

## UNIFORM LIENS AND ARBITRATION PROVISIONS

*(1998 Proceedings at page 55)*

### PART N LIENS AND ARBITRATION

**Comment:** This Uniform legislation is drafted to be added as a new Part to an existing statute of the enacting province or territory that provides for builders' liens.

*Certain steps not affected by stay*

**XX.1** Notwithstanding [legislation of the enacting province or territory comparable to the *Uniform Arbitration Act* or the *Uniform International Commercial Arbitration Act*] or equivalent legislation of any other jurisdiction, a stay of proceedings granted by any court of competent jurisdiction to assist the conduct of an arbitration does not prohibit the taking of any step pursuant to this Act:

- (a) to register a claim of lien;
- (b) to prevent the expiry of a lien;
- (c) to preserve the land or personal property to which a lien attaches or any estate or interest in land or personal property to which a lien attaches; or
- (d) to have a trustee appointed pursuant to [provision of builders' lien legislation or other statute that provides for the appointment of a trustee in relation to a construction project].

**Comment:** Section XX.1 ensures that a lien claimant will not be prevented from taking all steps required under the construction lien legislation to preserve its lien or the security to which it attaches as a result of a stay of proceedings ordered pending completion of an arbitration process in which the lien claimant is participating. Required steps in most

provinces and territories include the commencement of a lien action, service of the statement of claim and setting the action down for trial within mandatory time limits which vary from place to place. Paragraph (d) also makes it clear that an application by a lien claimant to appoint a trustee to complete or preserve a construction project is permitted.

*Right to arbitrate not waived*

**XX.2. Notwithstanding [legislation of the enacting province or territory comparable to the *Uniform Arbitration Act* or the *Uniform International Commercial Arbitration Act*] or equivalent legislation of any other jurisdiction, where the contract or subcontract of a lien claimant contains a provision respecting arbitration, the taking of any step described in section XX.1 does not constitute a waiver of the lien claimant's rights to arbitrate a dispute pursuant to the contract or subcontract.**

**Comment:** Section XX.2 intended to eliminate the possibility that a court will find that the taking of a step required under the builders' lien legislation to preserve a lien or the security to which it attaches constitutes a waiver of the lien claimant's right to proceed to arbitration under the terms of its contract or subcontract. So long as the lien claimant only takes the minimum steps required to preserve its lien under the *Act*, it will then still be permitted the benefit of the arbitration provisions included in its contract or subcontract.

*Certain actions not stayed by arbitration*

**XX.3. Notwithstanding [legislation of the enacting province or territory comparable to the *Uniform Arbitration Act* or the *Uniform International Commercial Arbitration Act*] or equivalent legislation of any other jurisdiction:**

- (a) an action to enforce a lien that is commenced by a lien claimant whose contract or subcontract does not provide for arbitration is not stayed by the commencement or continuation of arbitration proceedings between other parties with respect to a matter that, in whole or in part, deals with the subject-matter of the action; and**