



# **Construction Lien Act Reform**

# Why We Need Reform

## Survey Results:

- Average current receivable for the group was 61.3 days.
- One in five trade contractors has *average* receivables of over 90 days.
- Almost 50% of contractors wait over 90 days to receive their holdback.

# Bill 142

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*Construction Lien Amendment Act 2017*

# Topics

1. Construction Liens
2. Adjudication
3. Prompt Payment
4. When Does the Act Apply?

# In Force Dates

- ❖ Changes to Construction Liens will be in force in the summer of 2018.
- ❖ Adjudication and Prompt Payment will be in force October 1, 2019.

# Construction Liens





# Extending the Time to Register a Claim for Lien

- ◆ The time for preserving a lien (registering lien) has been extended from **45** to **60** days from the trigger date.



# Trigger Dates for Subcontractors

→ For **subcontractors**, the deadline for filing a construction lien is **45** days from the earlier date of:

- ◆ The date of subcontractor's last supply
- ◆ The publication of a certificate of substantial performance of the general contract in the Daily commercial news.



# Trigger Dates for Contractors

→ For **general contractors**, the deadline for filing a construction lien is **45** days from the earlier date of:

- ◆ The completion, abandonment, or termination of a general contract.
- ◆ The publication of a certificate of substantial performance of the general contract in the daily commercial news.

# Adjudication





# Adjudication

→ Fast: 60 days

→ Binding and Enforceable:

- Has the effect of a Court order.
- Allows for the suspension of work.

→ Temporary: Effective until a final decision of the Court or an arbitrator.



# Who May Act As an Adjudicator

- Draft Regulations: Anyone having 7 years of “relevant” construction experience who gets the training may qualify to act as an adjudicator.
- Relevant construction experience “may include” working as an accountant, architect, engineer, quantity surveyor, project manager, arbitrator or lawyer.



# Modified by Contract

## → Examples:

- Expanding the types of disputes that may be adjudicated.
- Extending the right of adjudication beyond the completion of the contract.
- Specifying adjudication procedures, e.g. hearing in orally, evidence shall be given in person and under oath, etc.
- Specifying the type of adjudicator, e.g. a lawyer 😊

**Prompt Payment**



# Four General Principles

- Fixed Timelines for Payment
- Notice
- Pay When Paid
- Adjudication





## ***Owner receives invoice***

The invoice is submitted by the contractor to the owner as specified in contract.



*within 28 days*



## ***Owner pays invoice***

The owner is required to pay the general contractor within **28** days of receiving the invoice.



*within 7 days*



## ***Contractor pays subcontractor***

The general contractor is required to pay the subcontractor within **7** days after receiving the payment from the owner.



*within 7 days*



## ***Subcontractor pays sub-subcontractors***

The subcontractor is required to pay other subcontractors within **7** days.



## ***Owner receives invoice***

The invoice is submitted by the contractor to the owner as specified in contract.

*within 14 days*



## ***Owner delivers Notice of nonpayment.***



The notice must give details of the amount the payor intends to hold back, and the reason payment is not being made in full.

*within 7 days and 21 days*



## ***Contractor issues Notice of nonpayment to Sub***

The general contractor is required to issue a Notice of Nonpayment to their subcontractors within **7** days after receiving the notice from the payor/owner and undertake to adjudicate within **21** days.



*within 7 days*

## ***Sub issues Notice of nonpayment to Sub-Sub***

Sub is not required to adjudicate non-payment with general.



## ***Owner receives invoice***

The invoice is submitted by the contractor to the owner as specified in contract.



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*within 28 days*



## ***Owner fails to deliver notice***

The owner fails to deliver a notice of nonpayment within **14** days of receiving the invoice. **28** days pass and the owner has not made a payment.



*within 7 days (ie. 35 days from contractor's invoice)*



## ***Contractor fails to deliver notice***

A Contractor has **35 days** to deliver a notice and undertake to adjudicate within **21 days**.



*within 7 days (ie. 42 days from contractor's invoice)*



## ***Sub Must Deliver Notice and Adjudicate***

A Sub has **42** days to deliver notice to a sub-sub and undertake to refer the matter to adjudication in **21 days**.



## ***Owner receives invoice***

The owner issues a notice of non-payment and chooses to pay the contractor **50%** of the contractor's invoice



*within 28 days*



## ***Contractor receives 50% of invoice***

The GC must now allocate the funds among his subcontractors despite a shortfall of pay.



*within 7 days*



## ***Contractor pays subcontractors***

Contractor now pays the subcontractors with the partial allocated funds.



*within 7 days*



## ***Subcontractors pay sub-subcontractors***

Subcontractors pay sub-subcontractors with the partial allocated funds.





## ***Owner receives invoice***

The invoice is submitted by the contractor to the owner as specified in contract.

*within 14 days*



## ***Owner delivers Notice of nonpayment.***



The notice must give details of the amount the payor intends to hold back, and the reason payment is not being made in full.

*within 7 days*



## ***Contractor issues Notice of nonpayment to Sub***

The general contractor is required to issue a Notice of Nonpayment to their subcontractors within **7** days after receiving the notice from the payor/owner and undertake to adjudicate within **21** days.



*within 7 days*



## ***Sub issues Notice of nonpayment to Sub-Sub***

Sub is not required to adjudicate non-payment with general.



## ***Owner receives invoice***

The invoice is submitted by the contractor to the owner as specified in contract.



*within 28 days*



## ***Owner fails to deliver notice***

The owner fails to deliver a notice of nonpayment within **14** days of receiving the invoice. **28** days pass and the owner has only paid 50% of the invoice amount.



*within 7 days (ie. 35 days from contractor's invoice)*



## ***Contractor fails to deliver notice***

A Contractor has **35 days** to deliver a notice and undertake to adjudicate within **21 days**.



*within 7 days (ie. 42 days from contractor's invoice)*



## ***Sub Must Deliver Notice and Adjudicate***

A Sub has **42** days to deliver notice to a sub-sub and undertake to refer the matter to adjudication in **21 days**.



# When Does the Act Apply?



# “Materials”

“materials” means every kind of movable property,

(a) that becomes, or is intended to become, part of the **improvement**, or that is used directly in the making of the improvement, or that is used to facilitate directly the making of the improvement,

# Examples

- ▶ Furniture Supplier
- ▶ Custom Millwork Fabricator
- ▶ A supplier to a Custom Millwork Fabricator
- ▶ Window and Door Manufacturer

**Thank you.**

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