

COLLECTING PAYMENT ON CONSTRUCTION/BUILDING CLAIMS

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For some, the thought of initiating a Court proceeding to collect upon money owed to them following the completion of their involvement in a construction project is one they would prefer to never have to face. The fact is, however, that most contractors have and will face that reality regularly over the course of any year.

The process can follow a number of steps or stages depending upon the amount due, and when the work was performed.

The first question to be addressed is whether you are required to take formal steps to secure or collect upon the amount owing. The main consideration at this stage is whether you believe that there is a genuine delay in processing the payment, or there is a realistic chance that you may not be paid. Making that assessment, and making it quickly is important if you wish to secure certain rights to ensure that you are paid.

Timing

The Builders' Liens Act of Manitoba allows that a contractor or any person providing material or services on a job site has 40 days from the earliest of substantial performance or, in some cases, the date of their last involvement on that project to file a builders' lien against title to the property where the project was performed.

Substantial performance is determined for purposes of lien registration, by the date a certificate issues. Typically, the contractor then has 40 days to register the lien. The 40 days is strictly enforced by the Land Titles Office registrar's and the Courts.

Presuming that you fall within the 40 day period outlined above, the next step involves determining how you go about filing the lien. For privately owned land (as opposed to Crown Land), the lien must be filed at the Land Titles Office where the property is registered. So an assessment must be made as to which Land Titles Office the property is registered at, because that is where the lien must be filed. After that, comes the task of determining the legal description of the property which you wish to lien.

Determining ownership issues, the correct legal description and Land Title Office takes time. For that reason, it is important to begin the investigations early in the 40 day period, and at your first sense that there might be a problem with payment. Legal counsel can provide assistance in making these investigations, and in preparing the lien documents in a timely way.

Once the lien is registered against the property, it may have some effect upon the owner's ability to access funds from a mortgagee or to pay other trades.

If you do not file a builders' lien, have you lost your rights to collect the money owing to you? The answer is absolutely not. While the failure to file a lien may mean that you have lost some leverage to receive payment quickly, legal rights to collect upon a debt due and owing, whether under a written contract or a verbal engagement, continue after the 40 day lien period has expired.

Court Process

A creditor has 6 years from the date of the debt to file a Statement of Claim or Small Claim (*The Limitation of Actions Act*). However, where a lien is filed, the claimant has two years to sue upon the lien to continue to enforce rights under *The Builders' Liens Act*. A failure to sue within the two year period may result in the lien rights lapsing, but does not prevent a claimant from taking court action within the original 6 year period.

If the amount in issue is less than \$10,000.00, the claimant may wish to commence a Small Claim. The Small Claims process is generally quicker than filing a Statement of Claim in the Court of Queen's Bench, but because of the dollar limit it is often times not applicable to claimants. To recover claims above \$10,000.00, the claimant will likely proceed to issue a Statement of Claim in the Court of Queen's Bench.

Depending upon the specific situation, there may be options as to the way in which you can proceed through the Court process, and legal counsel should be consulted at an early stage to provide you with that advice.

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