

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

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

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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 <u>earlier</u> 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.



- → For general contractors, the deadline for filing a construction lien is 45 days from the <u>earlier</u> 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 ③

Prompt Payment



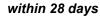
Four General Principles

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





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





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



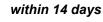
Subcontractor pays sub-subcontractors

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





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





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 <u>and</u> 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.

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 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

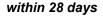
A Sub has 42 days to deliver notice to a sub-sub and undertake to refer the matter to adjudication in 21 days.



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







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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.



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





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

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within 7 days



Sub issues Notice of nonpayment to Sub-Sub Sub is not required to adjudicate non-payment with general.



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

