



## LIENS – RIGHTS OF RETENTION – WAIVERS

6 March 2026

In our South African law there is a degree of uncertainty as to how a lien (a right of retention) operates. There are two types of liens:

1. what is commonly termed an “enrichment lien” or a “real lien” and
2. debtor – creditor liens (contractual liens).

A lien gives the entitled party (lien holder) the right to occupy or hold onto the property pending payment of compensation or fulfilment of a contractual obligation.

Some examples:

- **Builder’s lien**

A builder or other contractor who effects any works (whether in respect of the building of a home or other premises, or indeed alterations), would have a right to remain in possession and occupation pending settlement of his claim with respect to any unpaid amounts whether disputed or otherwise.

- **Mechanic’s lien**

A mechanic would have a lien over a vehicle brought to him for repairs pending payment of whatever is owed to him, similarly whether disputed or otherwise.

- **Storage lien**

Where a person has failed to pay the rent due with respect to storage of goods, the storage facility would have a lien over the goods stored.

- **Landlord's lien**

A landlord has a right of retention over a tenant's movable assets. (It is common practice for the supplier of goods on hire purchase, lease/rental, or loan to obtain acknowledgement from the landlord that those goods are not subject to the landlord's hypothec.

- **Improvement lien**

These would similarly relate to the person affecting the improvements, whether the tenant or occupier who bring about additions, renovations, or improvements to the owner's property. The property in issue would be returned as and when either the debt has been paid or settled, or compensation for the "unjust enrichment" has been made. The right of retention affords the lien holder the right to require satisfaction of the debt or duty ordinarily arising by law. The enforcement of improvement liens regularly arises, and the authorities are clear that the person enforcing the lien can claim the lesser of the costs actually expended with regard to the improvements, or the amount by which the property (so improved) has thereby been increased in value.

- **Services lien**

Work done by auditors/accountants, attorneys, architects, engineers, etc., - the right to retain documents prepared on behalf of a client pending payment for such services (but not paperwork not so prepared by the professional).

A debtor who incurred a contractual lien, secured e.g. by a mortgage bond registered over a property to secure a loan or other obligation would, in effect, constitute the bond holder as the lien holder.

It is not the purpose of this article to deal with the ranking of preferences in terms of securities held by a lien holder, nor in the event of insolvency.

What is important is that persons should be alert to the rights of a builder, contractor or any of the other entitled lien holders when concluding a contract. A bank will not advance a loan to a borrower for purposes of development of the borrower's property or improvements thereto, unless the borrower has procured a "waiver of lien" from the contractor, and, where relevant, sub-contractors involved. The bank as lender, protects itself, as a lien holder's security would rank in preference to that of the bond holder.

Similarly, a person engaging contractors to affect any building works or other improvements should be alert to this reality and, where possible, procure a written waiver of lien, similarly when contracting in terms of a formalistic building contract or engineering contract (JBCC or GBCC), it would be prudent

to ensure that there is a waiver of lien by the the relevant contractor concerned included in such contract.

Absent the waiver of lien, it would be very difficult to have a contractor evicted from the relevant site without putting up adequate security for the contractor's claim (notwithstanding that same is disputed).

It would accordingly be prudent for persons to ensure when concluding a contract, which could result in the other party as lien holder exercising their lien (and retaining possession of the property concerned), that they seek legal advice in order to procure, where competent, a waiver of lien.

---

By Steven Klagsbrun (Director) | Corporate and Commercial Department

*Disclaimer:*

*This article is for the purpose of general information only and does not constitute nor must it be construed as legal advice. Specialist legal advice must be sought in respect of a specific legal matter. We accept no liability, damage, loss and/or responsibility, whether direct or consequential, for any actions taken or failure to take any actions, based on the content contained herein.*

© 2026 Klagsbrun Edelstein Bosman Du Plessis Inc. All rights reserved.