

Construction Liens Explained: A Simple Guide for Contractors and Suppliers

Construction liens are one of the most effective tools available to secure payment in the construction industry. For contractors, subcontractors, and suppliers, they provide critical leverage when payment issues arise by giving those who contribute to an improvement a claim against the property itself. In an industry where payment moves through multiple layers, that protection can make the difference between getting paid and taking a loss.

This article provides a practical overview of what a construction lien is, how it works, and the key steps required to preserve and enforce lien rights. While the core concepts are similar across Canada, each province has its own legislative framework, which is touched on in this article.

What is a Construction Lien?

A construction lien is a legal claim against land that secures payment for services or materials supplied to a construction project. In practical terms, it allows an unpaid party to assert an interest in the property they improved—even without a direct contract with the owner—which is what makes it such a powerful tool in the construction context.

A lien attaches to the property itself and runs with the land, meaning it can affect the owner's ability to sell, refinance, process payment draws, or otherwise deal with the property while the claim remains in place. It arises by statute (such as Ontario's *Construction Act*) and can exist without privity of contract with the owner, extending protection to parties throughout the construction pyramid. A lien claim is also typically advanced alongside a contractual claim for payment.

Importantly, lien rights are strictly time-sensitive and highly technical—missing a deadline or failing to comply with the required form can result in the loss of those rights entirely.

Who Can Lien?

Generally, lien rights are available to a broad range of participants in the construction pyramid who supply services or materials to an improvement. This includes contractors who have a direct contract with the owner, as well as subcontractors, trades, and material suppliers further down the chain. In many cases, equipment lessors may also have lien rights, and certain consultants may be entitled to a lien depending on the nature of their services and the applicable legislation.

Life cycle of a Lien

While the details vary by province, most construction lien regimes follow the same general lifecycle:

1. **Triggering Events for a Lien** → lien rights arise and persist for a defined period after the occurrence of a triggering event (e.g. last supply of services or materials)
2. **Preservation** → lien must be registered or given within strict deadlines
3. **Perfection** → legal action must be commenced to 'perfect' or maintain the lien
4. **Resolution or enforcement** → through settlement, payment, or court process

Triggering Events for a Lien

Using Ontario's *Construction Act* as an example, lien rights arise upon the first supply of services or materials to an "improvement" (a defined term under the Act). Importantly, not every supply of services or materials will necessarily relate to that improvement and therefore may not be lienable. Care must be taken to ensure that the services or materials in question are properly connected to the improvement, as this will determine whether lien rights arise at all.

Assuming a valid lien right exists, it will generally continue only until the expiry of prescribed deadlines. A lien claimant must therefore take the necessary steps within those timelines to preserve and maintain its rights—failing to do so will result in the lien being lost entirely. These deadlines are triggered by specific events (which can depend on whether you are a contractor or subcontractor), and generally include (i) the issuance of a certificate of substantial performance or completion, (ii) completion, abandonment or termination of the contract, and (iii) the last supply of services or materials.

Given that multiple triggering events may start the clock, identifying the correct event is critical, as the earliest applicable event will govern. In practice, contractors and suppliers should treat lien deadlines as urgent and take steps to preserve their lien rights as soon as there is any risk of non-payment.

Preserving Your Claim for Lien

Lien rights must be actively preserved. Preservation is the step where a lien claimant formally registers its claim against the property within the applicable deadline. While the specific requirements may vary by province, this typically involves preparing and registering (or delivering) a claim for lien in the prescribed form with the appropriate land registry or government office.

A lien claimant must ensure that the lien is preserved within the time limits set out in the applicable legislation and that all required information is accurately included—such as the identity of the parties, the amount claimed, and a description of the premises. Errors in the form or missing the deadline can be fatal to the lien claim.

From a practical perspective, preservation is often the most critical step in the lien process. Contractors and suppliers should ensure they have systems in place to track key dates, gather the necessary project information early, and take prompt action where payment issues arise. Waiting until the deadline approaches can create unnecessary risk, particularly where there is uncertainty as to the applicable triggering event, the correct property description, and questions counsel may have regarding the claim.

Perfecting Your Claim for Lien

Each province has its own scheme for perfecting a lien, which generally requires the commencement of legal proceedings within a prescribed period following preservation. Failing to perfect a lien within the applicable timeline will result in the lien expiring, even if it was properly preserved.

In Ontario, and depending on the version of the *Construction Act* that applies, a lien claimant must commence an action within 45 or 90 days of the last day the lien could have been preserved.

In British Columbia, a claimant must commence an action to enforce the lien no later than one year from the date the lien was filed in the land title office. In addition, unless the lien has been satisfied or removed through the posting of security, the claimant must register a Certificate of Pending Litigation to provide notice to other parties with an interest in the property.

In Alberta, the timeline to commence an action is somewhere in between, requiring a lien claimant to perfect their lien within 180 days of registration.

Resolution or Enforcement of a Lien

Once a lien has been preserved and perfected, there are still ongoing deadlines that require the claimant to move the action forward. These timelines are intended to prevent lien claims from remaining indefinitely on title without progress. Depending on the province, this may include requirements to commence an action within a set period or to take further steps (such as setting the matter down for trial) within a prescribed timeframe.

In practice, lien claims are often removed from title early in the process by the posting of security or by paying funds into court in the prescribed form. This is commonly referred to as “bonding off” or “vacating” the lien and allows the project to move forward and not pause the flow of cash while the underlying dispute continues.

Most lien claims do not proceed all the way to trial and enforcement. That outcome typically only arises where a claim is preserved and perfected, the action is advanced through the court process, the parties are unable to settle the dispute, and the claimant is ultimately successful at trial. Subject to various statutory mechanisms (including where security has been posted into court), if a lien claim succeeds and payment is not made, the court may permit the lien claimant to enforce its rights against the property, which can include forcing a sale and recovering from the proceeds.

Overall, while enforcement is available, the lien process is more commonly used as a tool to secure payment and drive resolution well before that stage.



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