



Ministry of Government Services  
ServiceOntario

Policy and Regulatory Services  
Branch

**Bulletin No. 2011-03**

***Land Titles Act***  
***Construction Lien Act***

**DATE: JUNE 27, 2011**

***Amendments under  
the Construction Lien  
Act and General  
Construction Lien  
Information***

## **Background**

The *Open for Business Act, 2010*, which received Royal Assent on October 25<sup>th</sup>, 2010, contained amendments to the *Construction Lien Act*. These amendments include the removal of the requirement for an affidavit of verification and facilitate the vacating of construction liens and certificate of actions from property records while protecting the rights of sheltered lien claimants. The amendments to the *Construction Lien Act* have been proclaimed into force as of July 1<sup>st</sup>, 2011.

In recognition of these amendments to the *Construction Lien Act*, the following changes to the electronic land registration system (Teraview) have been made effective July 4<sup>th</sup>, 2011:

## **Construction Lien**

With the removal of the requirement for the affidavit of verification, the following *Affirmation of Facts* statements are now optional when creating an electronic Construction Lien document:

2521 I am the lien claimant and the facts stated in the claim for lien are true.

2522 I, name, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

2523 I, name, am a trustee of the Workers' Trust Fund which is named as the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

## **Discharge of a Construction Lien**

A Construction Lien is preserved by the registration of a Claim for Lien and is perfected by the registration of a Certificate of Action or by sheltering under a Certificate of Action registered by another Lien Claimant.

The *Construction Lien Act* provides that a preserved or perfected lien and certificate of action may be deleted from title by the registration of a release of the lien by the lien claimant, by a court order discharging the lien and/or action or by a court order vacating the lien and/or action. The *Construction Lien Act* also provides that a lien may shelter under an existing certificate of action. Sheltering is dependent on the circumstance and is recognized as a very complex legal concept. The Ministry is not in a position to determine whether in fact sheltering has or has not occurred.

In this regard, the electronic Discharge of Construction Lien document type requires one of the following *Evidence Statements* (bold type indicates a law statement) to explain the basis for the release of the lien and one of the following *Sheltering Statements* as evidence where there is no sheltering or where sheltering of another lien may be occurring. The *Evidence Statements* 702 and 708 have been amended to include the words discharging/releasing/vacating (see "Impact on Work in Progress Documents" section below, if applicable). The court order should be imported into the document in Statement 61.

### **Evidence Statements:**

**701** The lien claimant releases the lien claimed in the claim for lien as in registration number number, and in respect to an improvement to the premises owned by owner(s) name and described in the PIN (s) identified.

**702** The application is based on a court order File no. number of court, dated yyymmdd, discharging/releasing/vacating the lien. The court order is still in full force and effect.

**708** The application is based on a court order File no. number of court, dated yyymmdd, discharging/releasing/vacating the certificate of action. The court order is still in full force and effect.

### **Sheltering Statements:**

**705** There is sheltering of another lien under Certificate of Action registered as number number.

**706** There is no sheltering of another lien under Certificate of Action registered as number number

**703** The lien has expired since no certificate of action has been registered within the prescribed time under the *Construction Lien Act*.

**704** The lien claimant, who is a party to the certificate of action, hereby consents to the release of the certificate of action registered as number number.

707 A certificate of action has been registered and no other claims for lien have been registered.

709 The lien is released and no certificate of action has been registered.

61 Schedule: Text

To facilitate the deletion of a certificate of action that may or may not have another lien sheltering under it the following law statement has been added to the *Sheltering Statements* in the electronic Discharge of Construction Lien document type:

**710 The deletion of Certificate(s) of Action number(s) number is in accordance with the *Construction Lien Act*.**

When preparing an electronic Discharge of Construction Lien document one of the *Sheltering Statements* must be selected depending on the particular situation. Below are three common scenarios encountered by staff and registrants when dealing with liens and certificates of action.

1) Lien and a Certificate of Action have been registered:

In this scenario both the lien and certificate of action can be deleted by the selection of the appropriate *Evidence Statement* and either *Sheltering Statement* of law **706 or 710** or *Sheltering Statement* 704 or 707. If statements 704 or 707 have been selected land registration staff must confirm no other liens are registered on title.

2) Lien and a Certificate of Action and a second Lien which may be sheltering:

In this scenario, if a court order discharges/vacates/releases all three instruments, the appropriate court order *Evidence Statement* is required and one of the *Sheltering Statements* of law **706 or 710**.

3) Lien and a Certificate of Action with one or more Liens registered that may be sheltering:

In this scenario only the lien and its certificate of action are either released by the lien claimant or discharged/vacated/released by a court order. In order to delete both the subject lien and certificate of action, the appropriate *Evidence Statement* is required and the *Sheltering Statement* of law **706 or 710**.

Section 104 of the *Land Titles Act* authorizes the deletion of a claim for lien under the *Construction Lien Act* or the *Mechanics' Lien Act* where it appears to the satisfaction of the land registration staff that the lien has ceased to exist. Land registration staff are reminded there is no change in the policy of requiring an application to amend the register by way of a Discharge of Construction Lien or Application General by deleting a claim for lien under the *Construction Lien Act* made by an interested party with the evidence being law Sheltering Statement **703**.

In the matter of a claim for lien under the *Mechanics' Lien Act*, registrants should submit an Application General which includes a law statement as to why the lien ceases to exist.

The information contained in paragraphs 1.1.4 and 1.1.5 of Bulletins 2008-05 continues to apply to liens carried forward from Registry to Land Titles Conversion Qualified (LTCQ) PINs.

The Construction Lien Module of the Electronic Registration Procedures Guide will be updated to reflect these changes upon its next release.

### **Impact on Work in Progress Documents**

If a Discharge of Construction Lien is a 'Work In Progress' document prior to July 4<sup>th</sup>, 2011 and statements 702 and/or 708 were selected, on July 4<sup>th</sup>, 2011 the system will automatically remove the selection of these statements. The registrant will need to review the revised wording of the statements and if applicable, select the statement(s) again. As per current functionality, if the document was previously signed, the removal of a selected statement will result in all signatures being removed and the document will require resigning prior to submitting for registration.

### **General Construction Lien Information**

#### 1) Time Limitations and Owners:

Land registration staff are reminded that there is no change in the Ministry's policy of not verifying time limitations or owner's names in respect of the registration of claims for lien and certificates of action under the *Construction Lien Act*.

#### 2) Release of Lien:

The *Construction Lien Act* provides that a preserved or perfected lien may be deleted by registration of a release by the Lien Claimant. Accordingly, if a release is registered on behalf of each and every party who has registered a Claim for Lien and each and every party who is named as a plaintiff in a registered Certificate of Action (if there is one), the lien and the Certificate of Action may be deleted from title.

The liens and certificates can be deleted immediately in the Land Titles system and under the Registry system may be deleted in accordance with Section 67 of the *Registry Act*. If there are other registered liens that may be sheltering under the Certificate of Action, the Certificate of Action may not be deleted until the sheltering liens are discharged unless Sheltering Statement of law **710** or **706** above has been selected in the Land Titles system.

Bulletins 82029, 83004 and 96002 are hereby revoked.

A handwritten signature in blue ink, appearing to read 'K. Murray', with a horizontal line extending from the 'K' and a loop at the end.

Katherine M. Murray  
Director of Titles