



Fleury, Comery LLP  
Barristers & Solicitors

## CONSTRUCTION LIENS: A SUMMARY OF THE PROCEDURE

Construction trades and suppliers have had since 1873 a special construction lien remedy whereby the land they help to improve can be charged as security for their unpaid accounts. This memo outlines the procedure for a construction lien claim.

### The Lien Arises

A lien is a charge on land, like a sheriff's execution or a mortgage. It arises when a contractor or subcontractor supplies services or materials to improve the land. In order to enforce a construction lien, the lien claimant must take various steps as outlined below.

### Register Claim for Lien

Within forty-five (45) days after the last supply of work or materials, the lien claimant must register against title to the property a document called a "Claim for Lien", which is a special form. Some lien claimants think that they cannot register such a claim until the thirty-day credit period on their invoice has expired. This is incorrect; you can register your claim for lien even while you are performing the work. The claim for lien must contain a sworn statement that the contract and the amounts claimed to be owing are correct. By registering a claim for lien, you have "preserved" your lien.

### Register Certificate of Action

Within ninety (90) days of the last supply of work and materials, the lien claimant must have started an official court action. When the action is started, the claimant obtains from the court offices a "Certificate of Action", which must be registered on title to the land within that ninety-day period. This step is called "perfecting" your lien.

### Settlement Conference

Although technically it is an optional step, in practice the next step in a lien claim (assuming the defendant has defended the court action) is obtaining an appointment with a court officer (at Toronto this is the Master) for a settlement conference. You then serve a notice of this conference on all of the interested parties. At the conference, the court officer will set up a schedule to proceed to trial.

### Trial of the Action

A lien action trial is no different than a trial in any other action, except that you do not have the advantage of examinations for discovery. A judgment at the end of the trial generally provides a court declaration about the validity of the lien or liens against the property, and the entitlement of each lien claimant. It provides that if the property owner fails to pay the judgment amount into court, the owner's interest in the property may be sold.

### Procedural Rules Are Very Strict

The time limits and other procedural rules for construction lien claims are interpreted very strictly, because this is a special privilege that most contract claimants do not have. When you come to see a lawyer about a lien claim, keep in mind that the lawyer needs to search title, prepare documentation, and arrange to register that documentation in the proper land registry office. We urge you to consult a lawyer no later than thirty-five (35) days after the last significant supply of work and material.

### Legal Costs

At Fleury, Comery, our fees are based mainly on the time spent on any particular matter. We do not generally recommend that clients proceed with construction lien claims until they have had an opportunity to review with us the alternatives to this procedure, such as Small Claims Court claims, or claims under the current "Simplified Rules of Procedure".

At Fleury, Comery, our partner, Greg McConnell, is experienced in construction litigation, including construction lien claims. If you or someone you know in the construction trades is faced with a situation where payment for their work and materials is not forthcoming, please do not hesitate to refer them to Mr. McConnell for a review of their options.

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