



Builder's Liens by Courtney N. Wowryk

While the construction of a new home or renovation of an existing home is supposed to be an exciting time for a home owner, it can also create problems for both the owner, and the contractor. Just as no home owner wants to have substandard workmanship, no contractor wants to get stiffed on their bill.

Under *The Builder's Liens Act* of Manitoba, members of the construction industry can register builder's liens against the titles to their clients' property. Available to contractors, sub-contractors and suppliers alike, builder's liens secure payment for work or services that are to be performed in the future, or have already been performed in part or in full pursuant to a contract. They are also available to suppliers once materials have been delivered to the land on which work is to be performed, or after they have made materials to specifications set out in a contract or sub-contract, and have delivered those materials to the purchaser.

While builder's liens can be registered before work has begun on a property, in practice they are almost always registered after trouble has arisen. In most cases liens are registered after the

relationship between the builder and the client has broken-down and work on the property has stopped, or after the work has been completed and the client has failed to pay their bill. Under *The Builder's Liens Act* the last day to register a lien is 40 days after substantial performance or abandonment of the contract has occurred.

By registering a lien a builder or supplier is essentially getting in line to be paid. Once registered, a builder's lien has lower priority than encumbrances, such as mortgages, that were registered before it. Liens have equal priority with other builder's liens registered against that particular piece of land, and have higher priority than all other encumbrances registered after it arises.

Builder's liens are an important tool for the construction industry because once registered, they essentially prevent clients from selling or transferring the property. If the client is able to find someone willing to purchase the property with a lien registered against the title, a builder's lien ensures that the contractor or supplier is paid from the proceeds of sale. Finally, liens

prevent clients from mortgaging their property because lending institutions require their encumbrance or interest to have priority before all others. Together, these powers of the lien may impress upon clients the importance of paying builders and suppliers for the work and goods they will or have provided.

Builder's liens are registered at the Land Titles Office in the land titles district in which the land is located. Under *The Builder's Liens Act* a builder can only file a lien against the property they are going to work on in future, or have already worked on, while suppliers can only file a lien against the property on which they delivered goods. This means that a lien cannot be registered against other properties owned by a client. The value of a lien registered must be equal to the unpaid portion of the contract, which must be greater than \$300. To prove the value claimed in the lien if it is disputed by a client, contractors and suppliers must keep detailed records of the work performed and goods supplied. Once registered, a lien will expire within 2 years if the builder or supplier does not commence an action in the courts.