

1989

## c 17 Repair and Storage Liens Act, 1989

Ontario

© Queen's Printer for Ontario, 1989

Follow this and additional works at: [http://digitalcommons.osgoode.yorku.ca/ontario\\_statutes](http://digitalcommons.osgoode.yorku.ca/ontario_statutes)

---

### Bibliographic Citation

*Repair and Storage Liens Act, 1989*, SO 1989, c 17

### Repository Citation

Ontario (1989) "c 17 Repair and Storage Liens Act, 1989," *Ontario: Annual Statutes*: Vol. 1989, Article 19.

Available at: [http://digitalcommons.osgoode.yorku.ca/ontario\\_statutes/vol1989/iss1/19](http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1989/iss1/19)

## CHAPTER 17

### An Act to revise and consolidate the Law related to Repairers' and Storer's Liens

*Assented to March 2nd, 1989*

#### CONTENTS

<b>Section</b>	<b>Section</b>
1. Definitions	21. Liability of lien claimant for non-compliance
2. Act binds Crown	22. Redemption of article
<b>PART I</b>	<b>PART IV</b>
<b>POSSESSORY LIENS</b>	<b>DISPUTE RESOLUTION</b>
3. Repairer's lien	23. Determination of rights by court
4. Storer's lien	24. Possessory liens; return of article
5. Loss of lien	25. Proper court
6. Priority of lien	<b>PART V</b>
<b>PART II</b>	<b>GENERAL</b>
<b>NON-POSSESSORY LIENS</b>	26. Separate liens
7. Non-possessory lien	27. Service of documents
8. Transactions in ordinary course of business	28. Lien claimant's rights and obligations
9. Registration of documents	29. Assignment of lien
10. Claim for lien	30. Destruction of books, records, etc.
11. Change statements	31. Power of sheriffs and bailiffs
12. Discharge	32. Regulations
13. Correction of registrar's records	<b>PART VI</b>
14. Seizure of article	<b>MISCELLANEOUS</b>
<b>PART III</b>	33. Transition
<b>REDEMPTION, SALE OR OTHER DISPOSITION</b>	34.-36. Complementary amendments
15. Sale of article	37. Repeals
16. Proceeds of sale	38. Commencement
17. Retention of article	39. Short title
18. Effect of sale or foreclosure; amount of lien deemed satisfied	
19. Gift to charity	
20. Effect of disposition on title of article	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1.—(1)** In this Act,

“article” means an item of tangible personal property other than a fixture;

“lien claimant” means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

1989, c. 16

“motor vehicle” means a motor vehicle as defined in the regulations made under the *Personal Property Security Act, 1989*;

“prescribed” means prescribed by a regulation made under this Act;

“registrar” and “branch registrar” mean, respectively, the registrar and a branch registrar under the *Personal Property Security Act, 1989*;

“repair” means an expenditure of money on, or the application of labour, skill or materials to, an article for the purpose of altering, improving or restoring its properties or maintaining its condition and includes,

- (a) the transportation of the article for purpose of making a repair,
- (b) the towing of an article,
- (c) the salvage of an article;

“repairer” means a person who makes a repair on the understanding that the person will be paid for the repair;

“storer” means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

Repair, etc.,  
by third  
party

(2) The following rules apply where an article is left for repair, storage or storage and repair and the article is forwarded by the person with whom the article is left to some other person for the repair, storage or storage and repair:

1. The person with whom the article was left shall be deemed to have performed the services and to be entitled to the rights of a repairer or storer against the person who left the article unless,

- i. there is a written agreement between the person who left the article and the person with whom it was left that there is no lien, or
  - ii. the person with whom the article was left has agreed to act as agent for the person who left the article in forwarding it to an identified repairer or storer for the repair, storage or storage and repair.
2. Unless subparagraph ii of paragraph 1 applies, the person to whom the article was forwarded does not have a lien under this Act.

**2. This Act binds the Crown.**

Act binds  
Crown

**PART I**

**POSSESSORY LIENS**

**3.—(1)** In the absence of a written agreement to the contrary, a repairer has a lien against an article that the repairer has repaired for an amount equal to,

Repairer's  
lien

- (a) the amount that the person who requested the repair agreed to pay;
- (b) where no such amount has been agreed upon, the fair value of the repair; or
- (c) where only part of a repair is completed, the fair value of the part completed,

and the repairer may retain possession of the article until the amount is paid.

(2) A repairer's lien arises and takes effect when the repair is commenced.

When lien  
arises

(3) A repairer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period following the day,

Disposition

- (a) on which the amount required to pay for the repair comes due; or
- (b) on which the repair is completed, if no date is stated for when the amount required to pay for the repair comes due.

Deemed  
possession

(4) For the purposes of this Act, a repairer who commences the repair of an article that is not in the repairer's actual possession shall be deemed to have gained possession of the article when the repair is commenced and shall be deemed to have given up possession when the repair is completed or abandoned.

Idem

(5) A repairer who, under subsection (4), is deemed to have possession of an article may remove the article from the premises on which the repair is made.

Storer's lien

**4.—**(1) Subject to subsection (2), a storer has a lien against an article that the storer has stored or stored and repaired for an amount equal to,

- (a) the amount agreed upon for the storage or storage and repair of the article;
- (b) where no such amount has been agreed upon, the fair value of the storage or storage and repair, including all lawful claims for money advanced, interest on money advanced, insurance, transportation, labour, weighing, packing and other expenses incurred in relation to the storage or storage and repair of the article,

and the storer may retain possession of the article until the amount is paid.

Limit on  
storer's lien

(2) A storer is not entitled to a lien for a repair made to an article unless the repair is made by the storer on the understanding that the storer would be paid for the repair or unless subsection 28 (2) applies.

When lien  
arises

(3) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair.

Notice to  
owner, etc.,  
in certain  
cases

(4) Where the storer knows or has reason to believe that possession of an article, subject to a lien was received from a person other than,

- (a) its owner; or
- (b) a person having its owner's authority,

the storer, within sixty days after the day of receiving the article, shall give written notice of the lien,

(c) to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registration under the *Personal Property Security Act, 1989* 1989, c. 16 against the name of the person whom the storer knows or has reason to believe is the owner; and

(d) in addition to the notices required by clause (c) where the article is a vehicle,

(i) to every person who has a registered claim for lien against the article under Part II of this Act,

(ii) to every person who has a security interest in the vehicle that is perfected by registration under the *Personal Property Security Act, 1989* against the vehicle identification number of the vehicle, and

(iii) if the vehicle is registered under the *Highway Traffic Act*, to the registered owner. R.S.O. 1980, c. 198

(5) A notice under subsection (4) shall contain,

Contents of notice

(a) a description of the article sufficient to enable it to be identified;

(b) the address of the place of storage, the date that it was received and the name of the person from whom it was received;

(c) a statement that a lien is claimed under this Act by the storer in respect of the article; and

(d) a statement advising how the article may be redeemed.

(6) Where a storer fails to give the notice required by subsection (4), the storer's lien as against the person who should have been given the notice is limited to the unpaid amount owing in respect of the period of sixty days from the date when the article was received, and the storer shall surrender possession of the article to that person where the person proves a right to possession and pays that amount.

Effect of failure to give notice

(7) The storer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period

Disposition

following the day on which the amount required to pay for the storage or storage and repair becomes due.

Loss of lien

**5.** A lien under this Part is discharged and cannot be revived as an interest in the article if possession of the article that is subject to the lien is surrendered to, or lawfully comes into the possession of, the owner or any other person who is entitled to receive a notice under subsection 15 (2).

Priority of lien

**6.** A lien under this Part has priority over the interests of all other persons in the article.

## PART II

### NON-POSSESSORY LIENS

Non-possessory lien

**7.—(1)** A lien claimant who is entitled to a lien under Part I (Possessory Liens) against an article, and who gives up possession of the article without having been paid the full amount of the lien to which the lien claimant is entitled under Part I, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed under Part I that remains unpaid.

When lien arises

**(2)** A non-possessory lien arises and takes effect when the lien claimant gives up possession of the article.

Priority

**(3)** A non-possessory lien has priority over the interest in the article of any other person other than a lien claimant who is claiming a lien under Part I, and, where more than one non-possessory lien is claimed in the same article, priority shall be determined according to the same rules of priority as govern the distribution of proceeds under section 16.

Period of credit not to affect lien

**(4)** A non-possessory lien is not extinguished by reason only that the lien claimant has allowed a period of credit for the payment of the debt to which the lien relates.

Acknowledgment of indebtedness required

**(5)** A non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be on an invoice or other statement of account.

Idem

**(6)** An acknowledgment of indebtedness under subsection (5) is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount that the lien claimant is owed.

Transactions in ordinary course of business

**8.—(1)** A buyer of an article from a seller who sells it in the ordinary course of business takes it free of any non-

possessory lien of a lien claimant whose lien arose from its repair or storage at the request of the seller or the seller's agent, unless the buyer signs an acknowledgment referred to in subsection 7 (5).

(2) Notwithstanding that a buyer has signed an acknowledgment as provided in subsection (1), a purchaser purchasing the article in the ordinary course of the buyer's business takes it free of the lien claimant's lien. Idem

**9.**—(1) A claim for lien or change statement to be registered under this Part shall be in the prescribed form and may be tendered for registration at a branch office established under Part IV of the *Personal Property Security Act, 1989*, or by mail addressed to an address prescribed under that Act. Registration of documents  
1989, c. 16

(2) A claim for lien or change statement is not invalidated nor is its effect impaired by reason only of error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission. Errors in documents

**10.**—(1) A non-possessory lien is enforceable against third parties only if a claim for lien has been registered, and, where a person acquires a right against an article after a non-possessory lien arises, the right of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the right. Claim for lien

(2) A claim for lien may relate to more than one article and may be registered at any time after an acknowledgment of indebtedness has been signed. Idem

(3) A claim for lien is effective from the time assigned to its registration by the registrar or branch registrar and expires at, and cannot be renewed after, the end of the earlier of, Idem

(a) the end of the registration period as set out in the claim for lien or as extended by the most recent change statement registered under subsection (4) or reduced by a change statement registered under subsection (7); and

(b) the third anniversary of the registration of the claim for lien.

(4) The registration period set out in a claim for lien or change statement may be extended by filing a change statement before the end of the registration period. Idem

- Assignment (5) A change statement may be registered to record an assignment of a non-possessory lien where a claim for lien has been registered.
- Idem (6) Where a claim for lien has not been registered and the lien claimant has assigned the non-possessory lien before the registration of the claim for lien, a claim for lien may be registered,
- (a) naming the assignor as the lien claimant and subsection (5) applies; or
  - (b) naming the assignee as the lien claimant and subsection (5) does not apply.
- Changes in information (7) Unless the information related to a claim for lien has been removed from the central file of the registration system, a change statement may be registered at any time during the registration period,
- (a) to correct an error or omission in a claim for lien or any change statement related thereto; or
  - (b) to amend a claim for lien or any change statement related thereto where the amendment is not otherwise provided for in this Part.
- Change statements **11.** The registration of a change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registration of the claim for lien to which it relates is effective.
- Discharge **12.—(1)** A non-possessory lien is discharged and cannot be revived as an interest in the article,
- (a) upon payment to the lien claimant of the amount of the lien claimed;
  - (b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;
  - (c) upon the order of a court;
  - (d) upon the registration of a change statement recording the discharge;
  - (e) upon the expiry of the registration period of the claim for lien; and

- (f) if the article is a motor vehicle, upon a change of ownership of the vehicle if a claim for lien was not registered before the change of ownership occurred.

(2) Where a claim for lien relates to more than one article and it is agreed to release one or more, but not all, of the articles from the lien, a change statement recording the release may be registered. Partial discharge

(3) Where a release described in subsection (2) is given, any person may, by written request, require the lien claimant to deliver to the person making the request a change statement recording the release. Idem

(4) Within thirty days after a registered claim for lien is discharged under clause (1) (a), (b), (c) or (f) or within thirty days of a request being made under subsection (3), the lien claimant shall register a change statement recording the discharge or partial discharge. Time limit

(5) Where a lien claimant fails to comply with subsection (4), the claimant, on written notice from the owner or other person with an interest in the article, shall pay the owner or other person \$100 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction. Penalty

**13.** Upon application to the District Court, the court may order the registrar to amend the information recorded in the central file of the registration system to indicate that the registration of a claim for lien has been discharged or has been partially discharged, upon any grounds and subject to any conditions that the court considers appropriate in the circumstances. Correction of registrar's records

**14.—(1)** A lien claimant who has a non-possessory lien and who has registered a claim for lien may deliver at any time to the sheriff of the county or district in which the article is located a copy of the registered claim for lien and a direction to seize the article. Seizure of article

(2) Upon receipt of a copy of a registered claim for lien and a direction to seize an article under subsection (1), the sheriff shall seize the article described in the direction wherever it may be found and shall deliver it to the lien claimant who issued the direction. Idem

(3) Nothing in subsection (1) or (2) prevents a lien claimant from exercising any lawful power of seizure with respect to Other powers of seizure not affected

the article whether provided for by contract or otherwise available to the lien claimant by law.

Limitation

(4) An article shall not be seized if it is in the possession of a lien claimant who claims to be entitled to a lien against it under Part I (Possessory Liens).

Disposition

(5) A lien claimant who has a non-possessory lien against an article has a right to sell the article in accordance with Part III (Redemption, Sale or Other Disposition) if,

- (a) the article has been seized and is in the possession of the lien claimant;
- (b) at least sixty days have expired since the day when the non-possessory lien arose; and
- (c) any part of the amount to which the lien relates is due but unpaid.

Liability for damages

(6) The lien claimant is liable to any person who suffers damages as a result of a seizure under subsection (1) if the lien claimant has entered into an agreement for payment of the debt to which the claim for lien relates and there has been no default under the agreement.

### PART III

#### REDEMPTION, SALE OR OTHER DISPOSITION

Sale of article

**15.—**(1) A lien claimant who has a right, under this Act, to sell an article shall not exercise that right unless the lien claimant has given notice of intention to sell the article.

Idem

(2) A notice of intention to sell an article shall be in writing and shall be given at least fifteen days before the sale to,

- (a) the person from whom the article was received for repair, storage or storage and repair;
- (b) where the article was received for repair, storage or storage and repair from a person other than the owner,
  - (i) the person who is the registered owner of the article, if the article is a motor vehicle, or
  - (ii) the person the lien claimant knows or has reason to believe is the owner, if the article is not a motor vehicle;

(c) every person who has a security interest in the article under the *Personal Property Security Act, 1989* 1989, c. 16 that is perfected by registration against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle; and

(d) every person who has registered a claim for lien under Part II (Non-possessory Liens) against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle.

(3) The notice required by subsection (2) shall contain,

Contents of  
notice

(a) a description of the article sufficient to enable it to be identified;

(b) a statement of the amount required to satisfy the lien, as of the time when the notice is given, and any costs of seizure;

(c) a statement of the method of calculating, on a daily basis, any further costs for storage or preservation of the article that may be incurred between the time when the notice is given and the time when the sale is to take place;

(d) a statement that the article may be redeemed by any person entitled to receive notice by payment of the amount determined under clauses (b) and (c) plus any other reasonable costs incurred in preparing the article for sale;

(e) a statement of,

(i) the name of the person to whom payment may be made,

(ii) the address where the article may be redeemed,

(iii) the times during which redemption may be made,

- (iv) the telephone number, if any, of the person giving notice;
- (f) a statement of the date, time and place of any public sale at which the article is to be sold, or the date after which any private sale of the article is to be made; and
- (g) a statement that the article may be sold unless it is redeemed on or before the day required to be specified in the notice by clause (f).

Method of  
sale

(4) The article may be sold in whole or in part, by public or private sale, at any time and place, on any terms, so long as every aspect of the sale is commercially reasonable.

Purchase by  
lien claimant

(5) The lien claimant may purchase the article only at a public sale.

Proceeds of  
sale

**16.—(1)** Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,

- (a) to the reasonable expenses of selling the article;
- (b) to the costs of seizure;
- (c) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of the lien claimant making the sale;
- (d) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;
- (e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before

or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;

- (f) to the payment of every person who has a perfected security interest in the article under the *Personal Property Security Act, 1989* who was entitled to notice under subsection 15 (2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and 1989, c. 16
- (g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.

(2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23. Payment into court

**17.—**(1) A lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15 (2). Retention of article

(2) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the proposal within thirty days of the receipt of the proposal, the lien claimant, subject to subsections (3) and (4), shall sell the article in accordance with section 15. Objection

(3) Upon application to the District Court and upon notice to every person who has given a written objection to the proposal, the court may order that the objection is ineffective because, Application to District Court

- (a) the objection was made for a purpose other than the protection of the interest in the article of the person who made the objection; or
- (b) the fair market value of the article is less than the amount of the lien of the lien claimant and the estimated expenses to which the lien claimant is entitled under this Act.

Foreclosure

(4) If no effective objection is made, the lien claimant, at the expiration of the thirty-day period mentioned in subsection (2), shall be deemed to have irrevocably elected to retain the article and thereafter is entitled to hold or dispose of the article free from the rights and interests of every person to whom the written notice of the proposal was given.

Effect of sale or foreclosure; amount of lien deemed satisfied

**18.** Where a lien claimant,

- (a) sells an article under section 15; or
- (b) is deemed to have elected irrevocably to retain the article under subsection 17 (4),

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

Gift to charity

**19.**—(1) A lien claimant who has retained possession of an article for twelve months after the right to sell the article arose may give the article to a charity registered under the *Income Tax Act* (Canada) if,

R.S.C. 1952, c. 148

- (a) the article has a fair market value of less than the total of the amount of the lien claimed by the lien claimant and the amount of the estimated expenses to which the lien claimant is entitled under this Act; and
- (b) the lien claimant has not given a notice of intention to sell under section 15 or a notice of a proposal to retain the article under section 17.

Records to be maintained

(2) A lien claimant who disposes of an article under this section shall maintain for six years a record of the article disposed of and the charity to which it was given.

Effect of disposition on title of article

**20.**—(1) Although a lien claimant has failed to comply with this Part, a purchaser who buys an article in good faith,

- (a) in a sale under section 15; or
- (b) from a lien claimant who has retained an article under section 17,

acquires the article free of the interest of the owner and any person entitled to notice under this Part.

(2) A charity that is given an article by a lien claimant under section 19, acquires the article free of the interest of the owner and all other persons. Idem

**21.** A lien claimant who fails to comply with the requirements of this Part is liable to any person who suffers damages as a result and shall pay the person an amount equal to the greater of \$200 or the actual damages. Liability of lien claimant for non-compliance

**22.** At any time before the lien claimant, Redemption of article

- (a) has sold the article under section 15 or contracted for such sale;
- (b) is deemed to have irrevocably elected to retain the article under section 17; or
- (c) has given the article to a charity under section 19,

the owner and any person referred to in subsection 15 (2) may redeem the article by paying the amount required to satisfy the lien.

## PART IV

### DISPUTE RESOLUTION

**23.—(1)** Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to, Determination of rights by court

- (a) the seizure of an article under Part II (Non-possessory Liens) or any right of seizure in respect of an article;
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,

and the court may make such order as it considers necessary to give effect to those rights.

Limitation

(2) An application shall not be made under clause (1) (d) where an application has been made under section 24.

Possessory  
liens; return  
of article

**24.**—(1) Where a lien is claimed under Part I (Possessory Liens) and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, and there is,

- (a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair;
- (b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article; or
- (c) a dispute concerning the right of the lien claimant to retain possession of the article,

the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

Respondent

(2) The lien claimant shall be named as the respondent in the application.

Form

(3) The application shall be in the prescribed form and may include an offer of settlement.

Payment into  
court

(4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.

Initial  
certificate

(5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the prescribed form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and

where applicable, indicating the portion of that amount that is offered in settlement of the dispute.

(6) The applicant shall give the initial certificate to the respondent who, within three days of receiving the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the prescribed form.

Release on  
interim  
certificate

(7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the prescribed form and under the seal of the court.

Final  
certificate

(8) The applicant shall give the final certificate to the respondent who, upon receiving the final certificate, shall release immediately the article described therein.

Release on  
final  
certificate

(9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff or bailiff to seize the article and, upon receipt of the writ, the sheriff or bailiff shall seize the article and return it to the applicant.

Writ of  
seizure

(10) Before obtaining a writ of seizure, the applicant shall file an affidavit with the clerk or registrar of the court confirming that the respondent has not released the article as required.

Idem

(11) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff or bailiff under a writ of seizure, the respondent may demand a receipt in the prescribed form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the prescribed form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.

Payment out  
of court of  
settlement

(12) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.

Notice to  
applicant

Substitution  
of security

(13) Where the article is released to the applicant by the respondent or is seized by the sheriff or bailiff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge upon the amount paid into court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.

Discharge

(14) The charge upon the money paid into court or the security posted with the court is discharged ninety days after the article was returned to the applicant or seized unless, before the end of the ninety days, the respondent has accepted the applicant's offer of settlement or has commenced an action to recover the amount claimed.

Return of  
money or  
security

(15) Upon the expiry of the ninety days referred to in subsection (14), the clerk or registrar of the court may return to the applicant the money paid into court and deliver up for cancellation any security posted with the court if the applicant files with the clerk or registrar an affidavit confirming that the respondent has neither accepted an offer of settlement nor commenced an action to recover the money claimed.

Costs of  
enforcing  
writ seizure

(16) The respondent is liable for the costs of enforcing a writ of seizure and these costs shall be set off against the amount paid into court under this section.

Proper court

**25.** An application under this Part may be brought in any court of appropriate monetary and territorial jurisdiction.

## PART V

### GENERAL

Separate  
liens

**26.—(1)** A separate lien arises under this Act each time an article is repaired, stored or stored and repaired.

No tacking

(2) A lien under this Act cannot be tacked onto another lien under this Act.

Service of  
documents

**27.—(1)** A document required to be given or that may be given under this Act is sufficiently given if it is given personally to the intended recipient or if it is sent by certified or registered mail or prepaid courier to the intended recipient at,

- (a) the intended recipient's address for service if there is one;

(b) the last known mailing address of the intended recipient according to the records of the person sending the document, where there is no address for service; or

(c) the most recent address of the intended recipient as shown on a claim for lien or change statement registered under this Act or as shown on financing statement or financing change statement registered under the *Personal Property Security Act, 1989*.

1989, c. 16

(2) A document sent to the intended recipient by certified or registered mail shall be deemed to have been given on the earlier of,

Service by mail

(a) the day the intended recipient actually receives it; or

(b) the tenth day after the day of mailing.

**28.—(1)** Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

Lien claimant's rights and obligations

(a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and

(b) unless otherwise agreed,

(i) shall keep the article identifiable, and

(ii) may create a security interest under the *Personal Property Security Act, 1989* in the article, but only upon terms that do not impair a right of redemption under that Act or this Act.

(2) Unless otherwise agreed, a lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of an article that is subject to a lien, including the cost of insurance and the payment of taxes or other charges incurred therefor, and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien.

Reasonable expenses

(3) Except as provided in clause 4 (1) (b), a lien claimant is not entitled to a lien for interest on the amount owing with respect to an article but this subsection does not affect any

Interest

right that the lien claimant may otherwise have to recover such interest.

Effect of failure to meet obligation

(4) A lien claimant is liable for any loss or damage caused by a failure to meet any obligation imposed by this section but does not lose the lien against the article by reason only of that failure.

Use of article

(5) A lien claimant may use an article,

- (a) for the purpose of preserving the article or its value;
- (b) for the purpose of making a reasonable demonstration of the quality or properties of the article in order to facilitate the making of a sale under this Act;
- (c) in accordance with an order of any court before which an application is being heard or an action is being tried in respect of that article; or
- (d) in accordance with any agreement with the owner.

Effect of unauthorized use or dealing

(6) Where the lien claimant uses or deals with an article in a manner not authorized by this Act, the lien claimant is liable for any loss or damage caused by that use or dealing and may be restrained by an injunction.

Assignment of lien

**29.—(1)** A lien claimant may assign the lien claimant's right to a lien by an instrument in writing.

Idem

(2) An assignment of a possessory lien under Part I becomes effective when the lien claimant delivers possession of the article to the assignee.

Idem

(3) An assignment of a non-possessory lien under Part II is enforceable against third parties only if a change statement recording the assignment has been registered under subsection 10 (5) or a claim for lien has been registered under clause 10 (6) (b).

Destruction of books, records, etc.

**30.—(1)** The registrar may authorize the destruction of books, documents, records or paper that have been micro-filmed or that in the registrar's opinion need not be preserved any longer.

Removal of information from registration system

(2) The registrar may remove from the central file of the registration system information related to a claim for lien or a change statement,

- (a) if the claim for lien is no longer effective;
- (b) upon the receipt of a change statement discharging the registration of a claim for lien;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a claim for lien or a change statement.

(3) The registrar, upon notice to the lien claimant, may remove from the central file of the registration system information related to a change statement if, Idem

- (a) it does not set out the correct file number of the claim for lien or change statement to which it relates; or
- (b) it does not set out the name of the person against whom the lien is claimed as that name is set out in the claim for lien or change statement to which it relates.

**31.**—(1) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, may use reasonable force to enter land and premises if the sheriff or bailiff believes, on reasonable and probable grounds, that the article to be seized is there and reasonable force may be used to execute the direction or writ. Power of sheriffs and bailiffs

(2) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, in respect of an article in a dwelling shall not use force to enter the dwelling or to execute the direction or writ except under the authority of, Restriction

- (a) the order of a court of competent jurisdiction, in the case of a direction to seize an article;
- (b) the order of the court that issued the writ, in the case of a writ of seizure.

(3) A court may make an order for the purposes of subsection (2) if, in the opinion of the court, there is reasonable and probable grounds to believe that the article to be seized is in the dwelling. Court orders

**32.** The Lieutenant Governor in Council may make regulations, Regulations

- (a) requiring the payment of fees and prescribing the amounts thereof;
- (b) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (c) requiring that claim for lien forms and change statements forms to be registered under Part II shall be those provided or approved by the registrar;
- (d) governing the time assigned to the registration of claims for lien and change statements;
- (e) prescribing abbreviations, expansions or symbols that may be used in a claim for lien or change statement or in the recording or production of information by the registrar;
- (f) prescribing the types of security that may be deposited with a court under section 24.

## PART VI

### MISCELLANEOUS

Transition

**33.**—(1) Where under any Act, a person has or is entitled to a lien that may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or in the manner provided by the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, the person shall be deemed to be a lien claimant having a possessory lien under Part I (Possessory Liens) of this Act and the lien may be enforced under Part III (Redemption, Sale or Other Disposition) of this Act.

Idem

(2) A lien that arose before the coming into force of this section and that could have been enforced under section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or under the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, or under the *Unclaimed Articles Act*, being chapter 513 of the said Revised Statutes, may continue to be enforced as if those Acts had not been repealed or the person claiming the lien may enforce the lien under Part III of this Act as if the lien were a possessory lien under Part I.

**34.** Subsection 2 (8) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the third line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

**35.—(1)** Subsection 147 (13) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section 33, is further amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth and ninth lines and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

(2) Subsection 190 (5) of the said Act is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the fourth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

**36.** Subsection 23 (3) of the *Niagara Parks Act*, being chapter 317 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 38, section 3, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

**37.** The following are repealed:

Repeals

1. The *Mechanics’ Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980.
2. The *Unclaimed Articles Act*, being chapter 513 of the Revised Statutes of Ontario, 1980.
3. The *Warehousemen’s Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980.

**38.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**39.** The short title of this Act is the *Repair and Storage Liens Act, 1989*.

Short title

