

INDEX

References are to page number.

abandonment

- defined, 89
- uncompleted or abandoned contract, 318

adjudication, dispute

- authority, nominating
 - o minister as interim, 273
 - o nomination, 273
- definition, 271
- dispute, 271
- general, 16, 271
- hearing, 35, 277
- judicial review, 280
- jurisdiction and enforcement, 17
- procedure, 277

adjudication of claims, 319

affidavits

- affidavit of lienholder or lienholder's agent — form 1, 349
- affidavit verifying claim by lienholder — form 3, 355
- affidavit verifying claim by other than lienholder — form 4, 357

Alberta Prompt Payment and Construction Lien Act (PPCLA)

- adjudication, dispute
 - o authority
 - o o minister as interim, 272
 - o o nomination, 272
 - o dispute, 228
 - o definition, 271
 - o general, 16, 271
 - o hearing, 35, 277
 - o judicial review, 280
 - o jurisdiction and enforcement, 17
 - o procedure, 276
- Bill 37, amendments
 - o generally, 7
 - o potential impact of amendments, 10
 - o rationale, 7
 - o o delay in payment, 8
 - o o delay in resolution of disputes, 8
- construction lien defined, 2
- creation of lien, 199, 202
- lien ceasing to exist, 3
- limitation of owner's liability, 3

INDEX

- primary functions of PPCLA, 1
- prompt payment deadline
 - o contractor to subcontractor, 11, 262
 - o effect of prompt payment, 14
 - o effect on wages, 268
 - o late payment, interest, 14, 267
 - o invoice, 10, 259
 - o non-payment, 264
 - o owner to contractor, 11, 261
 - o subcontractor to subcontractor, 12, 263
- purpose of the Act, 1
- table of concordance, 269
- trust provisions, 127, 242

assignment of rights, 258

Buchanan Report, 160

cancellation of lien, 300

certificate of substantial performance, *see also* substantial performance

- defined, 155, 196
- generally, 125
- requirement to display, 126

checklists

- checklist for filing and enforcing a lien, 341
- checklist for owner obligations and defending against a lien, 344

compliance with PPCLA

- contractors, subcontractors and material suppliers, by, 127
- owner, by, 127
- responsibility of contractors and subcontractors to those who work for them, 127

condominium liens, 66

construction bonds

- construction lien bonds, 140
- contact information for bonding companies, 141
- enforcement
 - o obligee finishing work on its own, 140
 - o suing on bond, 141
 - o triggering bond, 140
 - o when is bond effective, 140
- generally, 138
- labour and material bond, 139
- performance bonds, 138
- adjudication, dispute

INDEX

- o authority
 - o o minister as interim, 272
 - o o nomination, 272
- o definition, 271
- o dispute, 271
- o general, 16, 271
- o hearing, 35, 277
- o judicial review, 280
- o jurisdiction and enforcement, 17
- o procedure, 276
- o assignment of rights, 258
- cancellation of lien, 300
- ceasing to exist upon failure to register, 44, 129, 294
- compliance
 - o contractors, subcontractors and material suppliers, by, 127
 - o owner, by, 127
 - o responsibility of contractors and subcontractors to those who work for them, 127
- condominium liens, 66
- continuation of lien, 299
- creation of lien
 - o generally, 1, 50, 202
 - o improvements, 56
 - o o oil and gas improvements, 56
- Crown land, public works, Crown corporations and First Nations projects and lands, 70
- date of, 136
- defined, 5
- discharge of lien - form 7, 359
- enforcement, *see* enforcement of lien
- expiry of registered lien, 294
- holdback, *see* holdback and lien fund system
- federal lands, 70
- First Nations projects and lands, 70
- leasehold liens, 67
- licences, 69
- lien as charge against money, 297
- lien fund system, *see* holdback and lien fund system
- limitation of lien, 209
- merging of lien, 144, 258
- mineral liens
 - o expiry of registered lien, 63
 - o expiry of unregistered lien, 62
 - o generally, 59
 - o holdback period, 63
 - o place of registration, 61
 - o special rules, 61

INDEX

- o time for registration, 61
 - oil and gas liens
 - o expiry of registered lien, 66
 - o expiry of unregistered lien, 66
 - o generally, 63
 - o holdback period, 66
 - o place of registration, 65
 - o special rules, 65
 - o time for registration, 65
 - owner identified, 53
 - pipeline liens, 67
 - priorities, 211
 - prompt payment
 - o contractor to subcontractor, 11, 261
 - o effect of prompt payment, 14
 - o effect on wages, 268
 - o late payment, interest, 14, 267
 - o invoice, 10, 259
 - o non-payment, 264
 - o owner to contractor, 11, 260
 - o subcontractor to subcontractor, 12, 263
 - public works, 71
 - registration, *see* registration
 - reinstatement of lien, 286
 - removal of lien, 299
 - surface liens
 - o expiry of registered lien, 59
 - o expiry of unregistered lien, 59
 - o generally, 57
 - o holdback period, 59
 - o place of registration, 58
 - o special rules, 58
 - o time for registration, 58
 - table of concordance, 369
 - timing for attaching to fund
 - o major lien fund, 117
 - o minor lien fund, 118
 - trust provisions, *see* trust provisions
 - validity of lien, 286
 - work giving rise to lien, *see* work giving rise to lien
- construction pyramid**
- generally, 337, 44, 122, 127, 242
 - s. 29 application, and, 132, 133, 256
- continuation of lien, 299**
- contractor, defined, 156**

INDEX

court, defined, 157

creation of lien

- generally, 199, 202, 202
- improvements, 56
 - o oil and gas improvements, 56

Crown corporations, 70

defending against liens

- checklist for owner obligations and defending against a lien, 344
- discharging liens before final determination on merits
 - o generally, 130
 - o s. 27 application: payment for lien fund, 130
 - o s. 29 application: payment to lienholder by owner, 131
 - o s. 48 application: lien removed, 131
- notice to commence action, 298
- running out the clock
 - o extension of timelines, 130
 - o 15 days' notice to prove lien, 129
 - o 45- or 90-day expiry of unregistered lien, 129
 - o 180-day expiry of registered lien, 130
 - o 30 days' notice to commence action, 129, 298
 - o two-year requirement for start of trial, 130
- settlement, effect of, 135
- statement of defence and counterclaim, 105
- time for filing defence, 312
- wrongful registration, 136, 288

definitions, 44, 156-196, 337-340

discharging liens before final determination on merits

- generally, 130
- s. 27 application: payment for lien fund, 130
- s. 29 application: payment to lienholder by owner, 131
- s. 48 application: lien removed, 131

document consent order/order to discharge lien(s), order template, 362

enforcement of lien

- appointment of receiver and trustee, 109, 315
 - o entitlement to rents and profits, 316
- checklist for filing and enforcing a lien, 341
- consolidation of actions, 318
- distribution of funds, 111
- failure to establish valid lien
 - o application of money realized, 326
 - o contractual and non-contractual remedies maintained, 319
 - o payment of proceeds into court, 325

INDEX

- o personal judgment, 319
 - o quantum meruit, 324
 - generally, 100, 325
 - parties, deemed, 310
 - process
 - o adjudication of claims, 319
 - o appeal, 330
 - o costs, 331
 - o enforcement of judgment, 328
 - o entering action for trial, 319, 327
 - o failure to establish valid lien, 319
 - o fees, 331
 - o generally, 101-102
 - o notice to prove lien, 103
 - o o form 8, 360
 - o order for removal and sale of structure, 328
 - o pre-trial application, 106, 312
 - o production of documents, 107
 - o proof of claim after proceedings, 330
 - o questioning, 108
 - o request for particulars, 104
 - o Rules of Court apply to all actions brought under PPCLA, 327
 - o o PPCLA can modify filing timelines, 328
 - o o contrary to PPCLA, 328
 - o service of documents, 330
 - o statement of claim, 103
 - o o service, 311
 - o statement of defence and counterclaim, 105
 - o time for filing defence, 312
 - o trial, 108-109
 - sheltering, 98, 310
 - uncompleted or abandoned contract, 318
- estate or interest in minerals, 284**
- failure to establish valid lien**
- application of money realized, 326
 - contractual and non-contractual remedies maintained, 319
 - payment of sale proceeds into court, 325
 - personal judgment, 319
 - quantum meruit, 324
- First Nations projects and lands, 70**
- forms**
- affidavit — form 3, 355
 - affidavit verifying claim by lienholder — form 3, 356
 - affidavit verifying claim by other than lienholder — form 4, 357, 358

INDEX

- certificate of lis pendens — form 30, 361
- discharge of lien — form 7, 359
- generally, 284
- notice to prove lien — form 8, 360
- statement of lien — form 1, 349
- statement of lien upon interest in Crown minerals — form 2, 351, 353

highways and irrigations districts, 207

holdback and lien fund system

- assignment, 144, 258
- calculation of lien fund
 - o additional sum due and payable but unpaid, 235
 - o amount payable, 115, 231
 - o example, 115
 - o generally, 113
 - o holdback, 115, 231
 - o limits of liability and recovery, 120
 - o major lien fund, 116
 - o minor lien fund, 118
 - o set-off of costs for deficiencies, 116
- default of contractor or subcontractor, 236
- lien funds
 - o defined, 113, 181
 - o entitlement of subcontractor, 234
 - o establishment, 231, 232
 - o payment from, 253
- money required to be retained, 239
- mortgagee, holdback by, 253
- payment to lienholder by owner, etc., 257
- payment where contract price not money, 256
- pro rata distribution, 327
- statutory trust
 - o builders' liens and statutory trust separate remedies, 245
 - o characteristics of, 243
 - o establishment, 241
 - o priority under Torrens System, 246
- substantial performance
 - o certificate
 - o o generally, 125, 237
 - o o money required to be retained, 239
 - o o requirement to display, 126
 - o defined, 125
 - o generally, 125
 - o substantial completion, vs., 126
- work actually done or materials actually furnished, 198, 210, 235

INDEX

improvements

- defined, 55, 158
- two-step analysis for determining whether “improvement”
 - o step 1
 - o o chattels vs. improvements, 164
 - o o construction must be intended, not started or completed, 161
 - o o engineering work, 170
 - o o improvement is overall project, 163, 170
 - o o intended construction, services for, 169
 - o o interior decorating, 170
 - o o lack of permit, 172
 - o o liens on other lands, 165
 - o o off-site services, 167
 - o o physical acts listed in definition must occur, 168
 - o o physical construction 161
 - o o planning or conceptual work, 162
 - o o preparatory work, 162
 - o o protection of those who supply work or materials, 160
 - o o services must be work integral work to actual physical construction, 161, 164
 - o o transportation of equipment, 168
 - o o unrealized construction, 164
 - o o work does not need to be on improved land, 160
 - o step 2
 - o o *Alberta Gas (Grey Owl)* line of authority, 175
 - o o *Gauntlet* line of authority, 173
 - o o where thing is neither affixed nor intended to be, 173

information, lienholder’s right to, 268

labour and material bond, 139

labourer, defined, 179

Land Titles Office, 94

leasehold liens, 67

licences, 69

lien bond, order template, 365

lien funds

- charge against lien fund, 251
- defined, 113, 181
- entitlement of subcontractor, 234
- generally, 230
- liability of owner, 252

INDEX

lienholder, *see also* registered lienholder

- assignment of rights, 258
- change of address, 288
- charge against lien fund, 251
- defined, 180
- payment by owner, mortgagee, contractor or subcontractor, 257
- proving claim, 259
- right to information, 268-270

limitation of lien, 209

major lien fund

- charge against lien fund, 251
- defined, 185
- establishment of, 233, 250
- payment from, 253

material furnished, 210

merging of lien, 258

mineral liens

- estate or interest in minerals, 284
- expiry of registered lien, 63
- expiry of unregistered lien, 62
- generally, 59
- holdback period, 63
- place of registration, 61
- special rules, 61
- statement of lien upon interest in Crown minerals — form 2, 351, 353
- time for registration, 61

minerals, estate or interest in, 284

minor lien fund

- charge against lien fund, 251
- defined, 185
- establishment, 233, 249
- payment from, 253

nature of lien action

- construction pyramid, 45
- effect of lien, 47
- generally, 44
- nature of lien, 47
- other remedies, 49
- settlement and summary determination, 49
- waiver of lien rights and obligations, 48

INDEX

oil and gas liens

- expiry of registered lien, 66
- expiry of unregistered lien, 66
- generally, 63
- holdback period, 66
- improvements, 56
- place of registration, 65
- special rules, 65
- time for registration, 65

order templates

- document consent order/order to discharge lien(s), 362
- lien bond, 365

owner

- checklist for owner obligations and defending against a lien, 344
- defined, 51, 296
- liability, 252
- limitation of liability, 3

perfection

- continuation of perfected lien, 299
- realization period, 96
- realization process, 96

performance bonds, 138

pipeline liens, 67

prescribed, defined, 191

preservation

- process
 - o affidavits proving lien, 93
 - o filing statement of lien, 92
 - o Land Titles Offices, 94
 - o minimum and maximum value, 94
 - o notice of registration, 94
- registration period, 86
- strict enforcement, 86

prevention arrangements, 142

priorities

- advancing mortgage moneys
 - o advancing if lien discharged, but still remains on certificate of title, 138
 - o advancing if lien registered on title, 137
 - o best practice, 137
 - o generally, 137

INDEX

- assignments, 212, 257
- Canada Revenue Agency, 214
- generally, 211
- insurance money, 227
- land owned by married person or adult interdependent partner, 143, 223
- lease or life estate, lender, 224
- lender vs. lienholder, 136
- mortgages, 219
- purchaser's liens, 214
- removal of material, 227
- sheltering, 98
- wages, 223

promissory estoppel, 92

prompt payment

- contractor to subcontractor, 11, 261
- effect of prompt payment, 10, 14
- effect on wages, 268
- late payment, interest, 14, 267
- invoice, 14, 259
- non-payment, 264
- owner to contractor, 11, 260
- subcontractor to subcontractor, 12, 263

proving claim, 259

public works, 71

receiver

- appointment, 109, 315
- entitlement to rents and profits, 316

registered lienholder, defined, 180, 191, 309

Registrar, defined, 192

registration

- abandonment, defined, 89
- calculation of registration and realization time periods
 - o effect of deficiency work on time limits, 73, 91
 - o promissory estoppel, 92
- cancellation of registered lien, 300
- expiry of registered lien, 294
- failure to register, lien ceasing to exist upon, 44, 294
- forms, 284, 299
- generally, 84, 280
- information rights
 - o contract inspection rights, 111

INDEX

- o consequences for ignoring inspection request, 112
 - perfection
 - o realization period, 96
 - o realization process, 96
 - preservation
 - o process
 - o o affidavits proving lien, 93
 - o o filing statement of lien, 92
 - o o Land Titles Offices, 94
 - o o minimum and maximum value, 94
 - o o notice of registration, 94
 - o o registration period, 86
 - o o strict enforcement, 86
 - process, 280
 - removal of lien, 299-300
 - sheltering, 97-99, 101, 203, 221, 310
 - statement of lien, 280
 - substantial compliance requirement
 - o generally, 99
 - o reinstating invalidated lien, 112
 - time for, 289
 - wrongful, 287
- reinstatement of lien, 286**
- removal of lien, 299-300**
- removal of material (vendor's lien), 227**
- Rules of Court apply to all actions under PPCLA**
- PPCLA can modify filing timelines, 328
 - contrary to PPCLA, 328
- sale of estate or interest in land charged with lien**
- application of money realized, 326
 - o class of lienholder, 327
 - o order of priority, 328
 - o pro rata distribution, 327
 - failure to establish valid lien, 319
 - payment of proceeds into court, 325
- security interests, 216**
- set-off, law of, 146**
- settlement, effect of, 135**
- sheltering, 97-99, 101, 203, 221, 310**

INDEX

statement of claim

- generally, 103
- service, 311

statement of defence and counterclaim

- generally, 102, 105
- time for filing defence, 312

statement of lien

- generally, 280
- statement of lien — form 1, 349, 350
- statement of lien upon interest in Crown minerals — form 2, 351, 353

subcontractor

- defined, 192
- entitlement to lien fund, 234

substantial completion vs. substantial performance, 126

substantial compliance requirement, 126

substantial performance

- certificate
 - o generally, 125, 237
 - o requirement to display, 126
- defined, 155, 196
- generally, 125
- substantial completion, vs., 126

surface liens

- expiry of registered lien, 59
- expiry of unregistered lien, 59
- generally, 57
- holdback period, 59
- place of registration, 58
- special rules, 58
- time for registration, 58

table of concordance, 369

trust provisions, 127, 241

trustee

- appointment, 109, 315
- entitlement to rents and profits, 316

unjust enrichment, 145, 319

validity of lien, 286

INDEX

vendor's lien, 143

wages, defined, 193

waiver prohibited

- arbitration not prohibited, 201
- generally, 199

work

- defined, 195
- not completed, 197
- valuation of work done, 197

work giving rise to lien

- accounting services, 72
- architectural services, 72
- condominium work, 75
- construction support services, 75
- contract charges, breach of contract damages and tortious damages, 75
- contracting and subcontracting construction services, 73
- deficiency work, 73
- development and project management, 73
- drilling, 74
- engineering services, 76
- generally, 72
- interest amounts, 76
- labour, 76
- landscaping, 77
- material supply, 77
- mining equipment, 78
- mobile irrigation services and separator packages, 78
- off-site labour, 78
- planning, 79
- rental equipment, 82
- repair, 79
- seismic work, 82
- services to repair and maintain rigs and service equipment, 82
- sociologists, 82
- solicitors, 83
- storage units, 83
- standby charges, 83
- transportation, mobilization and demobilization services, 83
- trivial or minor work, 83
- un-invoiced or late invoiced amounts, 84
- work that does not proceed to actual construction, 84
- work that increases value of land, 84