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BUILDERS LIEN ISSUES FOR DESIGN PROFESSIONALS

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Fundamentals of the act

1. The lien
2. The holdback
3. The trust

Holdback and Holdback account

- Holdback is a fund for the subtrades, a defence for the owner and the last 10% of the general contract price
- Holdback mandatory – 10% of completed value of work
- Holdback account mandatory, unless under $100,000 or provincial government
- Multiple trade contracts require multiple holdbacks and holdback accounts

Builders lien filing and Holdback release periods

45 days for lien filing and 55 days for holdback release

Triggering events

1. Issuance of certificate of completion of a contract or subcontract
2. If no certificate, the completion, termination or abandonment of the head contract, if there is one; or completion or abandonment of the improvement

Substantial completion

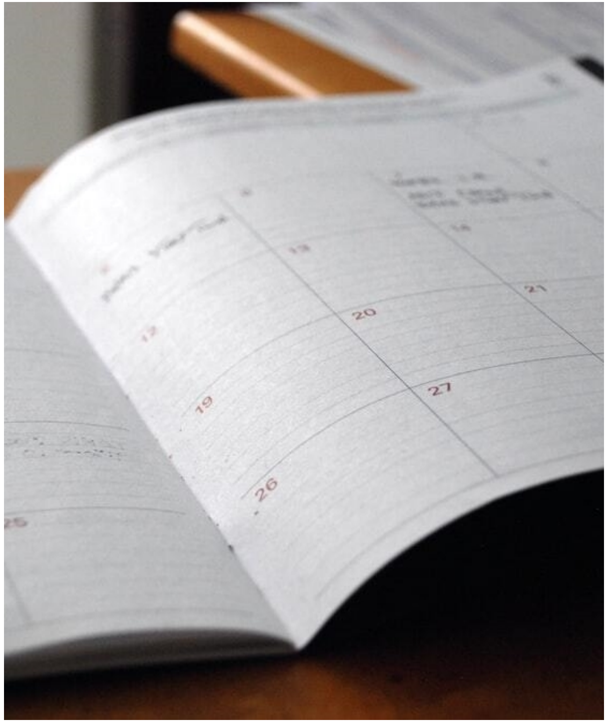
Substantial completion criteria --

- Head contract, contract or subcontract - 3-2-1 percentage of cost to complete formula
- Improvement or a substantial part - Use or readiness for use for the intended purpose; or
- Strata lot - Earlier of (a), (b) or date of first occupation
- Occurs with or without certification

Payment certifier’s certification of substantial completion

Within 10 days of request by contractor or subcontractor, determine completion and, if completed, issue a Certificate of Completion

Within seven days of issuance of a Certificate of Completion, deliver a copy of the Certificate and post a Notice of Certification of Completion



Certification issues

- Certificate and Notice forms
- Accuracy and completeness
- Certificate of Completion effective as of the date of issuance
- Holdback release searches – Land Title Office and Supreme Court Registries (Shimco)

Design professionals' liability

- Knowledge of Builders Lien Act and advice
- Client compliance with Builders Lien Act
- Certification of payment, completion and holdback release

Design professionals' liens

- Security remedy
- Legal right to lien
- Design vs. field services
- No holdback from architects or engineers
- No liens by subconsultants

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Thank you. Any questions?