



Ontario

Ministry of
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Property
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Legal
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Time for
Registration

Discharges
of Claims

BULLETIN NO. 83004

DATE: March 15, 1983

TO:
ALL LAND REGISTRARS

CONSTRUCTION LIEN ACT, 1983
(Statutes of Ontario, 1983 Chapter 6)

LAND REGISTRATION PROCEDURE

The Construction Lien Act, 1983, which comes into force on April 2, 1983, applies to all contracts for the supply of services or materials to an improvement entered into on or after that date, and to subcontracts arising under those contracts and to all services and materials supplied thereunder. The Mechanics' Lien Act continues to apply to all contracts entered into before April 2, 1983 and to any amendments made thereto on or after that date.

Land Registrars are advised that, notwithstanding the coming into force of the Construction Lien Act, 1983, existing guidelines as set out in Bulletins 74110, 77030, 78011, 78021 and 82029 and Land Titles Procedural Guide relating to the registration of claims for lien, certificates of action, their discharges, and sales by chargees under power of sale, etc., will continue to apply equally to the Mechanics' Lien Act and the Construction Lien Act, 1983, subject to the following:

1. While time limitations for registration of claims for lien and certificates of action have been changed under the Construction Lien Act, 1983, there will be no change in our policy of not policing time limitations in respect of the registration of claims for lien and certificates of action under that Act.

2. A claim for lien relating to a contract entered into on or after April 2, 1983, under the Construction Lien Act, 1983, may be discharged by registering a release signed by the lien claimant in the form prescribed by regulation under that Act. (See section 41) Conversely, a claim for lien relating to a contract entered into before that date under the Mechanics' Lien Act may be discharged by registering a receipt acknowledging payment, signed by the lien claimant or his agent duly authorized in writing, in a form such as that set out in Bulletin 74110. A receipt acknowledging payment is not acceptable to discharge a lien under the Construction Lien Act, 1983, nor is the prescribed release under that Act acceptable to discharge a claim for lien under the Mechanics' Lien Act, (except as noted on page 2).

Accordingly, Land Registrars in the land titles system must ensure that a claim for lien registered before April 2, 1983 is not discharged by a release under the Construction Lien Act, 1983. In addition, they must ensure, where a claim for lien is registered on or after April 2, 1983, that the discharging instrument correctly corresponds to the claim for lien which it is discharging. Where the discharging instrument does

not correspond to the claim for lien, (e.g., a release under the Construction Lien Act, 1983 which is attempting to discharge a claim for lien registered under the Mechanics' Lien Act) affidavit evidence explaining the discrepancy must accompany the discharging instrument, (e.g., the claim for lien was inadvertently registered on the wrong claim for lien form).

Section 103 of the Land Titles Act authorizes the Land Registrar to delete a claim for lien under the Mechanics' Lien Act which appears to his satisfaction to have ceased to exist. By virtue of clause 15(b) of the Interpretation Act, section 103 of the Land Titles Act also applies to liens under the Construction Lien Act, 1983. Land Registrars are advised not to act under that section in a case where it appears that a lien has expired under either the Mechanics' Lien Act or the Construction Lien Act, 1983. An application to amend the register by deleting a claim for lien may be made in Form 15 under section 13 of Ontario Regulation 75/82 where the evidence in support of such application includes a written receipt for payment of the amount secured by the lien and an affidavit of the applicant stating that the receipt relates to the lien and explaining why it is impossible or inconvenient to obtain a release or discharge of the lien.

Power
of Sale

3. A major change in the Construction Lien Act, 1983, is the establishment of the priority of liens over mortgages and charges by subsections 80(2) and 80(5) of the Act. Consequently, on a sale by a chargee under a power of sale in the land titles system, which involves subsequently registered claims for lien under the Construction Lien Act, 1983, in addition to the regular affidavit evidence, Land Registrars will require an affidavit of the chargee, the chargee's solicitor, or an agent of the chargee who has personal knowledge of the facts, stating that the charge has priority, notwithstanding the provisions of subsections 80(2) and 80(5) of the Construction Lien Act, 1983, or in the alternative, that a financial guarantee bond has been registered in accordance with subsection 80(10) of that Act. It should be noted that the above additional evidence will be necessary only in respect of charges registered on or after April 2, 1983. (See Note on page 3)

Sheltering
Liens

4. The Land Titles Procedural Guide sets out the rules as to sheltering in respect of liens under the Mechanics' Lien Act relating to pre-April 2, 1983 contracts. Those rules will continue to apply only to such contracts. With respect to liens under the Construction Lien Act, 1983, relating to contracts entered into on or after April 2, 1983, the following rules will apply:

- (a) A claim for lien may shelter under any existing "perfected" lien (that is, a lien for which a certificate of action has been registered) at the time of registration of the claim for lien or may shelter under any lien which is perfected between the time of registration of the lien claimant's lien and the expiry of the time for its perfection. Since Land Registrars do not police time limitations on the registration of claims for lien and certificates of action, they are to consider that a claim for lien may properly be "sheltering" in the context of the Construction Lien Act, 1983 under any existing "perfected" claim for lien.

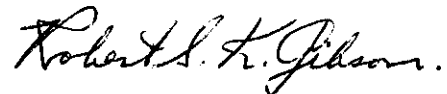
- (b) A claim for lien may properly shelter under an existing perfected lien notwithstanding the invalidity or improper preservation (registration) or perfection of the lien under which it is sheltering. (See paragraph 2 of subsection 36(4))
- (c) A claim for lien is sheltered only as to the defendants and nature of relief claimed in the statement of claim under which it is sheltered. (See paragraph 3 of subsection 36(4)) Accordingly, where a claim for lien is, in fact, sheltering under a perfected claim for lien, the lien claimant is protected only as to the priority claimed in the claim for lien under which it is sheltering.
- (d) Under the Construction Lien Act, 1983, a claim for lien may be registered only for services or materials already provided. It is possible, therefore, that the same lien claimant may register several successive claims for lien in relation to the same contract. Land Registrars should ensure that each claim for lien is considered independently, even if there are additional claims for lien registered by the same claimant. That is, do not assume that each claim for lien is necessarily sheltering under the same certificate of action.

Land Registrars must remember that a claim for lien under the Mechanics' Lien Act may shelter only under a certificate of action under that Act, and a claim for lien under the Construction Lien Act, 1983 may shelter only under a certificate of action under the latter statute.

Court
Orders

5. Land Registrars should also note that section 49 of the Construction Lien Act, 1983 provides that a certified copy of a court order declaring that a lien has expired, or discharging a lien or vacating the registration of a claim for lien or certificate of action may be registered under the Registry Act or the Land Titles Act. In this regard, see Bulletin 82029 distinguishing between "vacated" and "discharged" liens.

Copies of the Construction Lien Act, 1983 and Ontario Regulation 159/83 will be provided to Land Registrars as they become available.



ROBERT S.K. GIBSON
DEPUTY DIRECTOR OF TITLES

RSKG/OAL

Note: *The procedure in respect of a sale by a chargee also applies where a mortgage was registered under the Registry Act prior to land being brought under the Land Titles Act.*

O. Reg. 159/83 will be published in The Ontario Gazette of April 2, 1983.