

**Uniform Law  
Conference of Canada**

***Uniform  
Liens Act, 2000***

# UNIFORM LIENS ACT, 2000

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## Uniform Liens Act, 2000

### Definitions

1 In this Act:

“**court**” means the [superior court of the enacting jurisdiction], or where the value of the goods does not exceed [the monetary jurisdiction of the provincial court of the enacting jurisdiction] includes the [provincial court];

**Commentary:** This definition, in addition to using the jurisdiction of the superior court, contemplates the use of the small claims procedure for claims in relation to assets that do not exceed the monetary jurisdiction of the small claims court. For most jurisdictions in Canada, this will expand the authority of the provincial court to include the exercise of powers under the jurisdiction’s personal property regime.

“**financing statement**” means a financing statement as defined in the Uniform Personal Property Security Act;

**Commentary:** This definition reflects a decision to register the liens created by this Act in the registry established under the Uniform Personal Property Security Act. [Please note that all references to the PPSA in this Act are to the Uniform Act.]

“**lien**” means, except where the context requires otherwise, a lien on goods pursuant to section 2”;

**Commentary:** This Act does not apply to all liens, but only those which have a commercial base and can be considered to have value. This point is more fully canvassed under section 2. The need to qualify the definition arises because sections 25 and 26 refer to liens that are not created by this Act. Section 25 abolishes liens arising at common law; section 26 is a transitional provision.

“**lien claimant**” means a person who has a lien on goods pursuant to section 2;

“**secured party**” means a person who has a security interest;

“**security interest**” means an interest in goods that secures payment or performance of an obligation;

“**services**” means any of the following types of services rendered for consideration in relation to goods:

- (a) the provision of labour and materials for the purposes of restoring, improving and maintaining the condition and properties of goods and of salvaging goods;
- (b) the storage of goods;
- (c) the transportation, carriage and towage of goods”.

**Commentary:** This is a key definition. Coupled with section 2, this definition determines the Act's scope. The three types of liens contemplated by this Act are: (i) the repairer's lien; (ii) the storer's lien; and (iii) the carrier's lien. An enacting jurisdiction may choose to expand the list. The commonality among these liens is that each has a commercial base and each can be said to have preserved or enhanced the value of the goods. Some explanation in relation to this latter point is required. The repairer's lien being a lien where a person has provided services for the purpose of improving, restoring or maintaining the condition or properties of goods is self explanatory. A storer's or a carrier's lien also preserves or adds value, but examples are needed to better explain this principle. A storer adds value in the sense that the goods are maintained by storage. Transportation adds value on the assumption goods are transported from one place to another where they are needed or will be capable of being sold or repaired. If not transported, the value of the goods is diminished if they cannot be sold for the best price or cannot be repaired. This definition also removes the distinction between carriers and common carriers. All carriers are brought within the framework of the Act.

There is no requirement that a bill of lading must be issued in order that a carrier may claim a lien.

“**sheriff**” includes any person appointed by a sheriff pursuant to section 14.

**Commentary:** This Act contemplates the use of a sheriff to seize the goods covered by a lien. An enacting jurisdiction may wish to use a different system of enforcement.

## NATURE AND EXTENT OF LIEN

### Person who has a lien

2(1) A person has a lien on goods for services provided by that person in relation to the goods at the request of a person in possession of the goods.

(2) A person who, pursuant to legislation of another jurisdiction in Canada, has a lien on goods for services provided by that person in relation to the goods at the request of a person in possession of the goods is deemed to have a lien on goods created by this section if the lien is registered in accordance with the personal property security legislation of that jurisdiction.

**Commentary:** Subsection (1) creates the lien for the services as defined in section 1. It reflects a conscious policy choice to permit the creation of the lien at the request of the person in possession of the goods. This is the position under the western Garagekeepers' Acts and is intended to permit the widest possible lien creation without considerations of apparent authority or ownership. At common law, a storer could claim a lien against goods entrusted to the debtor by the owner. A common carrier who was by its nature obliged by law to provide services to those willing to pay had a lien on the goods carried.

This section does not create a lien analogous to a hotelkeeper's lien. With the repeal of sections 8 and 9 of the Uniform Hotelkeepers Act and the enactment of subsection 25(2) of this Act, the hotelkeeper's lien will be abolished.

Subsection (2) addresses out of province liens. It is common for goods which are the subject of a repairer's lien to be transported from one jurisdiction to another. Since the Uniform Liens Act adopts the conflict provisions of the enacting jurisdiction's PPSA (see s. 23), the validity, perfection and effect of perfection or non-perfection of such a lien is governed by the jurisdiction where the collateral was situated when the lien was created (see s. 23(a) of the Uniform Liens Act). When the goods are moved, perfection continues for a certain period of days after the goods are brought into the province but there is currently no means for the lien claimant to register the lien. Without a means to register the lien, there is also no means to enforce it.

Once registered the Uniform PPSA provides that the procedural issues which arise when a secured party enforces rights (which includes, by reference, a lien claimant under the Uniform Liens Act) are governed by the law of the jurisdiction in which the collateral is located when the rights are exercised.

Thus, this subsection makes it possible for the out-of-province lien claimant to register and, thereby, enforce the lien in the enacting jurisdiction.

No special provision for registering an out-of-province lien is required. An out-of-province lien claimant can register in the system in the same way as a lien claimant who is resident in the enacting jurisdiction.

Note that this proposal reflects a policy choice to permit the registration, and therefore, the enforcement of liens arising only in Canadian jurisdictions. This is consistent with other Uniform Acts

**Amount of lien**

**3(1)** Subject to subsection 4(1), a lien secures the amount that the person requesting the services agrees to pay for the services.

(2) If no amount is agreed on, the lien secures the fair value of the services rendered.

**Commentary:** The lien only secures the amount agreed or, if not agreed, the fair value of the services. Thus, these are particular as opposed to general liens.

**When lien attaches**

**4** Subject to subsection (2), a lien attaches to goods on the commencement of the services giving rise to the lien but, until completion of the services, secures only the fair value of the services provided.

Where the lien claimant repudiates the agreement before completion of the services provided for in the agreement, the attachment of the lien ends.

**Commentary:** To permit a lien to attach on commencement of the services, as subsection 4(1) does, represents a revision to the common law which required work to have been completed before a lien would attach. To balance this, it was decided to build in some safeguards for the owner of the goods. The first safeguard is to ensure that if the services are not completed only the fair value is secured by the lien.

The committee decided upon "fair value" recognizing that in some instances the parties may have agreed on a figure that was either more or less than what the fair value might indicate. Fair value will normally be determined by reference to market value. The second safeguard is that contemplated by subsection 4(2) which will ensure the lien claimant does not have a lien where it has repudiated the contract.

**When lien enforceable**

5(1) Subject to subsection (4), a lien is enforceable only where:

- (a) the goods are in the possession of the lien claimant; or
- (b) the person requesting the services has, at any time:
  - i) authorized the services giving rise to the lien in a signed writing that includes a description of the goods that are subject to the lien; or
  - ii) acknowledged an obligation to pay for the services giving rise to the lien in a signed writing that includes a description of the goods that are subject to the lien.

**Commentary:** This subsection establishes when a lien is enforceable. There is no writing requirement if the goods are in the possession of the lien claimant, but if they are not, there must be a written authorization for the services or a written acknowledgment of the obligation to pay. The authorization or acknowledgment may be obtained at any time, including after the goods are released to the person who has requested the services. Failure to obtain an authorization or acknowledgment renders the lien unenforceable against both the person who has requested the services and third parties.

This is a departure from the policy choice of the PPSA, which provides that a failure to obtain a security agreement signed by the debtor only renders the security agreement unenforceable against third parties. For liens, the acknowledgment fulfils the additional requirement of specifying the required services and the agreed amount in an effort to avoid disputes.

(2) For the purposes of clause (1)(a), a lien claimant is deemed not to have possession of goods that are in the apparent possession or control of the person requesting the services or that person's agent.

**Commentary:** There is a comparable provision in the PPSA that provides that a secured party is not considered to be in possession of goods that are in the apparent or visible possession of the debtor.

(3) An acknowledgment of an obligation to pay pursuant to subclause (1)(b)(ii) is without prejudice to the right of the person requesting the services or any other person to dispute the amount the lien claimant is owed.

**Commentary:** A person who signs an acknowledgment of indebtedness should not be prevented from disputing the amount of the lien. It simply reflects the amount due. If it were otherwise, a person requiring immediate use might be coerced into signing the acknowledgment to obtain the release of the lien. A dispute mechanism is provided in section 20 of this Act.

“(4) If the conditions mentioned in subsection (1) have not been met when a third party acquires an interest in the goods, a subsequent acquisition of possession or a signed acknowledgment of indebtedness by the lien claimant does not render the lien enforceable against the third party.

“(4.1) For the purposes of subsection (4), a person described in clause 11(2)(a) is a third party who acquires an interest in the goods”.

**Commentary:** Subsection 5(4) refers to an interest acquired during the period of time between the date the lien attaches and the date on which the requirements of subsection 5(4) are met. Subsection 5(4.1) ensures that a judgment enforcement creditor is “a third party (who) acquires an interest in the goods.” Without this provision, a lien claimant would have priority over a judgment enforcement creditor in circumstances where the lien claimant has an essentially unenforceable lien.

There can be no prejudice from this feature that might be of assistance to lien claimants where periodic repairs are performed.

[(5) For the purposes of subsection (1), the authorization or acknowledgment is deemed to be in writing and signed by the person requesting the services when it is in the form of a tangible authenticated record.]

**Commentary:** This subsection is intended to accommodate agreement by electronic means. In those enacting jurisdictions where “writing” is given an extended meaning, this provision may be unnecessary.

**Lien may be assigned**

**6** Where the debt secured by a lien is assigned, the lien claimant may, in writing, assign the lien to the person to whom the debt is assigned.

**Commentary:** At common law a lien could not be assigned (see: *Beaver River Community Futures Development Corporation v. Joe Hansen and Kalinowski Trucking Ltd* (Sask.Q.B.)). This can present difficulties particularly when a business owning certain claims is sold. Assignability may also be useful in the financing of repairs. There may be cases where the person requiring services cannot immediately pay for the repairs and the lien claimant is unable to carry the cost. Knowing that the ultimate lien is assignable may induce the lien claimant to make the repairs.

The reference to the writing requirement is consistent with legislation providing for the assignment of choses in action that provides that every debt and every chose in action arising out of contract shall be assignable at law by any form of writing.

**Effect of credit and taking of security**

**7(1)** The granting of credit by a lien claimant for the payment of the debt to which a lien relates:

- (a) does not affect the attachment, enforceability, perfection or priority of the lien; and
- (b) does not extinguish the lien.

**Commentary:** To permit credit is consistent with the concept of the non possessory lien.

(2) A lien claimant who takes a security interest in goods that are subject to a lien in order to secure the amount of the lien is deemed to have taken the security interest in substitution for the lien.

**Commentary:** A lien claimant loses its lien rights when a security interest is taken respecting the goods.

PERFECTION AND PRIORITY OF LIEN

**Perfection**

8(1) Possession of goods by a lien claimant or by a person acting on behalf of a lien claimant perfects a lien on the goods.

(2) For the purposes of subsection (1), a lien claimant or a person acting on behalf of a lien claimant does not have possession of goods if:

- (i) the goods are in the actual or apparent possession or control of the person requesting the services or that person's agent;
- (ii) or the goods are being held as a result of a seizure or repossession.

**Commentary:** This Act relies on PPSA terminology, which uses the concept of perfection to distinguish the validity of the lien from the notification steps needed to protect a lien against third parties. A lien may be perfected by possession, but in order to fulfil the function of providing notice, which is a necessary component of perfection, the lien claimant's possession must be visible and apparent. Hence, the necessity to disallow perfection where possession is effected by seizure or the goods are in the possession of the person who requested the services.

“(3) Registration of a financing statement in the Personal Property Registry perfects a lien when:

- (a) either:
  - (i) in the case of serial numbered goods, the goods are described in the financing statement by their serial number; or
  - (ii) in the case of goods that are not serial numbered goods, both the owner of the goods and the person requesting the services, if that person is not the owner, are identified as debtors in the financing statement; and
- (b) all other requirements of the regulations made pursuant to the Uniform Personal Property Security Act [or other applicable regulations of the enacting jurisdiction] have been met.

“(3.1) For the purposes of subsection (3):

- (a) **‘owner’** includes a buyer, a lessee or a consignee under a transaction to which the Uniform Personal Property Security Act applies;
- (b) **‘serial numbered goods’** means serial numbered goods as defined in the regulations made pursuant to the Uniform Personal Property Security Act [or other applicable regulations of the enacting jurisdiction]”.

(4) Part IV of the Uniform Personal Property Security Act applies, with any necessary modification, to financing statements registered pursuant to subsection (3).

**Commentary:** A lien may also be perfected by registration. Registration may occur at any time, and, as will be seen, if the lien claimant is not registered it will be defeated by certain interests. In order for the Uniform Liens Act to dovetail with this system and for priority rules to interact in a priority regime with security interests, lien registrations should be made against the owner's name as well as the name of the person requesting the services in any case where the goods are not serial numbered goods and where the nature of the security agreement is one to which the Personal Property Security Acts would apply. "Owner" for these purposes would mean a person who has granted a security interest securing all or part of the purchase price, i.e., the buyer under what used to be called the "conditional sales contract" or the lessee or consignee under an instrument which secures all or part of the purchase price. These latter interests would be considered disguised sales contracts. It also would include true leases for a term greater than one year and true consignments. In addition to addressing serial numbered goods, these subsections provide that registration of a financing statement against the name of the owner of the goods and the person requesting the services perfects a lien on the goods. It should be acknowledged that this could result in the subordination of a lien in circumstances beyond the control of the lien claimant. As between the lien claimant and a subsequent buyer or secured party who relies on the registry, however, it is the lien claimant who is in the best position to prevent the problem from arising. He or she can demand proof of ownership of goods with respect to which services are being requested. A buyer or searching party has no way, other than through information in the registry, to determine whether goods offered for sale or as security are subject to a lien. The owner may not be aware of the existence of the lien or may be prepared to act dishonestly in not disclosing the fact that services provided in connection with the goods were contracted for by someone else. Hence, the policy choice reflected in this section. (Note that "owner" is defined in this section as it does not appear elsewhere in the Act.)

(5) Where the perfection of a lien is not continuous, the date of perfection to be considered in determining the priority of the lien is its most recent date of perfection.

"(6) With respect to a lien mentioned in subsection 2(2), registration of the lien pursuant to the personal property security legislation of another jurisdiction does not constitute perfection of the lien for the purposes of this Act, but the lien may be perfected by any of the methods set out in this section".

**Commentary:** This provision is intended to clarify that registration in another province does not equate to perfection through registration in the jurisdiction of proposed enforcement. The lien claimant is simply entitled to pursue perfection in the jurisdiction of enforcement in accordance with the terms of this Act.

**Grace period for registration**

**9(1)** Where a lien is perfected by possession, returning the goods to the control of the person requesting the services does not affect the perfection of the lien if the lien claimant registers a financing statement with respect to the goods within the first 15-days after returning control of the goods to that person.

(2) Where a lien claimant does not have possession of goods when a lien attaches to the goods and the lien claimant registers a financing statement with respect to the goods within the first 15-days after completion of the services, the lien is deemed to be perfected during that 15-day period.

**Commentary:** This Act provides for two methods of perfection: possession and registration. If the lien claimant has possession of the goods and the goods are then returned to the person requesting the services, the lien claimant has a 15-day grace period in which to register to continue the perfected status. If the lien claimant never has possession (as a result of providing the services on site), the only method of perfection provided in this Act is registration. In this case, subsection (2) gives the lien claimant a 15-day grace period to register.

**Priority of liens over other interests**

**10(1)** Except as provided in this Act or any other Act, a perfected lien has priority over an interest that is created after the lien attaches.

**Commentary:** Including this section reflects a policy choice to state the priority rule between lienholders and others, including secured parties, in the Act. It establishes the residual rule and repeats the common law for possessory liens and the existing statutory law for non possessory liens.

At common law, a possessory lien for the improvement of chattels defeated the interests of all third parties. This was also the case for common carriers.

A lien for the improvement of chattels in a PPSA jurisdiction (outside of Ontario) derives its priority from a section in the PPSA like section 30 of the Uniform PPSA:

Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that he has in respect of those materials or services has priority over a perfected security interest unless an Act in force in the enacting jurisdiction provides that the lien does not have priority.

For those jurisdictions with garagekeepers' legislation, the rule is that the lien takes priority over prior secured parties and subsequent secured parties who acquire their interest after the lien is registered. As soon as possession is relinquished, the lienor has 21 days to register. The lienholder's interest is subordinate to the interest of anyone whose interest arises after possession is given up but before the lienholder's interest is registered. The lienholder may obtain an extension of time to register late and the priority of the lienholder continues throughout this extended time.

The rule in the Ontario Repairers' and Storers' Act is similar to that in the Garagekeepers' Acts.

For storers, as long as the warehousekeeper gave notice to the owner of the goods, which includes a conditional seller, a chattel mortgagee and a grantee under a bill of sale, the warehousekeeper would take priority over all such interests regardless of when such interests may have arisen.

(2) Notwithstanding subsections 33(2) and (3) of the Uniform Personal Property Security Act, a lien, whether perfected or unperfected, has priority over

- (a) a security interest that attaches before the lien attaches, and
- (b) a writ of execution that is issued or a charging order that is granted before the lien attaches.

**Commentary:** This subsection grants priority as against a prior secured party or execution creditor to the unregistered lien claimant. It is consistent with the common law and existing statutory liens.

A departure from the PPSA structure should be noted. Under subsection 33(2) of the PPSA, a perfected security interest securing future advances will defeat the interests of secured creditors who seize the collateral and the interests of their representatives. Subsection 33(3) of the PPSA provides that if future advances are made while a security interest is perfected, the security interest has the same priority with respect to the future advance as it had with respect to the first advance. No such special rule exists between the prior secured party making a future advance and the lien claimant.

The special status to be conferred on lienholders by the proposed Uniform Liens Act justifies changing the priority given to future advance financiers by the PPSA. The lienholder is not an ordinary creditor. The lienholder enhances the value of the article. Moreover, future advance financing is not a factor in relation to collateral that would normally be subject to a lien. It plays a role with respect to inventory or accounts financing, but is rare with respect to a single item of collateral.

A secured party making future advances in relation to inventory is not likely to be severely prejudiced by a lien that encumbers one of many items of collateral.

Finally, the legislative choice in favour of lienholders in this situation has already been made in those jurisdictions that have Garagekeepers' Acts and in the Ontario Repairers' and Storers' Liens Act.

**Where lien subordinate or unenforceable**

**11(1)** In this section, "seized under legal process" includes seizure under a writ of execution and the issue of an equitable execution or charging order affecting the goods subject to the lien.

(2) If a lien is unperfected when the goods are seized under legal process to enforce a judgment, the lien is subordinate to the interest of

- (a) a person who causes the goods to be seized;
- (b) a creditor entitled by law to participate in the distribution of the seized goods or their proceeds; and
- (c) a representative of creditors, but only for the purposes of enforcing the rights of a person mentioned in clause (a).

**Commentary:** The language of this provision comes from clause 19(1)(b) of the PPSA.

(3) A lien is subordinate to

- (a) the interest of a buyer or lessee of the goods who gives value and acquires the interest without knowledge of the lien and before the lien is perfected; and
- (b) a security interest that attaches after the lien attaches and that is perfected after the lien attaches and before the lien is perfected.

(4) A lien is not enforceable against

- (a) a trustee in bankruptcy, if the lien is unperfected at the date of bankruptcy; or
- (b) a liquidator appointed pursuant to the Winding-Up and Restructuring Act (Canada), if the lien is unperfected at the date the winding-up order is made.

**Commentary:** This priority rule is similar to that contained in s. 19(1) of the PPSA for security interests.

It dates priority for the execution creditor from the date of seizure. It also expands the meaning of “seizure under legal process” as has been done in the modern PPSA’s. Note that in order for a transferee to defeat a lien, the transferee need not take delivery of the goods. This is consistent with all the Canadian PPSA’s except for Ontario where the transferee must take delivery of the goods in order to defeat a lien. A security interest arising after the lien attaches may only defeat a lien if it is perfected before the lien is perfected.

**Exceptions to priority of liens**

**12(1)** In this section, “**consumer goods**” means goods that are used or acquired for use primarily for personal, family or household purposes.

(2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected lien whether or not the buyer or lessee has knowledge of the lien.

(3) A buyer or lessee of goods that are acquired as consumer goods takes free of any lien on the goods if the buyer or lessee

- (a) gives value for the interest acquired; and
- (b) has no knowledge of the lien.

(4) Subsection (3) does not apply to a lien on goods where the purchase price exceeds \$1,000 or, in the case of a lease, where the market value of the goods exceeds \$1,000.

(5) A buyer or lessee takes free of a lien described in section 9 if, during the 15-day period mentioned in that section and before the lien is perfected by registration, the buyer or lessee

- (a) gives value for the interest acquired; and
- (b) has no knowledge of the lien.

**Commentary:** Again, this is equivalent to the priority positions between secured parties and buyers or lessees under the PPSA. A buyer or lessee of goods will not defeat the lien if the goods are in the possession of the lien claimant. The definition in subsection (1) is included solely for the purposes of subsection (3), which permits a buyer or lessee for value and without knowledge of a lien to take the goods free of that lien.

**Priority among liens**

**13** Priority among two or more liens is to be determined by the reverse order in which the services are provided.

**Commentary:** A first to register priority rule for lien claimants is unfair to subsequent lien claimants who add value and but for their value the first lien claimant may claim little or nothing. Assume a fact situation where a vehicle has been repaired at a cost of \$5,000 and, as a result, is worth \$10,000. The vehicle is involved in an accident requiring \$6,000 worth of repairs. The repairs are effected. The vehicle is again worth \$10,000. But for the intervention of the second repairer, the first repairer would not have been able to satisfy its bill, but with a first in time priority rule the first repairer will be fully paid before the second repairer.

With this scenario in mind, the Act includes a rule that gives priority to the last lien claimant to provide services. This rule reflects the reality that in almost all cases the later lien claimant enhances or preserves the value of the goods and so confers a benefit on the earlier lien claimants. Priority would be for the full amount secured by the claim as provided in section 3.

## ENFORCEMENT

### **Appointment to exercise sheriff's powers**

**14** A sheriff may appoint one or more persons to exercise any of the powers of the sheriff that are conferred by this Act, and the exercise of any of those powers by a person so appointed is deemed to be an exercise of the power by the sheriff.

### **Seizure by sheriff**

**15(1)** A lien claimant may cause goods that are subject to a lien to be seized where

- (a) the amount secured by the lien remains unpaid; and
- (b) any period granted for repayment has expired.

**Commentary:** The lien claimant has the right to instruct the sheriff to seize the goods as long as it remains unpaid and is otherwise entitled to do so. Priority disputes will be resolved in the ordinary way using the dispute resolution mechanisms provided by the PPSA.

(2) Only a sheriff may seize goods to which a lien has attached.

**Commentary:** Under the western garagekeepers Acts, any asset to be seized had to be seized by the sheriff. As a general rule, a garagekeeper would have little experience in the seizure of goods. There was also no security agreement alerting the person who requested the services to the possibility of seizure. By having the sheriff seize the goods, it was thought disputes arising from these two factors could be prevented. It should be noted that sheriff in this Act is defined to include a person appointed by a sheriff to exercise the powers of the sheriff.

(3) The sheriff shall not seize goods unless the lien claimant or an agent of the lien claimant has executed and delivered a warrant in the form prescribed in the regulations to the sheriff who is to carry out the seizure.

(4) In effecting a seizure, a sheriff may exercise any powers given to a secured party pursuant to section 57 of the Uniform Personal Property Security Act.

(5) A seizure by a sheriff does not affect the interest of a person who, pursuant to this Act or any other law, has priority over the rights of the lien claimant.

### **Sheriff may require security**

**16** A sheriff may refuse to make or continue a seizure of goods unless the sheriff is furnished with security sufficient to

- (a) cover the sheriff's fees and expenses; and
- (b) indemnify the sheriff for anything done in relation to a seizure, including indemnification for claims by the person requesting the services or any third party.

**Commentary:** The requirement of security is consistent with sheriffs' practice.

**Sheriff may appoint bailee**

**17(1)** Where a lien is perfected by registration, the sheriff may, at any time after making a seizure, appoint any person in possession of the goods seized as bailee of the sheriff if the person executes an undertaking in the prescribed form

- (a) to hold the goods as bailee for the sheriff; and
- (b) to deliver up possession of the goods to the sheriff on demand.

(2) Seized goods held by a bailee appointed by the sheriff are deemed to be held under seizure by the sheriff.

**Commentary:** There will be occasions when the sheriff believes that the goods are better left in the possession of the person who requested the services or any other person in possession of the goods. As long as the lien has been perfected by registration, this section permits the sheriff to do so.

**Surrender of possession to lien claimant**

**18(1)** A sheriff may surrender possession or the right of possession of the goods seized to the lien claimant or a person designated in writing by the lien claimant.

(2) Before or after a seizure of goods, a sheriff may give a written notice to the lien claimant named in the warrant under which the seizure is made, indicating that the seizure is to be released at a date specified in the notice unless the lien claimant takes possession of the seized goods before that date and pays all sheriff's costs associated with the seizure.

**Commentary:** By means of this subsection, the sheriff can compel the lien claimant to receive the goods.

(3) If the person to whom the notice is given does not take possession of the goods mentioned in the notice on or before the date specified, the sheriff may release the seizure.

(4) If the sheriff releases a seizure pursuant to subsection (3), the lien ceases to exist when the seizure is released.

**Commentary:** This subsection provides a consequence if the lien claimant fails, following the sheriff's request, to take possession of the seized goods.

(5) After a surrender of possession or the right of possession pursuant to subsection (1) or a release of seizure pursuant to subsection (3), the sheriff is not liable for any of the following that occur after the surrender or release

- (a) loss of or damage to the goods, or
- (b) unlawful interference with the rights of the person requesting the services or any other person who has rights in or to the goods.

**Lien claimant may dispose of goods**

**19** If the person requesting the services fails to pay the debt within 30 days after the day on which it becomes payable, the lien claimant may realize on the goods in accordance with Part V of the Uniform Personal Property Security Act, and the lien claimant has all the rights and obligations of a secured party under Part V of that Act.

**Commentary:** A lien claimant has the right, by virtue of this section, to sell the goods 30 days after the debt becomes due, in accordance with Part V.

**Court may resolve dispute**

**20(1)** The person requesting the services or any other person claiming a proprietary interest in, or a contractual right to possession of, the goods that are subject to a lien may apply to the court to have a dispute resolved where the dispute concerns:

- (a) the existence of a lien or the amount secured by a lien; or
- (b) the right of the lien claimant to take or retain possession of the goods”.

(2) In addition to the powers conferred on a court under the Uniform Personal Property Security Act, on hearing an application pursuant to subsection (1), the court may make any order that it considers appropriate in the circumstances.

**Commentary:** This section provides an express ability for any person claiming a proprietary interest in goods that are the subject of a lien to access the courts for dispute resolution.

**Payment into court**

**21(1)** Where, in an application under section 20, the amount claimed by the lien claimant is paid into court or security for this amount is posted with the court, the [insert title of proper officer of the court] shall issue to the applicant a certificate setting out the details of the payment or security.

(2) On the receipt of the certificate, the lien claimant shall

- (a) release the goods; or
- (b) not later than three days after receiving the certificate, file a notice of objection with the court stating that additional or alternative security should be posted with the court prior to release of the goods.

(3) Where an objection mentioned in subsection (2) has been filed and the applicant has posted the additional or alternative security demanded by the lien claimant, the lien claimant shall release the goods.

(4) If the court concludes that the lien is not valid or that the additional or alternative security mentioned in subsection (2) is not justified, the court shall order the lien claimant to pay to the applicant as damages any loss suffered or cost incurred by the applicant as a result of having to pay money into court or post security or additional or alternative security.

**Where goods released**

**22(1)** Where goods are released after a certificate is issued by the court, the lien is discharged and is replaced by a charge on the amount paid into court or on the security posted.

(2) The charge is discharged 90 days after the goods are returned by the applicant unless the lien claimant accepts the applicant’s offer of settlement or commences an action to recover the amount claimed.

(3) After the expiry of 90 days, the [proper officer of the court] shall return to the applicant the money paid into court or the security posted if the applicant files with the [proper officer of the court] an affidavit confirming that the lien claimant has not accepted the applicant’s offer of settlement or commenced an action to recover the amount claimed.

**Commentary:** Overall sections 20 to 22 provide an effective dispute resolution mechanism to balance the lien claimant's power of retention and seizure where there is a dispute about services, quality, price or similar matters.

Sections 20 to 22 are taken from the Alberta Institute's Report, recommendation #34, which in turn is modeled after Rule 469 of the Alberta Rules of Court, but there are some differences. The proposed section 21 removes the requirement to pay the amount claimed into Court as a pre-condition to bringing an application under section 20. The person who requested the services may want to contest the lien while leaving the goods in the hands of the lien claimant. There is no justification for the lien claimant demanding more than the amount of the debt owing. The only objection that should be made is as to the amount and kind of security.

There is no automatic consequence for abusing the system by providing that no order under subsection 21(4) should be less than a set sum. Such a requirement seemed to tie the discretion of the Court and appeared unwarranted in commercial dealings.

## GENERAL APPLICATION OF THE UNIFORM PERSONAL PROPERTY SECURITY ACT

### **Application of Uniform Personal Property Security Act**

**23** Except as otherwise provided in this Act, the following provisions of the Uniform Personal Property Security Act apply, with any necessary modification, to a lien created by this Act as though the lien were a security interest

- section 4 (validity and perfection of foreign lien on goods);
- section 5 (choice of law where parties understand goods are to be taken to another province or territory);
- section 6 (validity, perfection and effect of perfection or non-perfection liens in mobile goods);
- section 7 (choice of law for procedural and substantive issues relating to goods);
- section 16 (care of collateral);
- section 17 (information to be provided by the lien claimant);
- Part IV (registration);
- Part V (default - rights and remedies);
- section 62 (application to the court);
- section 64 (rights to be exercised in a commercially reasonable manner);
- section 65 (extension of time);
- section 66 (remedial provision);
- section 67 (service of notices);
- section 68 (notice or knowledge).

**Commentary:** This section gathers together the PPSA provisions that will be applicable to a lien under this Act. To restate those provisions in this Act would create a risk that at some future date its provisions would cease to parallel those of the PPSA as the latter is amended. Enacting jurisdictions might wish to consider preparing a detailed pamphlet for the purpose of educating lien claimants as to the interface between this Act and the PPSA.

**Regulations**

[24 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act, including words and expressions defined in this Act, and any word or expression used in a regulation adopted pursuant to clause (b), whether or not the word or expression is defined in the regulation;
- (b) adopting, as amended from time to time or otherwise, any regulations made pursuant to the Uniform Personal Property Security Act and amending them or otherwise providing for any necessary modifications to them for the purposes of this Act;
- (c) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (d) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.]

**Commentary:** Enacting jurisdictions will wish to refer to local policies on regulation-making powers. The regulation-making power under the local PPSA should provide an appropriate point of departure in framing this provision.

**Common law liens abolished**

25“(1) Any lien arising under the common law of the kind that arises under this Act is abolished”.

(2) The lien arising under the common law in favour of an innkeeper with respect to the goods of a guest of the innkeeper is abolished.

**Commentary:** The common law lien of an innkeeper often arises without a request from a guest to store the goods of the guest, as when the guest abandons property in the room that he or she has occupied and leaves without paying for the accommodation. The request made by a guest is normally a request for accommodation, not for storage of goods. Without a specific repeal of the innkeeper’s common law lien, arguably this type of lien would continue.

In some circumstances, a guest may also request storage of goods (for example, requesting safekeeping of valuables in the hotel safe, requesting storage of luggage between checkout time and a late in the day flight. In those circumstances, section 2 would probably apply.

**Transition**

26(1) In this section, “**prior law**” means [insert definition appropriate for legislation of enacting jurisdiction].

(2) This Act applies to every lien created under prior law that has not been terminated in accordance with prior law before the coming into force of this Act.

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(3) A lien created under prior law that is validly registered pursuant to [any repairer's or garagekeeper's legislation extant in the enacting jurisdiction] is deemed to be registered pursuant to this Act for the unexpired portion of the registration, and may be continued by registration pursuant to this Act.

**Commentary:** This represents the only transition provision thought to be necessary.

**Repeal**

**27(1)** Sections 8 and 9 of the Uniform Hotelkeepers Act are repealed.

(2) The [any repairer's or garagekeeper's legislation extant in the enacting jurisdiction] Act is repealed.

(3) The Uniform Warehousemen's Lien Act is repealed.