paying you, pays the full amount of your claimed lien to the Court plus 25% (up to a maximum of \$250,000.00) for legal costs. The Court will hold the money in trust until your legal proceeding is resolved.



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Registering a construction lien is the usually the first step in an often, long and arduous dispute process. That said, it is often a very useful tool to ensure that contractors and subcontractors are able to collect on amounts owing to them.

If you believe you are entitled to a construction lien, and may experience problems collecting payment, you should contact your lawyer as soon as possible.

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