

— TRUSTED LEGAL ADVICE —



Builders Lien Issues for Design Professionals

SHK



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— 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

- 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 –
 1. Head contract, contract or subcontract - 3-2-1 percentage of cost to complete formula
 2. Improvement or a substantial part - Use or readiness for use for the intended purpose; or
 3. 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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ASSOCIATE COUNSEL



Since 1982, Marc has practiced extensively in the area of construction law, focusing on builders liens, tendering disputes, the preparation and analysis of contract documents and construction-related litigation.



PRACTICE AREAS

- Bonding
- Builders Liens
- Construction



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