

Builders' Lien Act

CHAPTER 277 OF THE REVISED STATUTES, 1989

as amended by

2002, c. 19, s. 36, 2004, c. 14; 2005, c. 8, ss. 3-5;
2013, c. 14; 2014, c. 42



© 2017 Her Majesty the Queen in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 277 OF THE REVISED STATUTES, 1989
amended 2002, c. 19, s. 36, 2004, c. 14; 2005, c. 8, ss. 3-5;
2013, c. 14; 2014, c. 42

**An Act to Establish Liens in Favour
of Builders and Others**

title amended 2004, c. 14, s. 1.

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Application of Act.....	3
Agreement not to apply Act.....	4
Effect of agreement to waive lien.....	5
Lien.....	6
Interest of spouse bound.....	7
Property to which lien attaches.....	8
Effect and effective date of lien.....	9
Destruction of property by fire.....	10
Maximum amount of lien.....	11
Maximum lien if claim by other than contractor.....	12
Holdback.....	13
Certifying subcontract complete.....	13A
Holdback for certified complete subcontract.....	13B
Direct payment by person not primarily liable.....	14
Priority of lien and among lien holders.....	15
Lien for wages.....	16
Material	
Material subject to lien.....	17
Registration of Claim	
Registration of claim for lien.....	18
Contents of claim.....	19
Claim for more than one lien.....	20
Substantial compliance with Sections 19 and 20.....	21
Duty of registrar.....	22
Registry Act.....	23
Time for registering claim for lien.....	24
Notice of registration of lien to owner of property.....	24A
Failure to comply with Section 24A.....	24B
Expiry and Discharge of Lien	
Expiry of lien.....	25
Expiry of registered lien.....	26
If no period of credit or period uncertain.....	27
Assignment of lien or transfer on death.....	28
Discharge of lien.....	29

Effect of Taking Security or Extending Time	
Effect of taking security or extending time	30
Proof of claim in action by another if time extended	31
Lien Holder's Right to Information	
Right of lien holder to information	32
Liens on Mining Claims	
Liens respecting mining operation	33
Arbitration	
Effect of stay of proceedings	33A
Does not constitute waiver	33B
Effect of action	33C
Realizing Liens and Procedure	
Action to enforce lien	34
Powers of judge, right of lien holder and proceeds of sale	35
Notice of trial	36
Consolidation of actions	37
Carriage of action	38
Costs	41
Fee for statement of claim filed in Halifax	42
Deficiency after sale	43
Form of certificate vacating lien	44
Trust Provisions	
Owner trustee of trust fund for contractor	44A
Contractor trustee of trust fund	44B
Where owner's interest in premises sold	44C
Payment by trustee	44D
Retention or application of trust funds upon payment	44E
Retention of trust funds where outstanding debt or claim	44F
Persons liable for breach of trust	44G
Miscellaneous Provisions	
Builder's lien on chattel	45
Personal judgment if lien not established	46
Forms	47
Regulations	48
Schedule	

Short title

1 This Act may be cited as the *Builders' Lien Act*. R.S., c. 277, s. 1; 2004, c. 14, s. 2.

Interpretation

2 In this Act,

(a) "contractor" means a person contracting with or employed directly by the owner or his agent for the doing of work or service or placing or furnishing materials for any of the purposes mentioned in this Act;

- (b) "land" includes the property mentioned in Section 6;
- (c) "material" or "materials" includes every kind of moveable property;
- (d) "owner" extends to any person, body corporate or politic, including a municipal corporation and a railway company, having any estate or interest in the land upon or in respect of which the work or service is done, or materials are placed or furnished, at whose request and
 - (i) upon whose credit,
 - (ii) on whose behalf,
 - (iii) with whose privity and consent, or
 - (iv) for whose direct benefit,

work, or service is performed or materials are placed or furnished, and all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien is claimed is commenced or the materials furnished have been commenced to be furnished;

- (e) "registrar" means a registrar of deeds;
- (f) "subcontractor" means a person not contracting with or employed directly by the owner or his agent for the purposes aforesaid, but contracting with or employed by a contractor, or under him by another subcontractor;
- (g) "wages" means money earned by a person for work done, whether by the day or other time or as piece work. R.S., c. 277, s. 2; 2004, c. 14, s. 3.

Application of Act

3 (1) Nothing in this Act extends to any public street or highway or to any work or improvement done or caused to be done thereon.

(2) A lien does not attach to and cannot be registered against the estate or interest in the land of Her Majesty in right of the Province.

(3) Where the circumstances referred to in Section 6 apply to land in which Her Majesty in right of the Province has an estate or interest but Her Majesty is not an owner, the lien may attach to the estate or interest of any other person in that land.

(4) Where Her Majesty in right of the Province is an owner, the lien does not attach to the land but constitutes a charge as provided in Section 13, and this Act applies without requiring registration pursuant to Section 18 of a claim of lien against the land.

(5) Where the owner of a property is Her Majesty in right of the Province, the claim for lien made in accordance with Section 19 or 20 may be served upon the Minister of Justice and Sections 24 to 29 apply *mutatis mutandis*.

(6) Subject to this Section, this Act is binding upon Her Majesty in right of the Province.

(7) Notwithstanding Section 18 of the Proceedings against the Crown Act, no action shall be brought against Her Majesty in right of the Province under this Act unless thirty days previous notice in writing has been served on the Attorney General, in which notice the name and residence of the proposed plaintiff, the cause of action and the court in which it is to be brought shall be explicitly stated. 2004, c. 14, s. 4.

Agreement not to apply Act

4 (1) Every agreement, verbal or written, expressed or implied, on the part of any person employed in any kind of manual labour intended to be dealt with in this Act, that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.

(2) This Section does not apply to a manager, officer or foreman. R.S., c. 277, s. 4; 2004, c. 14, s. 5.

Effect of agreement to waive lien

5 No agreement shall deprive any person otherwise entitled to a lien under this Act who is not a party to the agreement, of the benefit of the lien, but it shall attach, notwithstanding such agreement. R.S., c. 277, s. 5.

Lien

6 (1) Unless he signs an express agreement to the contrary and in that case subject to Section 4, any person who performs any work or service upon or in respect of, or places or furnishes any material to be used in the making, constructing, erecting, fitting, altering, improving, or repairing of any erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, pavement, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, or the appurtenances to any of them, for any owner, contractor, or subcontractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, paving, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees and appurtenances, and the land occupied thereby or enjoyed therewith or upon or in respect of which such work or service is performed, or upon which such materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner.

(2) A person who rents to an owner, contractor or subcontractor equipment used on land or in such place in the immediate vicinity thereof as is designated by the owner, contractor, subcontractor or agent thereof, performs a service within the meaning of subsection (1). R.S., c. 277, s. 6; 2004, c. 14, s. 6.

Interest of spouse bound

7 Where work or service is done or materials furnished upon or in respect of the land of a married person with the privity and consent of the spouse of that person, the spouse shall be deemed to be acting so as to bind the interest of that spouse, as the agent for the other spouse, unless, before so doing such work or service or furnishing such materials, the person doing or furnishing the same shall have had actual notice to the contrary. R.S., c. 277, s. 7.

Property to which lien attaches

8 (1) The lien shall attach upon the estate or interest of the owner in the property mentioned in Section 6.

(2) Where the estate or interest upon which the lien attaches is leasehold, the fee simple may also, with the consent of the owner thereof, be subject to the lien, provided that such consent is testified by the signature of the owner upon the claim of lien at the time of the registering thereof, verified by affidavit.

(3) Where the land upon or in respect of which any work or service is performed, or materials are placed or furnished to be used, is encumbered by a prior mortgage or other charge and

(a) the selling value of the land is increased by the work or service, or by the furnishing or placing of the materials; and

(b) the mortgagee consents to the performance of such work or service or the furnishing, or placing of such materials,

the lien shall attach upon such increased value in priority to the mortgage or other charge. R.S., c. 277, s. 8.

Effect and effective date of lien

9 Such lien, upon registration, as in this Act provided, shall attach and take effect from the date of the registration as against subsequent purchasers, mortgagees, or other encumbrancers. R.S., c. 277, s. 9.

Destruction of property by fire

10 Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed, and shall be subject to the claims of all persons for liens to the same extent as if such money was realized by a sale of such property in an action to enforce the lien. R.S., c. 277, s. 10.

Maximum amount of lien

11 Save as herein otherwise provided, the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S., c. 277, s. 11.

Maximum lien if claim by other than contractor

12 Save as herein otherwise provided, where the lien is claimed by any person other than the contractor, the amount which may be claimed in respect thereof shall be limited to the amount owing to the contractor or subcontractor or other person for whom the work or service has been done or the materials placed or furnished. R.S., c. 277, s. 12.

Holdback

13 (1) In this Section, a contract under which a lien can arise pursuant to Section 6 is deemed to be substantially performed

(a) when the work or improvement is ready for use or is being used for the purpose intended; and

(b) when the work to be done under the contract is capable of completion or correction at a cost of not more than two and one-half per cent of the contract price.

(2) In all cases the person primarily liable upon any contract under or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, deduct from any payments to be made by him in respect of the contract, and retain for a period of sixty days after the contract is substantially performed, ten per cent of the value of the work, service and materials actually done, placed or furnished as mentioned in Section 6, and such value shall be calculated on the basis of the contract price, or if there is no specific contract price, then on the basis of the actual value of the work, service or materials.

(3) Where, sixty days after the date on which a contract is deemed to be substantially performed, services or materials remain to be supplied to complete the contract, the person primarily liable upon the contract shall retain a separate holdback equal to ten per cent of the price of the remaining services or materials as they are actually supplied under the contract, until all liens that may be claimed against the holdback have expired or have been satisfied, discharged or vacated in accordance with this Act.

(4) The lien shall be a charge upon the amount directed to be retained by this Section in favour of subcontractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable.

(5) All payments up to ninety per cent of the contract price or actual value made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of such lien given by the person claiming the lien to him, shall operate as a discharge *pro tanto* of the lien.

(5A) Where the person primarily liable upon the contract has received notice in writing of a lien and has retained, in addition to any holdback required under this Section, an amount sufficient to satisfy the lien, the person may, without jeopardy in respect of any other lien, make payment on the contract up to ninety per cent of the price of the services or materials that have been supplied under the contract, less the amount retained.

(6) Payment of the percentage required to be retained pursuant to subsections (2) and (3) may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the periods mentioned in subsections (2) and (3) unless in the meantime proceedings have been commenced to enforce any lien or charge against such percentage as hereinafter provided.

(7) Where, pursuant to subsection (3), anyone retains a separate holdback in respect of services or materials that remain to be supplied to complete a contract, everyone retaining the separate holdback shall make payment of the holdback retained pursuant to subsection (2).

(8) Anyone retaining a holdback who does not make payment within sixty-five days immediately following substantial performance as permitted by subsection (3) or subsection (7) is liable to the person entitled to such payment for interest on the amount which should have been paid at the prime rate of interest then commonly charged by chartered banks plus two per cent unless there has been agreement on some other rate of interest.

(9) As funds retained are paid eventually according to entitlement under the provisions of this Act, the liability of the owner to a lien claim will be reduced in the same proportion as such payments. R.S., c. 277, s. 13; 2004, c. 14, s. 7; 2005, c. 8, s. 3; 2013, c. 14, s. 1; 2014, c. 42, s. 1.

Certifying subcontract complete

13A (1) A subcontract may, upon the request of the contractor or a subcontractor, be certified complete by the architect, engineer or other person upon whose certificate payments are to be made.

(2) Where there is no architect, engineer or other person upon whose certificate payments are to be made and the owner and the contractor determine that a subcontract is complete, the subcontract may be certified complete by the owner and the contractor acting jointly.

(3) Where there is a failure or refusal to certify, within a reasonable time, that a subcontract is complete, any person may apply to a court having jurisdiction to try an action to realize a lien, and the court, upon being satisfied that the subcontract is complete and upon such terms as to costs or otherwise as it considers fit, may issue an order certifying the subcontract to be complete.

(4) Where a subcontract is certified complete, the subcontract is deemed to have been completed on the date of certification. 2013, c. 14, s. 2; 2014, c. 42, s. 2.

Holdback for certified complete subcontract

13B (1) Where a subcontract has been certified complete under Section 13A, the owner may, without jeopardy in respect of any other lien, make payment reducing the holdback required by Section 13 to the extent of the amount of holdback the payer has retained in respect of the completed subcontract if all liens that may be claimed against the holdback have expired or have been satisfied or discharged in accordance with this Act.

(2) Where the owner makes payment pursuant to subsection (1), everyone retaining a holdback in respect of any subcontract to the completed subcontract, as certified under Section 13A, shall make payment reducing the holdback required by Section 13 to the extent of the amount of holdback the payer has retained in respect of the subcontract to the completed subcontract if all liens that may be claimed against the holdback have expired or have been satisfied, discharged or vacated in accordance with this Act.

(3) Anyone retaining a holdback in respect of a completed subcontract, or any subcontract thereto, who does not make payment within sixty-five days immediately following the certification of the completed subcontract as permitted by subsection (1) or (2) is liable to the person entitled to such payment for interest on the amount that should have been paid at the prime rate of interest then commonly charged by chartered banks plus two per cent unless there has been agreement on some other rate of interest. 2013, c. 14, s. 2; 2014, c. 42, s. 3.

Direct payment by person not primarily liable

14 If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under Section 6 for or on account of any debt justly due to him for work or service done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives, by letter or otherwise, written notice of such payment to the person primarily liable, or his agent, such payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable, but not so as to affect the percentage to be retained by the owner as provided by Section 13. R.S., c. 277, s. 14.

Priority of lien and among lien holders

15 (1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien to the person making such payments or after registration of a claim for such lien as hereinafter provided.

(2) Where there is an agreement for the purchase of land, and the purchase money or part thereof is unpaid, and no conveyance has been made to the purchaser, he shall, for the purposes of this Act, be deemed a mortgagor and the seller a mortgagee.

(3) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money shall be entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lien holders shall rank *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights. R.S., c. 277, s. 15.

Lien for wages

16 (1) Every person whose lien is for wages shall, to the extent of thirty days wages, have priority over all other liens derived through the same contractor or subcontractor to the extent of and on the amount directed to be retained by Section 13, to which the contractor or subcontractor, through whom such lien is derived, is entitled, and all such mechanics and labourers shall rank thereon *pari passu*.

(2) Every wage-earner shall be entitled to enforce a lien in respect of a contract not completely fulfilled.

(3) If the contract has not been completed when the lien is claimed by a wage-earner, the percentage shall be calculated on the value of the work done or materials furnished by the contractor or subcontractor by whom such wage-earner is employed, having regard to the contract price, if any.

(4) Where the contractor or subcontractor makes default in completing his contract, the percentage shall not, as against a wage-earner claiming a lien, be applied by the owner or contractor to the completion of the contract or for any other purpose, nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor, nor in payment or satisfaction of any claim against the contractor or subcontractor.

(5) Every device by an owner, contractor or subcontractor to defeat the priority given to a wage-earner for his wages, and every payment made for the purpose of defeating or impairing a lien, shall be null and void. R.S., c. 277, s. 16; 2004, c. 14, s. 8.

MATERIAL

Material subject to lien

17 (1) During the continuance of a lien no part of the material affected thereby shall be removed to the prejudice of the lien.

(2) Material actually brought upon any land to be used in connection with such land for any of the purposes enumerated in Section 6, shall be subject to a lien in favour of the person furnishing it until placed in the building, erection or work, and shall not be subject to execution or other process to enforce any debt other than for the purchase thereof, due to the person furnishing the same. R.S., c. 277, s. 17.

REGISTRATION OF CLAIM

Registration of claim for lien

18 A claim for lien may be registered in the registry of deeds for the registration district in which the land is situated. R.S., c. 277, s. 18.

Contents of claim

19 (1) A claim for lien shall state

(a) the name and residence of the person claiming the lien, and of the owner of the property to be charged, or of the person whom the person claiming the lien, or his agent, believes to be the owner of the property proposed to be charged, and of the person for whom and on whose credit the work or service was, or is to be, done, or materials furnished or placed, and the time within which the same was, or is to be done, or furnished or placed;

(b) a short description of the work or service done, or to be done, or materials furnished or placed, or to be furnished or placed;

(c) the sum claimed as due or to become due;

(d) a description of the land or property to be charged; and

(e) the date of expiry of the period of credit, if any, agreed upon by the lien holder for payment for his work or service or materials, where credit has been given.

(2) The claim may be in one of the Forms A or B in the Schedule to this Act or to the like effect, and shall be verified by the affidavit (Form C) of the person claiming the lien, or of his agent or assignee having a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

(3) Where it is desired to register a claim for lien against the lands of a railway company, it shall be a sufficient description of such lands to describe them as the lands of such railway company, and every such claim for lien shall be registered in the registry of deeds for the registration district in which such lien is claimed to have arisen. R.S., c. 277, s. 19.

Claim for more than one lien

20 A claim for lien may include claims against any number of properties, and any number of persons claiming liens on the same property may unite therein (Form D), but when more than one lien is included in one claim each lien shall be verified by affidavit (Form C), as provided in Section 19. R.S., c. 277, s. 20.

Substantial compliance with Sections 19 and 20

21 (1) Substantial compliance only with Sections 19 and 20 shall be required, and no lien shall be invalidated by reason of the failure to comply with any of the requisites of such Sections, unless, in the opinion of the court or judge who

has the power to try the action under this Act, the owner, contractor, subcontractor, mortgagee or other person, as the case may be, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

(2) Nothing contained in this Section shall be construed as dispensing with the registration required by this Act. R.S., c. 277, s. 21.

Duty of registrar

22 The registrar upon payment of the fee prescribed by the *Costs and Fees Act* shall register the claim so that the same may appear as an encumbrance against the land so described. R.S., c. 277, s. 22.

Registry Act

23 (1) Where the claim for lien is so registered the person entitled to the lien shall be deemed the purchaser *pro tanto* and within the provisions of the *Registry Act* but, except as in this Act provided, the *Registry Act* shall not apply to any lien arising under this Act.

(2) A mortgage lender who has registered his mortgage obtains priority with respect to funds advanced in good faith, over any lien then existing for which a claim for lien has not been filed at the time the funds are paid to the owner. R.S., c. 277, s. 23.

Time for registering claim for lien

24 (1) A claim for lien by a contractor or subcontractor, in cases not otherwise provided for, may be registered before or during the performance of the contract, or within sixty days after the completion or abandonment thereof.

(2) A claim for lien for materials may be registered before or during the furnishing or placing thereof, or within sixty days after the furnishing or placing of the last material so furnished or placed.

(3) A claim for lien for services may be registered at any time during the performance of the service or within sixty days after the completion of the service.

(4) A claim for lien for wages may be registered at any time during the performance of the work for which such wages are claimed, or within sixty days after the last work is done for which the lien is claimed.

(5) In the case of a contract which is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made, the claim for lien by a contractor may be registered within the time mentioned in subsection (1) or within seven days after the architect, engineer or other person has given, or has, upon application to him by the contractor, refused to give a final certificate. R.S., c. 277, s. 24; 2004, c. 14, s. 9.

Notice of registration of lien to owner of property

24A A person who has registered a lien pursuant to this Act shall give notice of the registration of the lien to the owner of the property referred to in the claim for lien. 2004, c. 14, s. 10.

Failure to comply with Section 24A

24B A failure to comply with Section 24A shall be treated as an irregularity and does not nullify the lien. 2004, c. 14, s. 10.

EXPIRY AND DISCHARGE OF LIEN

Expiry of lien

25 Every lien for which a claim is not registered shall absolutely cease to exist on the expiration of the time hereinbefore limited for the registration thereof. R.S., c. 277, s. 25; 2004, c. 14, s. 11.

Expiry of registered lien

26 (1) Every lien for which a claim has been registered shall absolutely cease to exist on the expiration of one hundred and five days after the work or service has been completed or materials have been furnished or placed, or after the expiry of the period of credit, where such period is mentioned in the claim for lien registered, or in the cases provided for in subsection (5) of Section 24, on the expiration of thirty days from the registration of claim, unless in the meantime an action is commenced to realize the claim and a certificate thereof (Form E) is registered in the registry of deeds in which the claim for lien was registered.

(1A) Where the certificate referred to in subsection (1) relates to land that is a parcel registered pursuant to the *Land Registration Act*, the form of the certificate to be registered is the certificate of *lis pendens* prescribed under that Act.

(2) Where the period of credit mentioned in the claim for lien registered has not expired it shall nevertheless cease to have any effect on the expiration of six months from the registration or any re-registration thereof if the claim is not again registered within that period, unless in the meantime an action is commenced and a certificate thereof has been registered as provided by this Section. R.S., c. 277, s. 26; 2004, c. 14, s. 12; 2005, c. 8, s. 4.

If no period of credit or period uncertain

27 If there is no period of credit, or if the date of the expiry of the period of credit is not stated in the claim so registered, the lien shall cease to exist upon the expiration of ninety days after the work or service has been completed or materials furnished or placed, unless in the meantime an action is commenced and a certificate thereof registered as provided by Section 26. R.S., c. 277, s. 27; 2004, c. 14, s. 13; 2005, c. 8, s. 5.

Assignment of lien or transfer on death

28 The right of a lien holder may be assigned by an instrument in writing and, if not assigned, upon his death shall pass to his personal representative. R.S., c. 277, s. 28.

Discharge of lien

29 (1) A lien may be discharged by a receipt signed by the claimant, or his agent, duly authorized in writing, acknowledging payment, and verified by affidavit and registered.

(2) The receipt shall be numbered and entered like other instruments, but shall not be copied in any registry book, and there shall be entered against the entry of the lien to which the discharge relates the word "discharged" and the registration number of such discharge.

(3) The fee shall be the same as for registering a claim.

(4) Upon application, the court or judge having jurisdiction to try an action to realize a lien, may allow security for or payment into court of the amount of the claim, and may thereupon order that the registration of the lien be vacated or may vacate the registration upon any other proper ground and a certificate of the order may be registered.

(5) Where the certificate required by Section 26 has not been registered within the prescribed time, and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate required by Sections 26 or 27, the order vacating the lien may be made *ex parte* upon production of the certificate of a solicitor of the Supreme Court of Nova Scotia certifying the facts entitling the applicant to such order. R.S., c. 277, s. 29; 2002, c. 19, s. 36; 2004, c. 14, s. 14.

**EFFECT OF TAKING SECURITY
OR EXTENDING TIME****Effect of taking security or extending time**

30 (1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgement of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, shall not merge, waive or pay, satisfy, prejudice or destroy the lien unless the claimant agrees, in writing, that it shall have that effect.

(2) Where any such promissory note or bill of exchange has been negotiated, the lien holder shall not thereby lose his lien if, at the time of bringing his action to enforce it, or where an action is brought by another lien holder, he is, at the time of proving his claim in such action, the holder of such promissory note or bill of exchange.

(3) Nothing in subsection (2) shall extend the time limited by this Act for bringing the action to enforce the lien.

(4) A person who has extended the time for payment of a claim for which he has a lien, to obtain the benefit of this Section, shall commence an action to enforce such lien within the time prescribed by this Act, and shall register a certificate as required by Section 26 or 27, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S., c. 277, s. 30; 2004, c. 14, s. 15.

Proof of claim in action by another if time extended

31 Where the period of credit in respect of a claim has not expired, or where there has been an extension of time for payment of the claim, the lien holder may nevertheless, if an action is commenced by any other person to enforce a lien against the same property, prove and obtain payment of his claim in such action as if the period of credit or the extended time had expired. R.S., c. 277, s. 31.

LIEN HOLDER'S RIGHT TO INFORMATION

Right of lien holder to information

32 (1) Any lien holder may, at any time, by written request, require information to be provided within a reasonable time, not to exceed twenty-one days, by the owner or the owner's agent, a contractor or a subcontractor.

(2) The information to be provided pursuant to subsection (1) by the owner or the owner's agent shall include

- (a) the names of the parties to the contract;
- (b) the contract price;
- (c) the state of accounts between the owner and the contractor;
- (d) a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner; and
- (e) a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

(3) The information to be provided pursuant to subsection (1) by the contractor or subcontractor shall include

- (a) the names of the parties to a subcontract;
- (b) the state of accounts between the contractor and a subcontractor or between a subcontractor and another subcontractor;
- (c) a statement of whether there is a provision in a subcontract providing for certification of the subcontract;

(d) a statement of whether a subcontract has been certified as complete; and

(e) a copy of any labour and material payment bond posted by a subcontractor with the contractor or by a subcontractor with another subcontractor.

(4) Where a person, who is required under this Section to provide information, does not provide the information as required or knowingly or negligently mis-states that information, the person is liable to the person who made the request for any damages sustained by reason thereof.

(5) Upon application, the court may at any time, whether or not an action has been commenced, order a person to comply with a request that has been made to the person under this Section and, when making the order, the court may make any order as to costs as it considers appropriate in the circumstances, including an order for the payment of costs on a solicitor-and-client basis. 2004, c. 14, s. 16.

LIENS ON MINING CLAIMS

Liens respecting mining operation

33 (1) Every labourer or worker to whom wages are due by any person, firm or corporation for work or labour performed at a mine or in connection with mining operations carried on by such person, firm or corporation and every person, firm or corporation who furnishes pit props, ties or lumber to be used in a mine or mining operation, or for a railway owned or operated by a coal-mining company, firm or corporation, shall have a lien upon the property and mining leases or licences in respect of which such work and labour has been performed, or such pit props, ties or lumber has been furnished, in the case of a laborer or worker to the extent of two months wages, and in the case of pit props, ties or lumber for the price thereof.

(2) Such lien shall have priority over all other liens, mortgages or charges upon the said property and mining leases or licences, whether the same are prior or subsequent to the performing of such work and labour.

(3) In the registration of such lien it shall not be necessary to describe the property and mining leases affected thereby, but it shall be sufficient to designate such property and mining leases as the property and mining leases of such person or corporation.

(4) Such lien shall be registered in the office of the Minister of Natural Resources at Halifax, as well as at the registry of deeds of the registration district in which the mine is situate, and the provisions of this Act shall, in so far as the same are applicable, apply to registration in the office of the Minister.

(5) Proceedings to enforce a lien created by this Section may be taken at any time within six months from the registration thereof and shall be

deemed to be taken on behalf of all persons holding such liens at the time such proceedings are commenced or within thirty days thereafter.

(6) In this Section, “mine” means a mine to which the *Coal Mines Regulation Act* or the *Metalliferous Mines and Quarries Regulation Act* applies and “mining” has the same meaning as the expression “to mine” in the *Mineral Resources Act*. R.S., c. 277, s. 33; 1992, c. 14, s. 61.

ARBITRATION

Effect of stay of proceedings

33A Notwithstanding the *Arbitration Act*, the *Commercial Arbitration Act* or the *International Commercial Arbitration Act* or equivalent legislation of any other jurisdiction, a stay of proceedings granted by any court of competent jurisdiction to assist the conduct of an arbitration does not prohibit the taking of any step pursuant to this Act to

- (a) register a claim of lien;
- (b) prevent the expiry of a lien; or
- (c) preserve the land or personal property to which a lien attaches or any estate or interest in land or personal property to which a lien attaches. 2004, c. 14, s. 17.

Does not constitute waiver

33B Notwithstanding the *Arbitration Act*, the *Commercial Arbitration Act* or the *International Commercial Arbitration Act* or equivalent legislation of any other jurisdiction, where the contract or subcontract of a lien claimant contains a provision respecting arbitration, the taking of any step described in Section 33A does not constitute a waiver of the lien claimant’s rights to arbitrate a dispute pursuant to the contract or subcontract. 2004, c. 14, s. 17.

Effect of action

33C Notwithstanding the *Arbitration Act*, the *Commercial Arbitration Act* or the *International Commercial Arbitration Act* or equivalent legislation of any other jurisdiction,

- (a) an action to enforce a lien that is commenced by a lien claimant whose contract or subcontract does not provide for arbitration is not stayed by the commencement or continuation of arbitration proceedings between other parties with respect to a matter that, in whole or in part, deals with the subject-matter of the action; and
- (b) no order shall be made directing a stay of an action referred to in clause (a) solely on the grounds that arbitration proceedings have been commenced or continued between other parties with respect to a matter that, in whole or in part, deals with the subject-matter of that action. 2004, c. 14, s. 17.

REALIZING LIENS AND PROCEDURE

Action to enforce lien

34 (1) The liens created by this Act may be enforced by an action to be brought and tried in the Supreme Court of Nova Scotia according to the ordinary procedure of that Court, except as varied by this Act.

(2) The jurisdiction of the Supreme Court of Nova Scotia under this Act includes a third party procedure where the amount claimed relates to the lien claim and arises out of the building contract or the work done or the materials supplied that is the subject of the lien claim.

(3) Without issuing an originating notice an action under this Act shall be commenced by filing a statement of claim in the office of the prothonotary.

(4) Any number of lien holders claiming liens on the same property may join in the action, and any action brought by a lien holder shall be taken to be brought on behalf of all other lien holders on the property in question who have complied with this Act.

(5) It shall not be necessary to make any lien holders defendants to the action, but all lien holders served with a notice of trial shall, for all purposes, be treated as if they were parties to the action.

(6) *repealed 2004, c. 14, s. 18.*

(7) The statement of claim shall be served within one month after it is filed, but the court or judge having power to try the action may extend the time for service thereof.

(8) The statement of defence may be in one of the Forms G or H.

(9) The service of all papers necessarily or usually served in the enforcement of this Act may be effected by any literate person. R.S., c. 277, s. 34; 2004, c. 14, s. 18.

Powers of judge, right of lien holder and proceeds of sale

35 (1) After the delivery of the statement of defence, where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, where it is desired to try the action otherwise than at the ordinary sittings of the court, either party may apply to a judge who has power to try the action to fix a day for the trial thereof, and the judge shall make an appointment fixing the day and place of trial, and on the day appointed, or on such other day to which the trial is adjourned, shall proceed to try the action and all questions which arise therein, or which are necessary to be tried to fully dispose of the action, and to adjust the rights and liabilities of the persons appearing before him, or upon whom the notice of trial has been served, and at the trial shall take all accounts, make all inquiries, and give all directions, and do all things necessary to try and otherwise finally dispose of the

action, and of all matters, questions and accounts arising in the action, or at the trial, and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action, or who have been served with the notice of trial, and shall embody all results in the judgment (Form I).

(2) The judge who tries the action may order that the estate or interest charged with the lien be sold, and when, by the judgment, a sale of the estate or interest charged with the lien is ordered, the judge who tries the action may direct the sale to take place at any time after judgment, allowing, however, a reasonable time for advertising the sale.

(3) The judge who tries the action may also order the sale of any materials and authorize the removal thereof.

(4) Any lien holder who has not proved his claim at the trial of any action to enforce a lien, on application to the judge who tried the action, upon such terms as to costs and otherwise as are just, may be let in to prove his claims at any time before the amount realized in the action for the satisfaction of liens has been distributed, and where such claim is proved and allowed, the judge shall amend the judgment so as to include such claim therein.

(5) Any lien holder for an amount not exceeding one hundred dollars, or any lien holder not a party to the action, may attend in person at the trial of an action to enforce a lien, and on any proceedings in such action, or may be represented thereat or thereon by a solicitor.

(6) Where a sale is held, the moneys arising therefrom shall be paid into court to the credit of the action and the judge upon whose order the lands were sold shall direct to whom the moneys shall be paid, and may add to the claim of the person conducting the sale his actual disbursements incurred in connection therewith and where sufficient to satisfy the judgment and costs is not realized by the sale, he shall certify the amount of the deficiency and the names of the persons, with the amounts, who are entitled to recover the same and the persons by the judgment adjudged to pay the same, and such persons shall be entitled to enforce the same by execution or otherwise, as a judgment of the court. R.S., c. 277, s. 35.

Notice of trial

36 The party who obtains an appointment fixing the day and place of trial, shall, at least eight clear days before the day fixed for the trial, serve a notice of trial, which may be in Form J in the Schedule to this Act, or to the like effect, upon the solicitors for the defendants who appear by solicitors, and upon all lien holders who have registered their liens as required by this Act, and upon all other persons having any registered charge or encumbrance or claim on the said lands who are not parties or, who being parties appear personally in the said action, and such service shall be personal unless otherwise directed by the court or judge who is to try the action, and the court or judge may, in lieu of personal service, direct in what manner the notice of trial shall be served. R.S., c. 277, s. 36.

Consolidation of actions

37 Where more than one action is brought to realize liens in respect of the same property, the court or judge having power to try such actions may, on the application of any party to any one of such actions, or on the application of any other person interested, consolidate all such actions into one action, and may give the conduct of the consolidated action to any plaintiff, in his discretion. R.S., c. 277, s. 37.

Carriage of action

38 Any lien holder entitled to the benefit of the action may apply for the carriage of the proceedings, and the court or judge having power to try the action may thereupon make an order giving such lien holder the carriage of the proceedings, and such lien holder shall, for all purposes in the action, be the plaintiff in the action. R.S., c. 277, s. 38.

39 and 40 *repealed 2004, c. 14, s. 19.*

Costs

41 (1) The costs of the action under this Act awarded to the plaintiffs and successful lien holders, shall not exceed, in the aggregate, an amount equal to twenty-five per cent of the amount of the judgment, besides actual disbursements, and shall be in addition to the amount of the judgment, and shall be apportioned and borne in such proportion as the judge who tries the action may direct.

(2) Where the costs are awarded against the plaintiff or other persons claiming the lien, such costs shall not exceed an amount, in the aggregate, equal to twenty-five per cent of the claims of the plaintiff and other claimants, besides actual disbursements, and shall be apportioned and borne as the judge may direct.

(3) In case the least expensive course is not taken by a plaintiff under this Act, the costs allowed to the solicitor shall in no case exceed what would have been incurred if the least expensive course had been taken.

(4) Where a lien is discharged or vacated under Section 29, or where in an action judgment is given in favour of or against a claim for a lien, in addition to the costs of an action, the judge may allow a reasonable amount for costs of drawing and registering the lien or for vacating the registration of the lien.

(5) The costs of and incidental to all applications and orders made under this Act, and not otherwise provided for, shall be in the discretion of the judge. R.S., c. 277, s. 41.

Fee for statement of claim filed in Halifax

42 Every statement of claim filed in an action to enforce a lien under this Act shall be accompanied by a fee of three dollars which shall be included in the costs and paid by law library stamp. R.S., c. 277, s. 42.

Deficiency after sale

43 All judgments in favour of lien holders shall adjudge that the person or persons personally liable for the amount of the judgment shall pay any deficiency which may remain after sale of the property adjudged to be sold, and whenever, on a sale of any property to realize a lien under this Act, sufficient to satisfy the judgment and costs is not realized therefrom, the deficiency may be recovered against the property of such person or persons by the usual process of the court. R.S., c. 277, s. 43.

Form of certificate vacating lien

44 A certificate vacating a lien may be in one of the Forms K or L in the Schedule to this Act, or to the like effect. R.S., c. 277, s. 44.

TRUST PROVISIONS

Owner trustee of trust fund for contractor

44A (1) All amounts received by an owner that are to be used in the financing of any of the purposes enumerated in Section 6, including any amount that is to be used in the payment of the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

(2) Where amounts become payable under a contract to a contractor by the owner, an amount that is equal to an amount that is in the owner's hands or received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor.

(3) Where the substantial performance of a contract has been deemed, or has been declared by the court, an amount that is equal to the unpaid price of the substantially performed portion of the contract that is in the owner's hands or is received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor.

(4) The owner is the trustee of the trust fund created by subsection (1), (2) or (3), and the owner shall not appropriate or convert any part of a fund to the owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts related to any of the purposes enumerated in Section 6 owed to the contractor by the owner. 2004, c. 14, s. 20.

Contractor trustee of trust fund

44B (1) All amounts

(a) owing to a contractor or subcontractor, whether or not due or payable; or

(b) received by a contractor or subcontractor,

on account of the contract or subcontract price of any of the purposes enumerated in Section 6 constitute a trust fund for the benefit of the subcontractors and other per-

sons who have supplied services or materials to any of the purposes enumerated in Section 6 who are owed amounts by the contractor or subcontractor.

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor's or subcontractor's own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to any of the purposes enumerated in Section 6 are paid all amounts related to any of the purposes enumerated in Section 6 owed to them by the contractor or subcontractor. 2004, c. 14, s. 20.

Where owner's interest in premises sold

44C (1) Where the owner's interest in a premises is sold by the owner, an amount equal to

(a) the value of the consideration received by the owner as a result of the sale,

less

(b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any existing mortgage indebtedness on the premises,

constitutes a trust fund for the benefit of the contractor.

(2) The former owner is the trustee of the trust created by subsection (1), and shall not appropriate or convert any part of the trust property to the former owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts owed to the contractor that relate to any of the purposes enumerated in Section 6. 2004, c. 14, s. 20.

Payment by trustee

44D Subject to Section 13, every payment by a trustee to a person the trustee is liable to pay for services or materials supplied to any of the purposes enumerated in Section 6 discharges the trust of the trustee making the payment and the trustee's obligations and liability as trustee to all beneficiaries of the trust to the extent of the payment made by the trustee. 2004, c. 14, s. 20.

Retention or application of trust funds upon payment

44E (1) A trustee who pays in whole or in part for the supply of services or materials to any of the purposes enumerated in Section 6 out of money that is not subject to a trust under this Act may retain from trust funds an amount equal to that paid by the trustee without being in breach of the trust.

(2) Where a trustee pays in whole or in part for the supply of services or materials to any of the purposes enumerated in Section 6 out of money that is loaned to the trustee, trust funds may be applied to discharge the loan to the extent

that the lender's money was so used by the trustee, and the application of trust money does not constitute a breach of the trust. 2004, c. 14, s. 20.

Retention of trust funds where outstanding debt or claim

44F A trustee may, without being in breach of trust, retain from trust funds an amount that, as between the trustee and the person the trustee is liable to pay under a contract or subcontract related to any of the purposes enumerated in Section 6, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages, whether or not related to any of the purposes enumerated in Section 6. 2004, c. 14, s. 20.

Persons liable for breach of trust

44G (1) In addition to the persons who are otherwise liable in an action for breach of trust under this Act,

- (a) every director or officer of a corporation; and
- (b) any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities,

who assents to, or acquiesces in, conduct that the person knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust.

(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and in determining this the court may disregard the form of any transaction and the separate corporate existence of any participant.

(3) Where more than one person is found liable or has admitted liability for a particular breach of trust under this Act, those persons are jointly and severally liable.

(4) A person who is found liable, or who has admitted liability, for a particular breach of trust under this Act is entitled to recover contribution from any other person also liable for the breach in such amount as will result in equal contribution by all parties liable for the breach unless the court considers such apportionment would not be fair and, in that case, the court may direct such contribution or indemnity as the court considers appropriate in the circumstances. 2004, c. 14, s. 20.

MISCELLANEOUS PROVISIONS

Builder's lien on chattel

45 (1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement in its properties, or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money

or skill and materials bestowed, shall, while such lien exists, but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to all other remedies provided by law, to sell by auction the chattel or thing in respect to which the lien exists, on giving one week's notice by advertisement in a newspaper published in the county in which the work was done, or in case there is no newspaper published in such county, then in a newspaper circulating therein, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of such county.

(2) Such mechanic, or other person, shall apply the proceeds of the sale in payment of the amount due him and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto. R.S., c. 277, s. 45.

Personal judgment if lien not established

46 When, in any action brought under this Act, any claimant fails for any reason to establish a valid lien, he may nevertheless recover therein a personal judgment against the party or parties to the action for such sum or sums of money as appear to be due him from such party or parties, and which he might recover in an action on the contract against such party or parties. R.S., c. 277, s. 46.

Forms

47 The forms in the Schedule to this Act, or forms similar thereto, or to the like effect, may be adopted in all proceedings under this Act. R.S., c. 277, s. 47.

Regulations

- 48 (1) The Governor in Council may make regulations
- (a) respecting notice that a contract is substantially performed;
 - (b) respecting notice that a subcontract is complete.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2013, c. 14, s. 3.

SCHEDULE

Form A

(Section 19)

CLAIM OF LIEN FOR REGISTRATION

A.B., (name of claimant) of (here state residence of claimant, and, if so, as assignee of, stating name and residence of assignor), under the ~~Mechanics~~² [Builders'] Lien Act, claim

a lien upon the estate of (here state the name and residence of owner of land upon which the lien is claimed) in the under-mentioned land in respect to the following work (service or materials), that is to say (here give a short description of the nature of the work done or materials furnished, and for which the lien is claimed), which work (or service) was (or is to be) done (or materials were furnished) for (here state the name and residence of the person upon whose credit the work is done or materials furnished) on or before the day of

The amount claimed as due (or to become due) is the sum of \$.

The following is a description of the land to be charged: (here set out a concise description of the land to be charged sufficient for the purpose of registration)

(when credit has been given, insert) The said work was done (or materials were furnished) on credit, and the period of credit agreed to expired (or will expire) on the day of, 19.

Dated at this day of, 19.

.
(signature of claimant)

Form B

(Section 19)

CLAIM OF LIEN FOR WAGES FOR REGISTRATION

A.B., (name of claimant) of (here state the residence of claimant, and, if so, as assignee of, stating name and residence of assignor), under the ~~Mechanics~~² [Builders'] Lien Act, claims a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the under-mentioned land in respect to days' work performed thereon while in the employment of (here state the name and residence of the person upon whose credit the work was done) on or before the day of

The amount claimed as due is the sum of \$.

The following is the description of the land to be charged: (here set out a concise description of the land to be charged sufficient for the purpose of registration)

Dated at this day of, 19.

.
(signature of claimant)

Form C

(Sections 19 and 20)

AFFIDAVIT VERIFYING CLAIM

I, A.B., named in the above (or annexed) claim, make oath and say that the said claim is true.

or, We, A.B. and C.D., named in the above (or annexed) claim, make oath and say, and each for himself saith, that the said claim, as far as relates to him, is true.

(where the affidavit is made by agent or assignee, a clause must be added to the following effect) I have full knowledge of the facts set forth in the above (or annexed) claim.

Sworn before me at
in the County of
this day of,
19

or, The said A.B. and C.D.
were severally sworn before
me at
in the County of
this day of,
19

or, The said A. B. was
sworn before me at
in the County of
this day of,
19

Form D

(Section 20)

CLAIM OF LIEN FOR WAGES
BY SEVERAL CLAIMANTS

The following persons under the Mechanics' [Builders'] Lien Act, claim a lien upon the estate of (here state the name and residence of the owner of the land upon which the lien is claimed) in the under-mentioned land, in respect to wages for labour performed thereon while in the employment of (here state name and residence or names and residences of employers of the several persons claiming the lien).

A.B., of (residence) \$. for days' wages.
 C.D., of (residence) \$. for days' wages.
 E.F., of (residence) \$. for days' wages.

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of, 19.

(signatures of the several claimants)

Form E

(Section 25)

CERTIFICATE OF LIS PENDENS

(style of court and cause)

I certify that the above-named plaintiff has commenced an action in the above court to enforce against the following land: (describing it)

a claim of ~~mechanics~~² [builders'] lien for \$.

Dated at this day of, 19.

.....
 Prothonotary

Form F

(Section 34)

AFFIDAVIT OF LIEN HOLDER VERIFYING CLAIM

(style of court and cause)

I, G.H., of (address and occupation), make oath and say:

I have in the foregoing account (or, in the account now shown to me, marked A), set forth a just and true account of the amount due and owing to me by E.H. (the owner), or by E.F., who is a contractor with the defendant, L.G., (the owner), of the lands in question, and I have in the said account given credit for all sums in cash, or merchandise, or otherwise, to which the said E.F. is justly entitled to credit in respect to the said account, and the sum of \$. appearing by such account to be due to me as the amount (or balance) of such account is now justly due and owing to me.

Sworn, etc.

Form G

(Section 34)

DEFENCE

(style of court and cause)

A.B. disputes that the plaintiff is now entitled to a ~~mechanic's~~^{mechanics} [builders'] lien on the following grounds: (setting forth the grounds shortly)

- (a) that the lien has not been presented in due time, as required by statute;
- (b) that there is nothing due to the plaintiff;
- (c) that the plaintiff's lien has been vacated and discharged;
- (d) that there is nothing due by (owner's name) for the satisfaction of the plaintiff's claim.

Delivered on the day of by A.B. in person, whose address for service is (stating address)

or Delivered on the day of by Y.Z., solicitor for the said A.B.

Note - If the owner does not dispute the claim entirely and only wishes to have the accounts taken, the owner may use the following form:

Form H

(Section 34)

DEFENCE WHERE THERE ARE NO MATTERS DISPUTED, OR WHERE THE MATTERS IN DISPUTE ARE MATTERS OF ACCOUNT

(style of court and cause)

A.B., admits that the plaintiff is entitled to a lien, and claims that the following is a just and true statement of the account in question:

Amount of contract price for work contracted to be performed by E.F., as plumber, on the lands in question herein.....	\$	500.00
Amounts Paid on Account		
June 1st, 1900, paid E.F.	\$200.00	
June 1st, 1900, paid G.H. and I.K., subcontractors of E.F.	100.00	300.00
Balance admitted to be due	\$	200.00

For satisfaction of the lien of plaintiff and other lien holders (as the case may be) A.B., before action, tendered to the plaintiff \$. in payment of his claim, and now brings into court \$. and submits that that amount is sufficient to pay the plaintiff's claim and asks that this action be dismissed as against him, with costs.

Delivered, etc.

Form I
(Section 35)
JUDGMENT

In the Court
. S.S.

Between
. Plaintiff,
and
. Defendant

This action coming on for trial before in at upon opening of the matter and it appearing that the following persons have been duly served with notice of trial herein (set out the names of all persons served with notice of trial) and all such persons (or as the case may be) appearing at the trial (if so), and the following persons not having appeared, (set out the names of non-appearing persons), and upon hearing the evidence adduced and what was alleged by counsel for the plaintiff and for C.D. and E.F. and the defendant (if so) and (by A.C. appearing in person).

1. This Court does declare that the plaintiff and the several persons mentioned in the first schedule hereto are respectively entitled to a lien under the ~~Mechanics'~~ [Builders'] Lien Act, upon the lands described in the second schedule hereto, for the amounts set opposite their respective names in the first, second and third columns of the first schedule, and the persons primarily liable for such claims respectively are set forth in the fourth column of such schedule.

2. (if so) And this Court does further declare that the several persons mentioned in the third schedule hereto are also entitled to some lien, charge or encumbrance upon the said lands for the amounts set opposite their respective names in the fourth column of the third schedule.

3. And this Court does further order and adjudge that upon the defendant (A.B., the owner) paying into court to the credit of this action the sum of (gross amount of liens in the first and third schedules for which the owner is liable) on or before the day of next that the said liens in the said first schedule mentioned be and the same are hereby discharged, (and the several persons in the third schedule mentioned shall release and discharge their said claims and assign and convey the said premises to the defendant (owner) and deliver up all documents on oath to the said defendant (owner) or to such person as he appoints and the said moneys so paid into court shall be paid out in payment of the claims of the said lien holders (if so, and encumbrances).

4. But if the said defendant (owner) makes default in payment of the said mon-
eys into court as aforesaid, this Court does order and adjudge that the said lands be sold with
the approbation of of this Court at, and that the purchase money be
paid into court to the credit of this action, and all proper parties do join in the conveyances as
the said directs.

5. And this Court does order and adjudge that the said purchase money be
applied in or towards payment of the several claims in the said first (and third) schedule(s),
mentioned as the said directs, with subsequent interest and subsequent costs to be
computed and taxed.

6. And this court does further order and adjudge that if the purchase money is
insufficient to pay in full the claims of the several persons mentioned in the first schedule, the
persons primarily liable for such claims as shown in such schedule do pay to the persons to
whom they are respectively primarily liable the amounts remaining due to such persons forth-
with after the same have been ascertained by the said

7. (if so) And this Court does declare that have not proved any lien
under the ~~Mechanics~~² [Builders'] Lien Act, and that they are not entitled to any such lien, and
this Court does order and adjudge that the claims of lien respectively registered by them
against the lands mentioned in the second schedule be and the same are hereby discharged.

Schedule 1

Names of lien holders entitled to mechanics ² [builders'] lien	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors

Schedule 2

The lands in question in this matter are (set out description sufficient for registration
purposes)

Schedule 3

Names of persons entitled to encumbrances other than mechanics' [builders'] lien	Amount of debt and interest (if any)	Costs	Total

Form J

(Section 36)

NOTICE OF TRIAL

(style of court and cause)

Take notice that this action will be tried at the court-house at on the day of by and at such time and place the will proceed to try the action and all questions which arise in or which are necessary to be tried to completely dispose of the action, and to adjust the rights and liabilities of the persons appearing before him or upon whom this notice of trial has been served and at such trial he will take all accounts, make all inquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions and accounts arising in such action, and will give all necessary relief to all parties.

And further take notice, that if you do not appear at the trial and prove your claim, if any, or prove your defence, if any, to the action, the proceedings will be taken in your absence, and you may be deprived of all benefit of the proceedings, and your rights disposed of in your absence.

This is a ~~mechanics'~~ [builders'] lien action brought by the above-named plaintiff against the above named above-named defendants to enforce a ~~mechanics'~~ [builders'] lien against the following lands: (set out description of lands)

This notice is served by, etc.

Form K

(Section 44)

CERTIFICATE VACATING LIEN

(style of court and cause)

I certify that the defendant, A.B. (the owner) has under an order made herein by and dated the day of paid into court to the credit of this cause all money due and payable by him for the satisfaction of the liens of the plaintiff and E.F., G.H., I.J. and K.L., and their liens are hereby vacated and discharged so far as the same affect the following lands: (describe lands)

Dated at the day of, 19.

.....
Prothonotary

Form L

(Section 44)

CERTIFICATE VACATING LIEN

(style of court and cause)

I certify that I have inquired and find that the plaintiff is not entitled to any ~~mechanics~~^{ies} [builders'] lien upon the lands of the defendant A.B. (the owner) and that his claim of lien is hereby vacated and discharged so far as the same affects the following lands: (describe lands)

Dated at the day of, 19.

.....
Referee

R.S., c. 277, Sch.; R.S., c. 240, s. 10; 1992, c. 16, s. 5; revision corrected.

