

ADVISORY 2017-1

June 8, 2017

Incorrect Registration of Builders' Liens

Background

The Farmers' Advocate Office (FAO) has been hearing concerns from landowners about builders' liens that have been incorrectly registered against a landowner's full fee simple (ownership) interest in a Certificate of Title rather than the limited surface lease interest granted to an oil and gas operator.

What is a Builders' Lien?

Builders' liens are specific, limited registrations against Certificates of Title. To help ensure payment for supplies purchased or services rendered, the *Alberta Builders' Lien Act RSA 2000, c B-7* permits any person who has provided work or materials for an improvement on land to register a lien against the estate or interest of the owner in the land. The Act defines an owner as:

A person having an estate or interest in land at whose request, express or implied, and

- (i) on whose credit,*
- (ii) on whose behalf,*
- (iii) with whose privity and consent, or*
- (iv) for whose direct benefit,*

work is done on or material is furnished for an improvement to the land and includes all persons claiming under the owner whose rights are acquired after the commencement of the work or the furnishing of the material;

For the purposes of a lien, an owner can include a lessee under an oil and gas surface lease.

A contractor employed by an oil or gas company who furnishes materials or labour for an improvement to a well site or a pipeline is entitled to register a lien for the unpaid portion of the services and or materials provided. The lien must be filed within strict time limits (45 or 90 days) following completion or abandonment of the work.

How do I Know if the Builders' Lien Has Been Registered Correctly?

A landowner is not directly liable for the amount claimed under a lien related to a company's energy interest. A correctly registered builders' lien should not be a cause for concern. However, the FAO encourages landowners to examine any builders' liens registered against their title to ensure they have been registered correctly.

We have heard reports of two different issues concerning the registration of builders' liens:

1. Registration Against the Fee Simple Estate

Some landowners are reporting that liens are being registered against the estate in fee simple rather than the leasehold mineral interest. A landowner will be able to check if the builders' lien is registered properly by

- a. Reviewing the *Statement of Lien (Form A)* that they have received. The second box should list the name of the company that holds the interest in the energy development on the land.
- b. Obtaining a current copy of their Certificate of Title through Alberta Land Titles. A properly registered builders' lien should specify which caveat is affected by the lien, stating "AFFECTING CAVEAT XXXX"

If you see that Form A or the current Land Title does not specify that the energy interest is affected, you should write to Alberta Land Titles as soon as possible to have the issued corrected. Addressing the issue promptly will help ensure that the contractor can meet the time obligations for pursuing their claim against the company.

2. Landowner Named as "Owner"

In some circumstances, landowners have been served notice by the contractor's lawyers stating that the landowners have been identified as "owners" under the Act. This would imply that the landowner has some responsibility for the outstanding lien amount. A landowner with a surface lease on their land does not meet the definition "owner" in the Act.

In these cases, the FAO recommends responding to the notice within the timelines outlined in the lawyer's correspondence. It is important that landowners do not agree to be liable for the lien amount. A landowner should clarify that they do not meet the definition of "owner" under the Act, and should request that their name be removed. A landowner may wish to obtain legal advice to assist in this process.

How Long Does a Correctly Registered Builders' Lien Remain on my Title?

If the builders' lien is registered properly against the leasehold mineral interest, it can only remain on the title for 180 days without additional action by contractor.

During that 180-day time period, the contractor may commence legal action against the oil and gas company. In that case, the lien is then replaced by a *Certificate of Lis Pendens* (CLP), which is a notice that the contractor has commenced legal action against the company. The CLP will remain registered on title during the litigation between the company and the contractor, but it should not affect transactions undertaken by the landowner. Ultimately, the contractor may be entitled to have the leasehold interest sold to satisfy any judgment awarded.

If the builders' lien remains on title after the 180-day time period has ended even though no further action has been taken by the contractor, a landowner can write to Alberta Land Titles to request that the lien be removed.

Please contact the FAO at farmers.advocate@gov.ab.ca or through the Ag Info Centre at 310-FARM (3276) if you have any questions.

<p>Alberta Land Titles – North John E. Brownlee Building 10365-97 Street Edmonton, AB T5J 3W7</p>	<p>Alberta Land Titles – South Service Alberta Building 710 - 4 Avenue S.W. Calgary, AB T2P 0K3</p>
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