



Builders' Lien

ACTION	NA	DATE DUE	DATE DONE	Notes
1. Initial Contact Arrange the initial interview (whether by phone, virtual meeting or in person).				
<ul style="list-style-type: none"> Ask the client to provide all relevant records (e.g., contract, invoices, correspondence, credit applications, copies of bonds relating to the project, certificates and documents relating to the value and completion of the work). 				
<ul style="list-style-type: none"> Check whether there are any limitation problems: <ul style="list-style-type: none"> Expiry of lien (40 clear days); see <i>The Builders' Lien Act</i>, SS 1984-85-86, c B-7.1, section 49, as to when the 40-day period begins to run. Section 49(5) may allow late registration of a lien. 				
<ul style="list-style-type: none"> Commencement of trust action under <i>The Builders' Lien Act</i> within two years of completion or abandonment of the contract (section 19). 				
<ul style="list-style-type: none"> Notice and commencement of action are requirements under bonds (e.g., labour and material payment bond, performance bond). 				
<ul style="list-style-type: none"> Check <i>The Limitations Act</i>, SS 2004, c L-16.1 and <i>The Builders' Lien Act</i> for claim in debt and enforcement of the lien, as well as <i>The Cities Act</i>, SS 2002, c C-11.1, <i>The Municipalities Act</i>, SS 2005 c M-36.1 and <i>The Northern Municipalities Act, 2010</i>, SS 2010, c N-5.2 for actions against cities/municipalities. 				
<ul style="list-style-type: none"> Obtain the names of all actual or possible parties (e.g., owner's consultant) adverse in interest and ensure that there are no conflicts of interest before the interview. 				
2. Consult with Client and Obtain Instructions <ul style="list-style-type: none"> After reviewing the title search, confirm there is no conflict of interest. 				

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<ul style="list-style-type: none"> Advise client regarding calculation of your account, the method and timing of payment, and the conditions upon which you undertake to act. Obtain a retainer. Consider whether written retainer agreement is appropriate. Also note the Law Society tariff relating to charges for work performed. 				
<ul style="list-style-type: none"> Determine the client's objectives. 				
<ul style="list-style-type: none"> Collect information from the client: <ul style="list-style-type: none"> Client: <ul style="list-style-type: none"> Name, address, telephone numbers, email; consider client identification and verification requirements in accordance with the Law Society of Saskatchewan Rules. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Name, address, and position of the person who will swear the affidavit of verification. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Classification under <i>The Builders' Lien Act</i> (e.g., owner, agent, contractor, subcontractor, labourer, material person or service person, architect, engineer, etc.). 				
<ul style="list-style-type: none"> The person with whom the client has contracted with or invoiced in respect of work done or material supplied: <ul style="list-style-type: none"> Name, address, telephone numbers, email. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Position in the contractual chain (e.g., owner, contractor, subcontractor/supplier). 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Lawyers' names. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Obtain copies of invoices if not already provided. 				
<ul style="list-style-type: none"> Details of the construction and client's involvement, including: <ul style="list-style-type: none"> Sufficient information to be able to determine all persons fitting the definition of "owner" under <i>The Builders' Lien Act</i>, section 2. Get names, addresses, telephone numbers, email and lawyers' names. 				

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<ul style="list-style-type: none"> Details of the material provided or work done, including substantial performance and completion date of the contract, sub-contract or date of abandonment or other determination (see definitions in <i>The Builders' Lien Act</i>, sections 3 and 4). Also obtain copies of any substantial performance certificates issued. 				
<ul style="list-style-type: none"> Names of the consultants, architects and engineers. 				
<ul style="list-style-type: none"> Name of general or head contractor. 				
<ul style="list-style-type: none"> Name of client's insurer and details of policies/coverage on the project. 				
<ul style="list-style-type: none"> Amount due (including any holdback) and the date when the amount became or will become due. 				
<ul style="list-style-type: none"> Description of the property: <ul style="list-style-type: none"> Address and legal description. 				
<ul style="list-style-type: none"> If it is owned by the Federal Crown, <i>The Builders' Lien Act</i> does not apply (though trust obligations may still apply between others in the construction chain – see <i>Canadian Pacific Railway Company v Kelly Panteluk Construction Ltd.</i>, 2020 SKCA 123). Note to check recent case law where leasehold interests, Federal or Provincial Crown, or Federal or Provincial Crown Corporations are involved. 				
<ul style="list-style-type: none"> Whether it is a highway within the exemption set out in <i>The Builders' Lien Act</i>, section 5 (though lien obligations may still apply as between non-Crown parties – see <i>Regina Bypass Design Builders v Supreme Steel LP</i>, 2021 SKCA 82). 				
<ul style="list-style-type: none"> Whether it is mineral or petroleum or natural gas property (<i>The Builders' Lien Act</i>, sections 22 and 51). 				

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<ul style="list-style-type: none"> Whether work was completed on a leasehold interest (<i>The Builders' Lien Act</i>, section 31). 				
<ul style="list-style-type: none"> If a plan is available, have client identify the property on it. 				
<ul style="list-style-type: none"> State of completion of the project: <ul style="list-style-type: none"> Whether an architect's or engineer's certificate of substantial performance has been issued. 				
<ul style="list-style-type: none"> Whether an occupancy permit has been issued (<i>The Builders' Lien Act</i>, section 3(1)(a)). 				
<ul style="list-style-type: none"> Whether the building is occupied (<i>The Builders' Lien Act</i>, section 3(1)(a)). 				
<ul style="list-style-type: none"> Whether safety systems are in place. 				
<ul style="list-style-type: none"> If there is any doubt, get name of consultant/architect/engineer and confirm. 				
<ul style="list-style-type: none"> Names and addresses of any banking or lending institutions connected with the project or with the general contractors. Also names and addresses of the defendant's banks, in case account seizure is an option. Also whether lenders have builders' mortgages, whether lenders are holding back 10%, and whether lenders have made any representations to potential or existing lien claimants. 				
<ul style="list-style-type: none"> Whether there are performance bonds or labour and material payment bonds, and name of the surety. 				
<ul style="list-style-type: none"> Whether there has been a previous demand for payment. 				
<ul style="list-style-type: none"> Whether there have been allegations of faulty workmanship or materials. If so, determine whether to give notice under client's insurance policies, or whether client is covered under other policies (e.g., wrap-up policies). 				

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<ul style="list-style-type: none"> Details relating to a breach of trust (<i>The Builders' Lien Act</i>, Part II), including: <ul style="list-style-type: none"> Unauthorized use made of the funds. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> The amount appropriated or converted. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Identity of any person or a corporate trustee or any other person who participated in the breach. Get names, addresses, telephone numbers, emails and lawyers' names. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Consider action against directors/officers/employees/ agents personally (<i>The Builders' Lien Act</i>, section 16) 				
<ul style="list-style-type: none"> Details relating to any negligence (e.g., by a consultant, architect, engineer). Get names, addresses, telephone numbers, emails and lawyers' names. 				
<ul style="list-style-type: none"> Consider whether there is a valid claim of lien under <i>The Builders' Lien Act</i>, Part III. 				
<ul style="list-style-type: none"> If the improvement was completed for a leasehold interest, determine whether the client has served the landlord with a Form B <i>Notice to Landlord</i> (<i>The Builders' Lien Act</i>, section 31, <i>The Builders' Lien Regulations</i>, section 6). 				
<ul style="list-style-type: none"> Consider whether to use a claim of lien and a written notice of lien, in light of <i>Town-N-Country Plumbing & Heating (1985) Ltd. v Schmidt</i> (1991), 93 Sask R 278 (CA). 				
<ul style="list-style-type: none"> Consider whether an action could be brought for debt, breach of contract, breach of trust, negligence, <i>quantum meruit</i> or unjust enrichment. 				
<ul style="list-style-type: none"> Consider whether notice must be given or action commenced under any bonds. If so, obtain instructions to serve notice and/or make a claim on the bonds. 				
<ul style="list-style-type: none"> Where appropriate, discuss: 				

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<ul style="list-style-type: none"> The nature of builders' liens (including methods of discharge), the trust fund, and the holdback. 				
<ul style="list-style-type: none"> Alternatives (e.g., suing on the contract) 				
<ul style="list-style-type: none"> Ask client to provide you with any other documentary evidence that is relevant, such as: the contract or sub-contract and specifications; all drawings and revisions, including architect's, engineer's, and shop drawings; all change orders; all invoices or progress claims; payment record; all correspondence (via emails, faxes, texts, project management software); minutes of site meetings; copies of applicable insurance policies or bonds for the project; informational brochures; photos. Diarize to ensure receipt. 				
<ul style="list-style-type: none"> Ask client about trade journals, texts, etc., that you might use to educate yourself regarding any technical areas in dispute. 				
3. Follow-up from Initial Interview <ul style="list-style-type: none"> Send letter to client confirming the retainer, setting out the manner in which you will determine your fee for services, stating the conditions upon which you have agreed to act, and summarizing the points discussed. Clarify whether you accept responsibility for being address for service and for diarizing the applicable limitation periods and/or any notice or limitation periods under bonds. 				
<ul style="list-style-type: none"> Open file: place checklist in file and note relevant dates (including the date when the lien takes effect pursuant to <i>The Builders' Lien Act</i>, section 27). Make entries in diary and tickler systems, including 40-clear-day statutory period (<i>The Builders' Lien Act</i>, section 49). 				
<ul style="list-style-type: none"> Conduct Land Title search, including: <ul style="list-style-type: none"> Legal description. 				
<ul style="list-style-type: none"> Plan (obtain a copy if necessary). 				

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<ul style="list-style-type: none"> Registered owner (note the extended definition of “owner”, <i>The Builders' Lien Act</i>, section 2). 				
<ul style="list-style-type: none"> Charges, encumbrances, etc., (noting in particular any registered mortgages or agreements for sale, bearing in mind priorities under <i>The Builders' Lien Act</i>, the possibility of foreclosure action, etc.) 				
<ul style="list-style-type: none"> Conduct other searches and obtain copies of documents, as required. May include: <ul style="list-style-type: none"> Ministry of Energy and Resources if the property is a mineral or oil and gas property (<i>The Builders' Lien Act</i>, section 51). 				
<ul style="list-style-type: none"> Company searches for all corporate parties: <ul style="list-style-type: none"> Name. 				
<ul style="list-style-type: none"> Registered office and mailing address. 				
<ul style="list-style-type: none"> Identity and addresses of directors. 				
<ul style="list-style-type: none"> Good standing. 				
<ul style="list-style-type: none"> Encumbrances. 				
<ul style="list-style-type: none"> Court Actions searches for other actions. 				
<ul style="list-style-type: none"> Bankruptcy Register (consider whether leave to bring an action is required; consider priorities). 				
<ul style="list-style-type: none"> Review documents obtained from client. 				
4. Register Claim of Lien and Service of Written Notice of Lien				
<ul style="list-style-type: none"> Prepare Form A <i>Written Notice of Lien</i> and/or Form E <i>Claim of Lien</i>, Part A and Part B of <i>The Builders' Lien Regulations</i>, RRS c B-7.1 Reg 1. 				
<ul style="list-style-type: none"> Meet with client and: <ul style="list-style-type: none"> Identify the property on the plan and confirm correct lot or lots. 				
<ul style="list-style-type: none"> Execute the lien and the affidavit of verification (affix corporate seal where appropriate). 				

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<ul style="list-style-type: none"> Explain the importance of address for service on lien (e.g., notices to lapse). 				
<ul style="list-style-type: none"> Ensure lien does not include a claim for interest and is not grossly excessive or without foundation (<i>The Builders' Lien Act</i>, sections 25 and 97). 				
<ul style="list-style-type: none"> Register and/or serve lien: <ul style="list-style-type: none"> To register against land where the owner is not the Crown, register at ISC. 				
<ul style="list-style-type: none"> Where Crown is the owner, effect service on the Crown (<i>The Builders' Lien Act</i>, sections 2(1)(o) and 52). 				
<ul style="list-style-type: none"> Where the lien attaches mineral or petroleum or natural gas rights held from the Crown, register by filing with the Ministry of Energy and Resources in Regina (see Ministry website for process of registering through the Ministry). 				
<ul style="list-style-type: none"> For written notice of lien, serve the party with whom your client has contracted, the party primarily liable to that party, the mortgagee, if any, and the owner. 				
<ul style="list-style-type: none"> Conduct post-registration search and obtain a copy of the title. 				
<ul style="list-style-type: none"> Diarize two-year limitation period for commencement of a trust action (where appropriate) and two-year limitation period for claim on the lien and debt (also consider other/earlier limitations, e.g., <i>The Cities Act</i>, <i>The Municipalities Act</i>, and <i>The Northern Municipalities Act, 2010</i>.) 				
<ul style="list-style-type: none"> Report to the client and submit account. Remind the client of any potential limitation of action problems under the limitation legislation. Also, remind the client of the necessary steps if notice is served to lapse lien (see below re: 30-day period to commence action and file Form O <i>Certificate of Action of The Builders' Lien Regulations</i>). 				
5. Notice to Lapse Builders' Lien				

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<ul style="list-style-type: none"> For owner: <ul style="list-style-type: none"> Discuss with the client and obtain instructions to lapse lien (<i>The Builders' Lien Act</i>, section 58). 				
<ul style="list-style-type: none"> Prepare request to lapse in the form referenced in <i>The Land Titles Regulations, 2001</i>, RRS c L-5.1 Reg 1, section 46. 				
<ul style="list-style-type: none"> Follow up with title search to confirm. Diarize file for review following expiry of the 30-day period for lien claimant to commence action (<i>The Land Titles Regulations, 2001</i>, section 46). 				
<ul style="list-style-type: none"> For lien claimant: <ul style="list-style-type: none"> Upon receipt of notice to lapse (notice to interest holder), diarize the 30-day limitation period for commencing an action and filing a certificate of action (<i>The Builders' Lien Act</i>, sections 61 and 86, and <i>The Builders' Lien Regulations</i>, Form O). Note: time runs from the date of mailing the notice. 				
<ul style="list-style-type: none"> Discuss with client and obtain instructions to commence an action and file a certificate of action at ISC. 				
6. Commence an Action to Enforce a Lien and/or Sue for Breach of Trust				
<ul style="list-style-type: none"> Confirm instructions. 				
<ul style="list-style-type: none"> Collect and verify facts, using a demand for information if necessary (<i>The Builders' Lien Act</i>, section 82). 				
<ul style="list-style-type: none"> Identify all defendants: <ul style="list-style-type: none"> Make sure to name as defendants all parties described by <i>The Builders' Lien Act</i>, subsection 88(2); also note the expanded definition of "owner". 				
<ul style="list-style-type: none"> In a trust action, include all persons who participated in the breach. Consider including all persons participating in the breach of trust, 				

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including directors, officers, agents and employees under <i>The Builders' Lien Act</i> , section 16.				
<ul style="list-style-type: none"> Determine whether to add surety under bond if applicable (<i>The Builders' Lien Act</i>, section 81). 				
<ul style="list-style-type: none"> Prepare a statement of claim, ensuring that: <ul style="list-style-type: none"> The action is commenced in the appropriate court at the judicial centre nearest to the location of the land in question (<i>The Builders' Lien Act</i>, section 86). 				
<ul style="list-style-type: none"> You have included all claims for relief (e.g., declaration of builders' lien, sale in default of payment, directions and accounting, judgment against person with whom client contracted, appointment of a trustee, damages for breach of trust, costs, other relief) and a declaration of priorities. 				
<ul style="list-style-type: none"> Obtain the certificate of action and file at ISC, if appropriate 				
<ul style="list-style-type: none"> Follow normal procedures for an action, but note that in an action to enforce a lien: <ul style="list-style-type: none"> A defendant should plead all counterclaims and cross claims because these claims may only be made at a later time with leave of the court (<i>The Builders' Lien Act</i>, subsection 89(3)). 				
<ul style="list-style-type: none"> Serve a statement of claim within thirty (30) days of issuance (<i>The Builders' Lien Act</i>, section 87). 				
<ul style="list-style-type: none"> It is preferable to have all lien claimants and trust claimants joined in the action (<i>The Builders' Lien Act</i>, section 88). 				
<ul style="list-style-type: none"> In an action, <i>The Builders' Lien Act</i>, section 83, authorizes the use of examinations for discovery on the claim of lien (whether or not an action has been commenced) and notes that the examination for discovery in an action may be used by all parties of like interest. 				

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<ul style="list-style-type: none"> The action to enforce the lien must be set down for trial within two years of the commencement of the action, unless extended by the court (<i>The Builders' Lien Act</i>, section 55; <i>101050094 Saskatchewan Ltd. v Terramax Sitework Ltd.</i>, 2007 SKCA 123). 				
<ul style="list-style-type: none"> Diarize file for two years from date of issuance of the statement of claim as the date the matter must be set down for trial (<i>The Builders' Lien Act</i>, section 55). 				
<ul style="list-style-type: none"> Report to the client and submit the account. Diarize file for 22 months from date action commenced in order to prepare application to extend the time to set the matter down for trial, if necessary. 				
<p>7. Remove Lien from Title</p> <ul style="list-style-type: none"> The lien may be voluntarily discharged or withdrawn; however, a discharged lien is irrevocable and the lien cannot be revived (<i>The Builders' Lien Act</i>, sections 63 and 64, <i>The Builders' Lien Regulations, Form N</i>). A lien may also be removed through the payment into court (or posting of a bond) of the amount of the lien plus security for costs, or in an amount the court considers reasonable under the circumstances (<i>The Builders' Lien Act</i>, sections 56 and 57). 				
<ul style="list-style-type: none"> Before Form O of <i>The Builders' Lien Regulations</i> is filed, any person claiming a mortgage or estate or interest in the land may request the registrar of titles to send a notification to lapse the lien (<i>The Builders' Lien Act</i>, section 58, and <i>The Land Titles Regulations, 2001</i>, section 46). <ul style="list-style-type: none"> If no certificate of action or order extending the time is registered within 30 days, the registrar of titles shall discharge the registration of the lien. The court may order under section 60 of <i>The Builders' Lien Act</i> the vacation of a registration of lien or certificate of action. 				
<ul style="list-style-type: none"> Conduct post-cancellation search and obtain a copy of the state of title certificate. 				

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<ul style="list-style-type: none">Report to client and submit account.<ul style="list-style-type: none">Once paid, return any original documents to client if requested.				
<ul style="list-style-type: none">Close file.				

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