

LIEN ON ME

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Many business owners are familiar with liens as a tool to collect unpaid bills. For instance, vehicle mechanics have long had a right, called a garage keepers lien, to retain property they have repaired until the bill is paid. Other businesses had similar rights, but the rules were archaic and were not consistent across the board.

Why is a lien important? In a word, priority. Most customer debts are unsecured, so if the payment is not made a lawsuit is needed, hoping that there is property available to satisfy a judgment. Even if there is property, it may already be pledged to secured creditors, making collection impossible. A lien creates a security-like interest, vastly improving the chances of collection, and also making collection much simpler and cheaper.

On March 1, 2002, a step was taken to modernize commercial liens law in Saskatchewan and make it more consistent with other provinces. The *Commercial Liens Act* is based on the *Uniform Liens Act* prepared by the national Uniform Law Conference.

The new legislation replaces several other statutes and the common law. For example, the Act abolishes any common law lien that would secure a similar obligation and repeals the *Garage Keepers Act*, the *Mechanics' Lien Act*, *The Warehousemen's Lien Act*, and the right to a lien under the *Hotel Keepers Act*. The Act has been structured and worded in a broad fashion so that it will be able to replace the previous legislation and common law in one fairly short statute. Not only does the Act bring together the old legislation and common law, it also allows for some new liens which were previously unavailable in our old system.

Under the Act, a lien is created when services are provided at the request of the person in possession of the goods. To ensure that the statute covers as many situations as possible, there is no specific definition of what goods or services will be covered. There is no requirement that the person requesting the services be the owner of the goods. Nor is there a requirement that the service provider obtain possession of the goods. This means that anyone in possession of goods can cause them to be subject to a lien simply by requesting work to be done.

The amount of the lien will be the amount agreed to be paid for the services. If there is no agreed amount, the lien will be for the fair market value of the services. The lien will attach at the commencement of the services as opposed to the previous common law rule that the lien only attached at the completion of the services. If the services are not completed, the lien will only amount to the value of the services that were provided. This allows a service provider to begin work with the knowledge that payment will be secured.

To maintain a lien, the service provider must either retain possession of the goods or have the person requesting the service sign a written acknowledgement of the amount owing. This written acknowledgment may then be registered at the Personal Property Registry to obtain a priority position in the event of default on payment. If possession of the goods is given up and the lien is not registered, the written acknowledgement is only enforceable between the service provider and the owner of the goods but not against other creditors. The registration of the lien is very important where there is someone else claiming possession or priority to the goods.

If a lien is obtained under the Act and the service provider either maintains possession of the goods or registers the lien, the lien holder, with very few exceptions, will have first claim to the goods to pay for the services provided. But if the service provider fails to maintain possession or register, they will lose priority to claims from others such as trustees in bankruptcy or secured creditors.

When the service provider wants to seize goods no longer in their possession, they are required to get a Sheriff to perform the seizure. Although this provision increases the cost of enforcement and the time required to seize the goods, it is balanced with the fact that using a Sheriff to exercise the rights of seizure will eliminate illegal conduct during seizure. The Uniform Law Conference felt that many people claiming a right to a lien will have little or no experience with seizure. This provision should greatly reduce any problems that may arise. The Sheriff's role will terminate upon transfer of the goods to the lien claimant. The lien claimant is then responsible for the sale of the goods. The Act sets out the procedures that must be followed.

Collection of debts from customers is often problematic, and it pays to have as many tools as possible. With the new Act modernizing the law of liens, business people will find it easier to understand and take advantage of the system.

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