



CLYDE & CO

Builders Lien Issues for Design Professionals

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CIVL 402



Cornerstones 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

- Forty five (45) days for lien filing; and
- Fifty five (55) days for holdback release

Triggering events

- Issuance of certificate of completion of a contract or subcontract
- 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 ten (10) days of request by contractor or subcontractor:

- determine completion; and
- if completed, issue a **Certificate of Completion**

Within seven (7) 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



480

Partners

2,400

Lawyers

5,000

Total staff

3,200

Legal professionals

60+

Offices worldwide*

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