

A photograph of a construction site featuring several tall yellow tower cranes and a building under construction with extensive scaffolding. The sky is a clear, light blue. The text 'CLYDE & CO' is positioned in the upper right corner.

CLYDE & CO

BUILDERS LIEN ISSUES FOR DESIGN PROFESSIONALS

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CE 402 -October 28, 2021

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 –

- 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
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- 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



440

Partners

1,800

Lawyers

4,000

Total staff

2,500

Legal professionals

50+

Offices worldwide*

www.clydeco.com

QUESTIONS?

*includes associated offices