

UNEDITED

# *The Mechanics' Lien Act*

*being*

Chapter 249 of *The Revised Statutes of Saskatchewan, 1953*  
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER 249

### An Act respecting the Liens of Mechanics, Wage Earners and Others

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Mechanics' Lien Act*.

R.S.S. 1953, c.249, s.1.

#### INTERPRETATION

##### Interpretation

- 2 In this Act:

##### “clerk of the court”

1. “**clerk of the court**” means the clerk of the district court;

##### “contractor”

2. “**contractor**” means a person contracting with or employed directly by the owner or his agent to perform work or service or place or furnish materials for any of the purposes mentioned in this Act;

##### “court”

3. “**court**” means the district court of the judicial district wherein the property in respect of which the lien is claimed is situated;

##### “judge”

4. “**judge**” means the judge of that court;

##### “material”

5. “**material**” or “**materials**” includes every kind of movable property;

##### “owner”

6. “**owner**” includes any person, firm, association, body corporate or politic having any interest or estate in the lands upon or in respect of which the work or service is performed or materials are placed or furnished at whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit any such work or service is performed or materials are placed or furnished and all persons claiming under him or it 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;

##### “person”

7. “**person**” includes a body corporate or politic, a firm, a partnership or association;

##### “registrar”

8. “**registrar**” means the registrar of land titles for the land registration district within which the property in respect of which the lien is claimed, is situated;

##### “registered”

9. “**registered**” means registered under *The Land Titles Act* and includes “**filed**” when no certificate of title is issued for the land affected by the lien;

**“subcontractor”**

10. **“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;

**“wages”**

11. **“wages”** means money earned by a workman, servant, labourer, mechanic or other person mentioned in section 3, for work done whether by time or as piece work.

R.S.S. 1940, c.296, s.2; R.S.S. 1953, c.249, s.2.

## CREATION, EFFECT AND REGISTRATION OF LIENS

**Contracts void where rights waived**

**3** Every agreement or bargain verbal or written, express or implied entered into on the part of any workman, servant, labourer, mechanic or other 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 any person entering into such agreement is null and void and of no effect as against such workman, servant, labourer, mechanic or other person.

R.S.S. 1940, c.296, s.3; R.S.S. 1953, c.249, s.3.

**Lien**

**4(1)** Unless he signs an express agreement to the contrary, and in that case subject to the provisions of section 3, any person who performs work or service upon or in respect of or places or furnishes materials to be used in the making, constructing, erecting, developing, fitting, altering, improving or repairing of any erection, building, land, wharf, pier, bulkhead, bridge, trestlework, mine, mining claim, mining land, water well, gas well, oil well or other well, gas or oil pipe line, or the appurtenances thereto, for an owner, contractor or subcontractor, shall by virtue thereof have a lien, for the price of the work, service or materials, upon the erection, building, wharf, pier, bulkhead, bridge, trestlework, mine, mining claim, mining land, water well, gas well, oil well or other well, gas or oil pipe line and appurtenances and the lands occupied thereby or enjoyed therewith, or upon or in respect of which the work or service is performed, or upon which the 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 hereinafter provided, by the owner.

**(2)** A person who has a lien under subsection (1) in respect of any mine, mining claim, mining land, oil well or gas well shall also have a lien upon the fixtures, machinery, tools, appliances, equipment and other property in or on the mine, mining claim, mining land, oil well or gas well, or the appurtenances thereto.

R.S.S. 1940, c.296, s.4; R.S.S. 1953, c.249, s.4.

**Lands of married woman**

**5** Where work or service is performed or materials are placed or furnished upon or in respect of the lands of a married woman with the privity and consent of her husband he shall be conclusively presumed to be acting for himself so as to bind his own interest and also as the agent of such married woman for the purposes of this Act unless the person performing the work or service or placing or furnishing the materials had actual notice to the contrary before performing the work or placing or furnishing the materials.

R.S.S. 1940, c.296, s.5; R.S.S. 1953, c.249, s.5.

**Third party of lien**

**6** No agreement shall be held to deprive anyone otherwise entitled to a lien under this Act and not a party to the agreement of the benefit of the lien but the lien shall attach notwithstanding such agreement.

R.S.S. 1940, c.296, s.6; R.S.S. 1953, c.249, s.6.

**Property on which lien attaches**

**7(1)** The lien shall attach upon the estate or interest of the owner in the property mentioned in section 4.

(2) Where the estate or interest charged by the lien is leasehold the land itself may also with the consent of the owner thereof be subject to the lien provided such consent is attested by the signature of the owner upon the claim of lien at the time of registration thereof and duly verified.

R.S.S. 1940, c.296, s.7; R.S.S. 1953, c.249, s.7.

**Insurance when lien attaches**

**8** Where any of the property upon which a lien is given by this Act is wholly or partly destroyed by fire any money received or receivable by reason of insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and shall, after satisfying the claims, if any, of mortgagees or chargees under prior registered instruments, be subject to the claims of all persons for liens to the same extent as if such moneys were realized by the sale of the property in an action to enforce a lien.

R.S.S. 1940, c.296, s.8; R.S.S. 1953, c.249, s.8.

**Limit of lien**

**9** Save as herein 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.S. 1940, c.296, s.9; R.S.S. 1953, c.249, s.9.

**Limit of lien when claimed by other than contractor**

**10** Save as herein provided where the lien is claimed by a 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 performed or the materials have been placed or furnished.

R.S.S. 1940, c.296, s.10; R.S.S. 1953, c.249, s.10.

**Percentage deducted and retained**

**11(1)** In all cases the person primarily liable upon any contract under or by virtue of which a lien may arise under the provisions of this Act shall as the work or service is performed or materials are placed or furnished under the contract deduct from payments to be made by him in respect of the contract and retain for a period of thirty days after the completion or abandonment of the contract twenty per cent of the value of the work, service and materials actually performed, placed or furnished as mentioned in section 4 and such values shall be calculated on the basis of the price to be paid for the whole contract; and the liens created by this Act shall be a charge upon the amount directed to be retained by this section in favour of the subcontractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable.

(2) All payments up to eighty per cent of such value made in good faith by an owner to a contractor or 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 the owner, contractor or subcontractor shall operate as a discharge *pro tanto* of the lien created by this Act.

(3) Payment of the percentage required to be retained under subsection (1) may be validly made so as to discharge all liens or charges under this Act in respect thereof after the expiration of the period of thirty days mentioned in subsection (1), unless in the meantime a claim of lien has been registered or an action has been commenced under this Act to enforce any lien or charge as provided by sections 24 and 25.

R.S.S. 1940, c.296, s.11; R.S.S. 1953, c.249, s.11.

**Payments made direct by owner**

**12** If an owner or contractor makes a payment to any person referred to in section 4 for or on account of any debt justly due to him for work or service performed or for materials placed or furnished to be used as therein mentioned and forthwith after such payment gives written notice thereof to the contractor or his agent or to the subcontractor or his agent, as the case may be, such payment shall as between the owner and the contractor or as between the owner and the subcontractor be deemed to be a payment to the contractor or the subcontractor on his contract generally but not so as to affect the percentage to be retained by the owner as provided by section 11.

R.S.S. 1940, c.296, s.12; R.S.S. 1953, c.249, s.12.

**Priority of lien**

**13(1)** The lien created by this Act shall have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises and over all conveyances or mortgages registered after registration of a claim of lien as in this Act provided.

(2) In case of an agreement for the purchase of land where the purchase money or part thereof is unpaid and no conveyance has been made to the purchaser, the purchaser shall for the purposes of this Act and within the meaning thereof be deemed a mortgagor and the seller a mortgagee whose mortgage was registered on the date of the execution of the agreement of sale.

(3) Except where otherwise declared by this Act no person entitled to a lien on any property or to a charge on any moneys under this Act shall be entitled to priority or preference over another person entitled to a lien or charge on such moneys or property under this Act and all lienholders except where otherwise declared by this Act shall rank *pari passu* for their several amounts and the proceeds of any sale shall subject as aforesaid be distributed among them *pro rata*.

R.S.S. 1940, c.296, s.13; R.S.S. 1953, c.249, s.13.

#### Priority of lien for wages

**14(1)** Every mechanic or labourer 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 twenty per cent of the contract price directed to be retained by section 11 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 completely fulfilled when the lien is claimed by wage earners the percentage shall be calculated on the work done or materials furnished by the contractor or subcontractor by whom such wage earners are employed.

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

(5) Every device by an owner, contractor or subcontractor adopted to defeat the priority given to wage earners for their wages by this Act shall as respects such wage earners be null and void.

R.S.S. 1940, c.296, s.14; R.S.S. 1953, c.249, s.14.

#### Payments to defeat lien

**15** Nothing in this Act applies to make legal any payment made for the purpose of defeating or impairing a claim for a lien arising or existing under this Act and all such payments shall be null and void.

R.S.S. 1940, c.296, s.15; R.S.S. 1953, c.249, s.15.

#### Removal of materials affected

**16(1)** During the continuance of a lien no portion of the materials affected thereby shall be removed, to the prejudice of the lien and any attempt at such a removal may be restrained on application to the court or to a judge having power to try an action to realize a lien under this Act.

(2) The court or judge to whom such application is made may make such order as to the costs of and incidental to the application and order as it or he deems just.

(3) When material is actually brought upon land to be used in connection with such land for any of the purposes enumerated in section 4 the same shall not be subject to execution or other process to enforce any debt, other than for the purchase thereof, due by the person furnishing the same.

R.S.S. 1940, c.296, s.16; R.S.S. 1953, c.249, s.16.

**Registration of lien**

**17(1)** Subject to the provisions of subsection (3) of this section and to the provisions of section 21, a claim for lien may be registered in the land titles office of the land registration district in which the land is situated and shall set out:

- (a) the name and residence of the person claiming the lien and of the owner of the property to be charged and of the person for whom and upon whose credit the work or service was or is to be performed or materials furnished or placed and the date upon which the contract or service was completed, the last material furnished or the last work done; or, where the claim is registered before the contract, service, furnishing of material or work has been completed, the time or period within which the same was to be performed or completed;
  - (b) a short description of the work or service performed or the 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 property to be charged;
  - (e) an address for service on the party claiming the lien.
- (2) The claim may be in form A, B or C and shall be verified by the affidavit (form D) 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) No such claim shall be registered, nor shall any claim which is not registered at the date when this subsection becomes operative be capable of enforcement under the provisions of this Act, where the amount claimed as due, or the aggregate of the amounts claimed as due by a number of persons uniting in accordance with section 18, does not exceed \$50.
- (4) The person claiming the lien may change his address for service by notifying the registrar in writing of the change, and thereupon the registrar shall note the change of address upon the claim of lien.

R.S.S. 1940, c.296, s.17; R.S.S. 1953, c.249, s.17.

**What may be included in claim**

**18** A claim for lien may include claims against any number of properties and any number of persons claiming liens upon the same property may unite therein; but where more than one lien is included in one claim each lien shall be verified by affidavit as provided in section 17.

R.S.S. 1940, c.296, s.18; R.S.S. 1953, c.249, s.18.

**Claims not invalidated by informality**

**19(1)** A substantial compliance only with sections 17 and 18 shall be sufficient and no lien shall be invalidated by reason of failure to comply with any of the requirements of the said sections unless in the opinion of the court or judge having power to try an action under this Act the owner, contractor or 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 in this section shall be construed as dispensing with the registration of the claim of lien as required by this Act.

R.S.S. 1940, c.296, s.19; R.S.S. 1953, c.249, s.19.

**Lien registered an encumbrance**

**20** The registrar upon payment of the prescribed fee shall register the claim so that the same may appear as an encumbrance against the land or the estate or interest in the land therein described.

R.S.S. 1940, c.296, s.20; R.S.S. 1953, c.249, s.20.

**Registration in Department of Mineral Resources**

**21(1)** Where the claim for lien is in connection with any mine, mining claim, mining land, oil well or gas well held from or under the Crown, the claim shall be made to the Supervisor of Mines, Department of Mineral Resources, Regina, instead of to the registrar of land titles, and all the provisions of this Act respecting registration and procedure in the land titles office shall apply *mutatis mutandis*.

(2) Such lien shall not affect the rights of the Crown.

R.S.S. 1940, c.296, s.21; R.S.S. 1953, c.249, s.21.

**Lienholder a purchaser**

**22** Where a claim is registered under this Act the person entitled to the lien shall be deemed a purchaser *pro tanto*.

R.S.S. 1940, c.296, s.22; R.S.S. 1953, c.249, s.22.

**Time for registering liens**

**23(1)** A claim for lien by a contractor or subcontractor may in cases not otherwise provided for be registered before or during the performance of the contract or within thirty days after the completion thereof.

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

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty 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 thirty days after the last day's work 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 a 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 his final certificate or has upon application to him by the contractor refused to give a final certificate.

R.S.S. 1940, c.296, s.23; R.S.S. 1953, c.249, s.23.

## DURATION OF LIEN

**When lien ceases**

**24** Every lien a claim for which is not duly registered under the provisions of this Act shall cease to exist at the expiration of the time hereinbefore limited for the registration thereof unless in the meantime an action is commenced to realize the claim or in which the claim may be realized under the provisions of this Act and a certificate thereof (form F) is duly registered in the land titles office of the land registration district wherein the property in respect of which the lien is claimed is situated:

Provided that claims may be registered and actions commenced after the time hereinbefore limited for so doing and that the failure to register a claim or to commence an action within the times mentioned in this section and in sections 11 and 23 shall not defeat a lien except as against intervening parties becoming entitled to a lien or charge upon the land whose claim with respect to the land is registered prior to the registration of the lien, or as against an owner in respect of payments made in good faith to a contractor after the expiration of said period of thirty days and before any claim or lien is registered or notice thereof given to the owner.

R.S.S. 1940, c.296, s.24; R.S.S. 1953, c.249, s.24.

**When registered lien expires**

**25(1)** A person claiming any right, title or interest in and to property in respect of which a claim of lien is registered as hereinbefore provided may at any time after thirty days have expired since the registration of the lien require the registrar to notify the lienholder by notice in writing (form E) forwarded by registered mail to the address for service of the lienholder that unless an action to realize the claim of lien or in which such claim may be realized is instituted and a certificate (form F) is deposited in the land titles office within thirty days from the date of such notice, the lien shall cease to exist; and if such action is not so instituted and the certificate so filed within thirty days from the date of the mailing of such notice the lien shall thereupon cease to exist and the registrar shall vacate the registration thereof unless prior to the expiration of the said thirty days there is registered in the said land titles office an order of a judge extending the time for instituting the action. Upon an *ex parte* application under subsection (2) of section 32 or upon a hearing or any adjourned hearing under that section of an application for leave to commence an action, the judge shall make an order or orders extending the time within which the action must be instituted under this section for such period or periods as may from time to time be deemed necessary in order to continue the lien so long as leave to commence an action is sought and withheld and for such additional period as will enable the lienholder, in the event of leave to commence the action being granted, to institute the action and file with the registrar a certificate (form F).

(2) Where a certificate that an action has been commenced to realize a claim of lien (form F) has been filed pursuant to subsection (1), a certificate of the clerk of the court in which the action was begun:

- (a) that the action has been discontinued; or

(b) that the action having proceeded to trial, judgment was given in favour of the defendant, that no appeal therefrom has been entered, and that the time limited for an appeal has expired;

may be registered, and when registered such certificate shall have the same effect as a discharge signed by the plaintiff or his agent or a judge's order vacating the registration.

R.S.S. 1940, c.296, s.25; 1943, c.63, s.2; R.S.S. 1953, c.249, s.25.

## TRANSMISSION OR ASSIGNMENT OF LIEN

### Transmission

**26** In the event of the death of a lienholder his right of lien shall pass to his personal representatives.

R.S.S. 1940, c.296, s.26; R.S.S. 1953, c.249, s.26.

### Assignment

**27** The right of a lienholder may be assigned by any instrument in writing.

R.S.S. 1940, c.296, s.27; R.S.S. 1953, c.249, s.27.

## DISCHARGE OF LIEN

### Discharge and vacating of lien

**28(1)** A lien may be discharged by a receipt signed by the claimant or his agent duly authorized in writing or trustee in bankruptcy, acknowledging payment and verified by affidavit and registered with the registrar. Such receipt shall be numbered and entered by the registrar in the same manner as other instruments and, the fees shall be the same as for registering a claim of lien.

(2) Upon application the court or judge may receive security or payment into court in lieu of the amount of the claim and may thereupon vacate the registration of the lien.

(3) The court or judge may vacate the registration upon any other ground.

R.S.S. 1940, c.296, s.28; R.S.S. 1953, c.249, s.28.

## EFFECT OF TAKING SECURITY ON LIEN

### Certain acts not to prejudice right to enforce lien

**29** The taking of security for or the acceptance of a promissory note for or the taking of any other acknowledgement of the claim or the giving of time for payment of the claim or the taking of proceedings for recovery of the claim or recovery of any personal judgment therefor shall not merge, waive, pay, satisfy, prejudice or destroy a lien created by this Act unless the lienholder agrees in writing that it shall have that effect.

R.S.S. 1940, c.296, s.29; R.S.S. 1953, c.249, s.29.

### LIENHOLDER ENTITLED TO INFORMATION AND INSPECTION OF CONTRACT

#### Information from owner

**30** A lienholder may at any time demand from the owner or his agent the terms of the contract or agreement with the contractor for and in respect of which the work, services or materials is or are performed or furnished or placed and if the owner or his agent does not at the time of such demand or within a reasonable time thereafter inform the person making the demand of the terms of the contract or agreement or the amount due and unpaid upon such contract or agreement or makes any false statement or knowingly falsely states the terms of the said contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of such refusal or neglect or false statement the owner shall be liable to him in an action therefor to the amount of such loss.

R.S.S. 1940, c.296, s.30; R.S.S. 1953, c.249, s.30.

#### Order for inspection of contract

**31** The court or a judge may on summary application at any time before or after action is commenced for the enforcement of a lien make an order requiring the owner or his agent to produce and allow any lienholder to inspect the contract and may make such order as to the costs of the application and order as is just.

R.S.S. 1940, c.296, s.31; R.S.S. 1953, c.249, s.31.

#### Leave to commence action

**32(1)** Subject to subsection (17), no action to realize under a lien shall be commenced except by leave of the judge granted upon application under this section.

(2) A lienholder desiring to commence an action may apply *ex parte* to the judge for an appointment to hear an application for leave to commence the action, and upon such application the judge shall grant an appointment for a hearing.

(3) Notice of the hearing shall be served upon such persons as should, in the opinion of the judge, be given notice.

(4) All notices of the hearing shall be served not less than fifteen days before the date of the hearing.

(5) The notice may be served by personal service or by registered mail with postage prepaid; and the rules of the Court of Queen's Bench respecting substitutional service apply *mutatis mutandis*. Where service is made by registered mail, the service shall be deemed sufficient if a receipt from the postmaster for the envelope containing such notice and a post office receipt form therefor purporting to be signed by the person to be served are produced as exhibits to the affidavit of service. A notice served by registered mail shall be deemed to have been served on the day of the date of the receipt which purports to be signed by the person to be served.

- (6) Upon the hearing the judge may make such inquiries as he deems necessary respecting the value of the land, the claims of all lienholders, the income and assets of the parties, prevailing conditions of a local or temporary nature and all other matters which may appear relevant, and may grant the application, adjourn the hearing for such period or periods not exceeding eight months in all as he deems fit or refuse to grant the application, and, except where an action has been commenced, may vary any order, including an order for adjournment, from time to time. Refusal to grant an application shall not be a bar to the granting of any further application to commence the action. On any second or subsequent application the material used on the previous application may be used.
- (7) In disposing of an application the judge shall have and exercise discretion in each case and shall act upon his own view of the proper order to be made having regard to all the facts.
- (8) No costs shall be allowed by the judge on any hearing unless in his opinion the application is made without proper justification, in which case he may order payment of costs by the applicant.
- (9) Any application made by a lienholder under this section shall be taken to be made on behalf of all other lienholders on the property in question.
- (10) An appeal lies from any fiat or order made on an application under this section.
- (11) The appeal shall be to a judge of the Court of Queen's Bench sitting in chambers in the judicial district in which the land in question is situated. For the purpose of hearing such appeal, in each judicial district other than the judicial districts of Regina, Saskatoon and Moose Jaw, chamber sittings shall be held during or immediately before or after each regular sittings of the court.
- (12) The appellant shall give notice of his intention to appeal by filing in the office of the local registrar within fifteen days after the date of the order complained of a notice in writing setting forth with reasonable certainty the order complained of. The appeal shall be returnable within two weeks from the filing of the notice of appeal and if a judge is not sitting in chambers on the return date of the appeal the appeal shall stand adjourned until the first day on which a judge is sitting in chambers in the judicial district. The respondent shall be served with a copy of the notice of appeal four clear days before the return date thereof. Subsection (5) applies with respect to service under this subsection. If the respondent appeared by solicitor on the application before the judge, service on the respondent may be effected by service on such solicitor. Notice of appeal need not be served on any person who did not appear on the application before the judge. Any of the times fixed in this subsection, other than the time for filing a notice of appeal, may be extended or abridged by the judge whose order is appealed from or by the appellate judge on *ex parte* application before or after the time has expired but not after the commencement of any action pursuant to leave granted under this section.
- (13) Where an appeal is taken the judge shall certify to the appellate judge what, if any, inquiry the judge has made and all the information obtained upon which he has purported to act, and the information so certified shall be part of the record before the appellate judge.

(14) Where an appeal is taken the judge appealed to shall have and exercise a discretion similar to that of the judge whose order is appealed from, notwithstanding that such order was made in the discretion of the judge, and may draw inferences of fact and make the order which, in the judgment of the judge appealed to, the judge whose order is appealed from ought to have made.

(15) There shall be no further appeal.

(16) Where an application is made for leave to commence an action, the period between the date of the first application for an appointment and the date on which leave is given to commence the action shall not be included in calculation of time under *The Limitation of Actions Act* for commencing such action.

(17) This section does not apply to an action by a lienholder to whom a notice in writing (form E) has been sent by the registrar at the request of the registered owner of the land under the provisions of subsection (1) of section 25.

1943, c.63, s.3; 1951, c.90, s.2; R.S.S. 1953, c.249, s.32.

## ENFORCEMENT OF LIENS

### Mode of realizing liens

**33**(1) Notwithstanding anything contained in *The Queen's Bench Act* and *The District Courts Act* all actions to realize under a lien shall irrespective of the amount involved or of the fact that the title to land is called in question be brought, tried and determined in the district court in the same manner and subject to the same right of appeal as ordinary actions in the court.

(2) Where an action has been entered in a judicial district other than that in which the land in question is situated, the judge of the district court of the judicial district in which the action was entered shall before trial of the action order that the record be transferred to the proper office of the district in which the action should have been entered, upon such terms as to costs or otherwise as may seem just.

(3) Upon the transfer of a record under subsection (2) the proceedings previously taken shall be and be deemed to have been as valid and effectual, and may be continued in the same manner, as if the action had been originally entered in the proper district.

R.S.S. 1940, c.296, s.32; R.S.S. 1953, c.249, s.33.

### Parties to action

**34** It shall not be necessary to make any lienholders parties defendant to the action, but all lienholders served with the notice of trial shall for all purposes be deemed parties to the action.

R.S.S. 1940, c.296, s.33; R.S.S. 1953, c.249, s.34.

### Notice to lienholders

**35**(1) The party setting an action down for trial shall at least ten days before the opening of the sitting of the court at which the action is to be tried serve notice of trial (form G) upon all lienholders who have filed their claims as required by this Act, or who are known to him. The service shall be personal, unless otherwise directed by the judge, who may direct in what manner the notice of trial may be served.

(2) Such party shall also, at least ten days before the opening of the sitting of the court, serve notice of trial (form G) upon the owner. The service may be personal, or may be made by mailing the notice in a registered envelope, addressed to the owner at his last known place of abode, postage prepaid, or in such other manner as the judge may direct.

R.S.S. 1940, c.296, s.34; R.S.S. 1953, c.249, s.35.

#### **Lienholder joining in action**

**36** Any number of lienholders claiming liens on the same property may join in an action and any action brought by a lienholder shall be taken to be brought on behalf of all other lienholders on the property in question.

R.S.S. 1940, c.296, s.35; R.S.S. 1953, c.249, s.36.

#### **Trial procedure**

**37(1)** Upon the trial of an action to realize under a lien the judge shall decide all questions which arise therein or which are necessary to be tried in order to dispose of the action completely and to adjust the rights and liabilities of all parties concerned and shall take all accounts, make all inquiries and give all directions and do all other 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 concerned and shall embody all results in the judgment.

(2) The judge may order that the estate or interest charged with the lien be sold and when by the judgment a sale is directed of the estate or interest charged with the lien the judge may direct the sale to take place at any time after judgment allowing a reasonable time for advertising the sale, and may make all necessary orders for the completion of the sale and vesting the property in the purchaser.

(3) The judge may also direct the sale of any materials and authorize the removal of the same.

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

(5) When a sale is held the judge shall direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the sale his actual disbursements in connection therewith and where sufficient to satisfy the judgment and costs is not realized from the sale he shall certify the amount of the deficiency and the names of the persons with their amounts who are entitled to recover the same and the persons by the judgments 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.S. 1940, c.296, s.36; R.S.S. 1953, c.249, s.37.

**Consolidation of actions**

**38** When more actions than one are brought to realize liens in respect of the same property the judge may on the application of any party to any one of the actions or on the application of any other person interested consolidate all the actions and may give the conduct of the consolidated action to any plaintiff as he sees fit.

R.S.S. 1940, c.296, s.37; R.S.S. 1953, c.249, s.38.

**Carriage of proceedings**

**39** A lienholder entitled to the benefit of the action may apply for the carriage of the proceedings and the judge may thereupon make an order giving such lienholder the carriage of the proceedings and such lienholder shall for all purposes thereafter be the plaintiff in the action.

R.S.S. 1940, c.296, s.38; R.S.S. 1953, c.249, s.39.

**Costs**

**40(1)** Where a lien is discharged or vacated under section 28 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.

(2) Where the amount found due in respect of a claim of lien does not exceed \$100, the costs of action shall be such costs only as are recoverable in an action brought under the provisions of the small debt procedure of the district courts.

R.S.S. 1940, c.296, s.39; R.S.S. 1953, c.249, s.40.

**Costs not otherwise provided for**

**41** 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 to whom the application or by whom the order is made.

R.S.S. 1940, c.296, s.40; R.S.S. 1953, c.249, s.41.

**Satisfaction of judgment**

**42** All judgments in favour of lienholders shall adjudge that the person or persons personally liable for the amount of the judgment shall pay any deficiency which may remain after the sale of the property adjudged to be sold and when on a sale of property to realize a lien sufficient to satisfy the judgment and costs is not realized therefrom the deficiency may be recovered by execution against the property of such person or persons.

R.S.S. 1940, c.296, s.41; R.S.S. 1953, c.249, s.42.

**Personal judgment**

**43** When in an action brought under the provisions of this Act a claimant fails for any reason to establish a valid lien he may nevertheless recover therein a personal judgment against any party or parties to the action for such sum or sums as appear to be due to him and which he might recover in an action on contract against such party or parties.

R.S.S. 1940, c.296, s.42; R.S.S. 1953, c.249, s.43.

**Extension of time**

44 Where in this Act a time is limited for registering a document or taking a proceeding, and through accident, mistake or inadvertence the time thus limited has been allowed to expire without such document being registered or proceeding taken, the judge may nevertheless, upon such terms as seem just, extend the time so limited; such enlargement shall be subject to the rights of third persons accrued by reason of the failure or omission to register the document or take the proceeding within the time limited.

R.S.S. 1940, c.296, s.43; R.S.S. 1953, c.249, s.44.

**LIENS FOR IMPROVEMENT OF CHATTELS****Liens for improvement of chattels**

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 of 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 the value of the money or skill and materials bestowed shall while such lien exists but not afterwards, if 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 the chattel or thing in respect of which the lien exists.

(2) One month's notice of the sale shall be given by advertisement in a newspaper published in the locality in which the work was done or if there is no newspaper published in such locality or within ten miles of the place where the work was done then by posting not less than five notices in the most public places within the locality for one month stating:

- (a) the name of the person indebted;
- (b) the amount of the debt;
- (c) a description of the chattel or thing to be sold;
- (d) the time and place of sale and the name of the auctioneer;

and leaving a like notice in writing at the residence or last known place of residence, if any, of the owner, as the case may be, or by mailing the same to him by registered letter if his address is known.

(3) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto.

R.S.S. 1940, c.296, s.44; R.S.S. 1953, c.249, s.45.

## SCHEDULE

## FORM A

(Section 17)

## CLAIM OF LIEN FOR REGISTRATION

*A. B. (name of claimant) of (here state residence of claimant) (if so, as assignee of stating name and residence of assignor) under The Mechanics' Lien Act claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed) in the undermentioned land in respect of 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).*

The contract or service was completed or the last material was furnished or the last work was done, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, or the contract or service is to be completed or the material is to be furnished or the work is to be done on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and the name and address of the person for whom the work was done or material furnished is \_\_\_\_\_.

The amount claimed as due (or to become 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)

.....  
(Address for Service)

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## FORM B

(Section 17)

## CLAIM OF LIEN FOR WAGES FOR REGISTRATION

A. B., (name of claimant) of (here state residence of claimant) (if so, as assignee of stating name and residence of assignor) under *The Mechanics' 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 undermentioned land in respect of \_\_\_\_\_ 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 \_\_\_\_\_ 19\_\_\_\_,

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)

.....  
(Address for Service)

## FORM C

(Section 17)

## CLAIM OF LIEN FOR WAGES BY SEVERAL CLAIMANTS

The following persons under *The Mechanics' 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 undermentioned land in respect of 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.       "       \$ \_\_\_\_\_ for \_\_\_\_\_ days' wages.

E. F.       "       \$ \_\_\_\_\_ for \_\_\_\_\_ days' wages.

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 purposes of registration).

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

.....  
.....  
(Signatures of Several Claimant)

.....  
(Address for Service)

FOR HISTORICAL REFERENCE ONLY

## FORM D

(Section 17)

## AFFIDAVIT VERIFYING CLAIM FOR REGISTRATION

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

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

(Where affidavit 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 Province of Saskatchewan this  
\_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_,

}

(Or The said A. B. and C. D. were  
severally sworn before me at \_\_\_\_\_  
\_\_\_\_\_ in the Province of  
Saskatchewan this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.)

}

(Or The said A. B. was sworn before me  
at \_\_\_\_\_ in the  
Province of Saskatchewan this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.)

}

## FORM E

(Section 25)

To.....

.....

Under the provisions of section 25 of *The Mechanics' Lien Act* I hereby notify you that the claim of lien filed by you on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, against the following property namely:

shall cease to exist unless an action to realize such claim of lien or in which such claim may be realized is instituted and a certificate that such action has been so instituted (which certificate shall be in form F of the schedule to *The Mechanics' Lien Act*, signed by the clerk of the court in which such action is instituted) is deposited in the land titles office for the registration district of \_\_\_\_\_ within thirty days from the date of this notice or within such thirty days you leave with me an order of a judge extending the time for instituting such action.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

.....  
*Registrar.*

## MECHANICS' LIENS

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## FORM F

(Sections 24 and 25)

In the District Court of the Judicial District of \_\_\_\_\_

Between

\_\_\_\_\_ *Plaintiff,*

a-and

\_\_\_\_\_ *Defendant.*

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' lien for \$ \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

.....

*Clerk of the Court.*

## FORM G

(Section 35)

## NOTICE OF TRIAL

(Style of Court and Cause)

Take notice that this action will be tried at the sittings of this Court to be holden at \_\_\_\_\_ in the Province of Saskatchewan, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and at such time and place all questions which arise in or which are necessary to be tried completely to dispose of the action, and to adjust the rights and liabilities of the persons appearing before the court, or upon whom the notice of trial has been served, will be tried, and all accounts will be taken, inquiries made, directions given, and necessary relief given to all parties.

And further take notice that if you do not appear at the trial and prove your claim, if any (*or* your defence, if any), 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' lien action, brought to enforce a mechanics' lien against the following lands (*set out description of lands*).

The following liens have been registered against the said lands, as appears by the records of the Land Titles Office:

Date of Registration	Name of Claimant	Amount
1. ....		
2. ....		
3. ....		
4. ....		

This notice is served, etc.

To the above named owner, Defendant:

This notice of trial has been or will be served upon each claimant mentioned above. Such claimants will be at liberty to appear at the trial and then and there prove their claims, and, upon the property being sold under the provisions of *The Mechanics' Lien Act*, each will be entitled to share in the proceeds of sale for such amount as may have been allowed him on the trial. If the proceeds of sale prove insufficient to satisfy all the claims, the claimants will be entitled to recover judgment for their respective shares of the deficiency.