

## Builders' Lien Legislation Updates: Clients Eagerly Awaiting Change

by: Stephen K. Branigan, *Associate*  
published May 31, 2024

Builders' liens can be useful protection for parties in construction contracts. This process allows an unpaid contractor, worker or material supplier to register a notice on a party's land title, claiming an interest in their land, until paid.

It is a double-edged sword, however. On the one hand, it sends a strong message to the landowner – and sometimes general contractor – that the (sub)contractors are not getting paid. On the other hand, filing a lien can frustrate the landowner (recipient of materials or services) and can have the effect of grinding payments and progress to a halt.<sup>1</sup>

### **Builders' Lien Basics**

- **What:** *The Builders' Lien Act*, C.C.S.M. c. B91 (the "Act"), creates a lien which is attached to an interest in land.
- **Where:** Liens are filed through Land Titles Office in Manitoba, and are filed against an interest in land, or real property. In some cases, there is no contractual relationship between the landowner and the lien claimant.
- **Who:** Contractors, subcontractors, suppliers, and laborers can file a lien. Essentially, anyone who has provided labor, materials, or services to improve a property has the right to file a lien if they are not paid.
- **When:** Under the current legislation a builder's lien must be registered within 40 days of: 1) substantial performance or abandonment of the contract; or 2) completion of the services or supply of the materials - whichever occurs first.

---

<sup>1</sup> This is because a lien generally has the effect of stopping all payments so an owner or the financier of the project will typically stop paying anyone until it is sorted out. A lawyer's attempt to lien a project to force payment sometimes has the unintended consequence of actually delaying payment.

## **Legislative Changes**

The greatest issue we see in the current lien legislation in Manitoba is the when: the short 40-day window to file a lien. Clients regularly ask: “When should I file a builder’s lien?” because it is typical for contractors to receive payment around 30 days after sending an invoice, notwithstanding that they only have 40 days to file a lien. They walk the line of frustrating their own client (i.e., the recipient of the work or materials) and failing to take steps to secure payment.

Fortunately, Bill 38 - *The Builders’ Liens Amendment Act (Prompt Payment)* – received Royal Assent on May 30, 2023. The changes related to timing include, but are not limited to, the following:

- Once an owner receives a “proper invoice” they must pay the contractor within 28 days;
- The contractor then has 7 days to pay subcontractors; and
- Lien claimants will have 60 days from substantial performance or abandonment of the contract.

Although the legislative changes will help in addressing the uncertainty of when payment will arrive as well as the common complaint around the short timeframe to register a lien, it unfortunately is unclear when Bill 38 will come into force.

**DISCLAIMER:** *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author’s and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*

### **The Author:**

STEPHEN BRANIGAN  
Associate  
skbranigan@mhlaw.ca  
204.725.8776