

## Construction Liens in Ontario: An Introductory Guide for Contractors

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A construction lien is a legal mechanism that helps protect contractors, subcontractors, and suppliers (collectively the “Lien Claimant”) from non-payment for their work on a construction project. In Ontario, construction liens are governed by the *Construction Act*. This Act provides contractors with the right to place a lien on a property, or premises, if they have not been paid for their work.

A construction lien is an important tool for contractors, as it helps to ensure that they will be paid for their work. A lien can be placed on a premises once the work has been completed or the materials have been supplied. The lien remains on the premises until the debt is paid, until a court order is obtained to remove the lien, or the property is sold by court order.

Timing and best practices are of critical importance to help protect the Lien Claimant’s rights and to help mitigate risks.

### Timing for Liens

Construction liens are subject to stringent timelines. While a claim for failure to pay resulting from a construction contract may be brought up to two years after the dispute arises between the parties, construction liens operate on a much tighter timeline.

If the Lien Claimant wishes to seek an interest in the land vis-à-vis a lien, there are two crucial deadlines that they must be aware of:

1. The Preservation of the Lien. A Lien Claimant has **60 days** to have a lien “preserved” on title. The 60-day timeline begins to run on the earlier of: (a) the date on which the contract is completed, or alternatively and if applicable, the date on which a copy of the certificate or declaration of the substantial performance of the contract is published; and (b) the date the contract is abandoned or terminated.

Failure to register a lien in the 60-day timeline may result in the Lien Claimant losing their right to register a lien. A Lien Claimant should not leave the preservation of a lien to the “*last hour*” as this may result in the lien failing to be preserved in time. A Lien Claimant looking to register a lien should do so with a minimum of 7 days notice to their lawyer.

2. The Perfection of the Lien. “Perfection” of a lien is the process which solidifies the lien on title to the premises. A lien is perfected when the Lien Claimant commences an action to enforce the lien and, except where an order to vacate the registration of the lien is made, the Lien Claimant registers a certificate of action in the prescribed form on title to the premises. If a lien is not perfected, but has been preserved, the lien will expire and may be removed from title.

A lien must be perfected prior to **90 days** from the last date on which the lien could have been preserved. Therefore, in total, a Lien Claimant has 150 days to preserve and perfect their lien from the earlier of the contract being completed, abandoned or terminated.

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### Best Practices

There are three crucial practices that all potential Lien Claimants should be implementing in order to protect their right to use a construction lien:

1. Written Contract - It is important to have a written contract in place that outlines the terms and conditions of the construction project. This contract should include a payment schedule and should specify when payments will be made and how disputes will be resolved. Key considerations such as interest and the scope of work should also be set out in the agreement.
  
2. Recording Keeping - Record keeping is crucial in the event that a lien needs to be filed. A Lien Claimant should keep track of all invoices rendered, payments made, and agreements entered into.
  
3. Crucial Information - A Lien Claimant looking to register a lien should have the following information readily available, prior to calling a lawyer:
  1. The address at which the work was performed;
  
  2. The name of parties to whom the work was supplied;
  
  3. The start and end dates for work;
  
  4. The scope of the work performed;
  
  5. The total contract price; and
  
  6. The amount outstanding to be paid.

### Conclusion

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Given the time constraints on preserving and protecting your right to file a construction lien, it is best to contact a lawyer as soon as a concern arises which may trigger the need for a construction lien. In addition, it is recommended that steps be taken to put a plan in place to best coordinate and utilize the construction lien process should the need arise.

Please note that this bulletin is intended for informational purposes only and does not constitute legal advice. We encourage you to contact your Miller Canfield lawyer or one of the authors of this alert if you have questions regarding your rights to register a lien or the construction lien process.