



This article provides an overview of the lien process pursuant to section 85 of the *Condominium Act, 1998*, S.O. 1998, c.19. If a unit owner defaults in his or her obligation to contribute to the common expenses, a condominium has a lien right against that owner's unit for the unpaid amount, plus interest and legal costs incurred by the condominium in connection with the collection of the unpaid amount. However, this lien right expires unless a certificate of lien is registered against the unit within three (3) months from the date of the initial default. Once the lien expires, a condominium must use ordinary measures (i.e. Small Claims Court) to collect the arrears.

There are generally three (3) steps in the lien process:

### Step 1 - Notice of Lien to Owner

A Notice of Lien to Owner, commonly referred to as a "Form 14", is sent to all unit owners of the unit in arrears. This prescribed form sets out the details of the arrears and provides a deadline for payment, which must be at least 10 days from the date the notice is given. Upon expiration of the notice period, a condominium may register a lien against the unit.

Our firm can also prepare the Form 14 on behalf of a condominium. If this route is selected, a file is opened and a full title search is conducted to confirm the titled unit owners. The Notice is then prepared and sent, via registered mail, to all unit owners. Given the time-sensitive nature of the lien process, our firm does not require a retainer prior to commencing work on a lien file. Once our firm is involved, all communications from unit owners should be directed to our firm until the lien has been resolved.

### Step 2 - Registration of the Lien

Once the notice period has expired, a lien may be registered against the unit. Prior to registration, the Form 14 and a current accounts receivable ledger for the unit are reviewed to ensure the condominium is entitled to register the lien.

Our firm utilizes specialized lien software developed exclusively for our firm. This software allows us to provide a quick turn-around and ensures a consistent process is maintained.

Once the lien is registered, a copy of the lien and a cover letter are sent to all of the owners of the unit and any registered mortgagees. All correspondences to unit owners are sent via registered mail to refute a later claim from the unit owner that he or she did not receive any correspondence from our firm. A copy of the registered lien is sent, via email, to the property manager for the condominium to confirm that the lien has been registered.

### Step 3A – Discharge of the Lien

At any time after registration of the lien, a unit owner or mortgagee may request a discharge statement. To prepare the discharge statement, an updated ledger must be obtained from the property manager to ensure there have not been any payments or additional charges. Once prepared, a discharge statement is only valid for one month.

Our firm does not accept partial payments to discharge a lien. Only payment in full of all amounts outstanding, including arrears, interest and legal fees will be accepted. If full payment is received in accordance with the discharge statement provided, the lien is eligible to be discharged.

Two reporting letters are then prepared: one letter is sent to the condominium, and one to the unit owners and mortgagees. A reporting letter to a condominium is more detailed, showing the monies received and a full breakdown. It also includes a copy of the registered lien and discharge, a copy of our account paid in full, and a cheque payable to the condominium, less our legal fees. The matter is considered completed, and the file is closed.



### Step 3B – Power of Sale Proceedings

Once ninety (90) days have passed since the registration of the lien, and payment has not been made, an email is sent to the property manager to advise the condominium that it is now in a position to proceed with a Notice of Sale under Lien.

Finally, our firm is only paid when the client is paid since all of our legal fees and disbursements are paid by the unit owner, and not the condominium.

For more information, please contact our condominium practice group chair:

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