

Subject: **LIENS REGISTERED PURSUANT TO THE RURAL
UTILITIES ACTS**

BACKGROUND

On July 1, 1986, the Rural Utilities Act was proclaimed and enacted provisions relating to liens against land similar to those that were contained in the former Co-operative Marketing Associations and Rural Utilities Guarantee Act, R.S.A. 1980, c. C-25.

When an association incorporated under the Rural Utilities Act, or under the Co-operative Associations Act (formerly the Co-operative Marketing Association and Rural Utilities Guarantee Act) and continued under the Rural Utilities Act, applies to have a loan guaranteed by the government in respect of the construction of works needed to supply a rural utility service (e.g., electricity, natural gas, water or sewage disposal), the Provincial Treasurer may require that the association obtain lien notes from those members who have not fully paid their share of the construction costs. (1) If the person to whom the utility service is to be supplied is not the registered owner of the land on which the works are to be constructed, the association may take a lien note made or co-signed by the registered owner. The appropriate Director must file a notice of lien in the prescribed form in the Land Titles Office. (2) The lien only affects the interest of the member in the surface rights of the land. It remains on title until the notice of lien has been discharged or until it is foreclosed by a mortgage to which it has been postponed. (3)

REGISTRATION PROCEDURE

1. **Notice of Lien** - The name listed on the notice ([FORM A](#)) must be that of the registered owner of the parcel against which registration is requested. If the owner of some other interest in a parcel is listed, the registered owner must also be listed.

The notice must be signed under seal by or on behalf of one of the following:

- Director of Natural Gas Co-operatives
- Director of Water and Sewage Co-operatives
- Director of Rural Electrification Associations

2. **Dower** - Dower compliance is not required because land for which a lien has been filed is deemed *not* to be a homestead. (4)

3. **Transfer of Lien** - In the event of a default in a payment due under a lien note, the association may assign its interest in the lien note to the Government. (5) A notice of assignment of lien signed under seal by or on behalf of the appropriate Director must be registered.

4. **Postponement** - Only the appropriate Director may postpone a registered lien pursuant to the provisions of the Land Titles Act. A postponement of a utility lien to a mortgage which does not change priority is also registrable as section 38(8) of the Rural Utilities Act provides for these liens to have priority unless specifically postponed to a prior mortgage (see procedure under [POS-1](#)). (6)

5. **Court Proceedings** - Proceedings to enforce a lien may be commenced in the Court of Queen's Bench and a certificate of *lis pendens* may be registered in respect of the proceedings (see procedure under [CLP-1](#)). (7) The court may order that the estate or interest in land that is charged with the lien be sold or may direct the sale and removal of any works. If a vesting order in respect of a sale ordered by the court is presented for registration, section 191 of the Land Titles Act must be complied with (see procedure under [ORD-1](#)).

6. **Discharge** - A lien memorandum is discharged upon registration of
a) a discharge ([FORM B](#)) signed by the appropriate Director (8), or
b) a certified copy of a court order directing its cancellation. (9)

There are no provisions for expiry of these types of liens.

7. **Fees** - Pursuant to [Tariff item 2](#), there is no fee for registrations relating to these liens as the Directors act on behalf of provincial government departments.

STATUTE AND CASE REFERENCES

Statute references are to the Rural Utilities Act, R.S.A. 2000, c. R-21, unless otherwise indicated.

1. s. 36
2. s. 38
3. s. 38(8) and (9)
4. s. 38(12)
5. s. 39
6. s. 38(6)
7. s. 42
8. s. 38(5)
9. s. 41