

Prompt Payment & Adjudication

New rules for Alberta's construction industry

Builders' Lien (Prompt Payment) Amendment Act

The Government of Alberta has approved changes to the *Builders' Lien Act* to address payment issues in Alberta's construction industry.

The goal is to reduce the need for liens and court actions, unlock cash flow, and provide certainty to this multi-billion-dollar sector of Alberta's economy.

The changes align with the modernized approaches of other Canadian jurisdictions.

Standardized billing practices

Invoices must be paid within 28 days

Parties to a contract retain the right to develop their own terms. However, the legislation will now require that general contractors must issue a proper invoice to project owners every 31 calendar days and, once issued, payment from the project owner must be received within 28 calendar days. Once payment is received, contractors must pay their own subcontractors within seven calendar days.

Under the new legislation, parties will not be allowed to opt out of payment timelines, and will have 14 calendar days from the receipt of an invoice to dispute it. If a dispute cannot be resolved, it can be brought to a formal adjudication process.

Interest will be allowed to accrue on any unpaid amount included in an invoice from the time it is due.



Establishing adjudication

Judgments will be binding

Currently, the construction industry in Alberta does not have a formal adjudication process, and payment disputes are routinely resolved through the courts.



Once implemented, the new legislation will establish an adjudication system to resolve payment disputes. The Minister of Service Alberta will appoint Authorized Nominating Authorities (ANAs), which will in turn appoint qualified, third-party adjudicators to resolve payment disputes in the construction industry.

The ANAs will assign disputes to adjudicators, whose judgments would be binding on all parties. Regardless of the adjudication outcome, parties will retain the option to file a lien with Service Alberta's Land Titles Office and enforce the lien through an action with the Alberta Court of Queen's Bench.

Applications to the adjudication system will require a reasonable fee, which will pay for costs of the adjudication services. These fees will be established in accompanying regulations that will be drafted in the coming months. Other details, such as requirements for adjudicator qualifications, will be refined during the regulation development process as well.

Modernizing holdbacks

Parties determine when holdbacks on multi-year projects may be released

Currently, a 10 per cent payment holdback is required for all construction projects to protect against lien claims being filed with Service Alberta's Land Titles Office. Holdbacks are typically released after 45 calendar days following completion of work, but are often held longer.

The new legislation mandates the release of holdbacks at pre-set times, without risk to a project owner, for multi-year projects. The use of pre-set release points (annually or as pre-determined project milestones are reached) will alleviate the necessity of retaining holdbacks to protect against liens for long periods, as well as the need to use lien holdbacks for non-permitted purposes.

Filing a lien

Lien filing period extended to 60 days

Currently, contractors and subcontractors who are owed at least \$300 have 45 calendar days after they have completed work or provided materials to file a lien against a construction project (parties in the oil and gas industry have 90 days).



Once in force, the lien filing period will increase to 60 calendar days after completion of work or materials provided for standard construction jobs, where the minimum amount owing is \$700 (parties in the concrete industry would have 90 days, as with oil and gas).

What's in a name?

Other minor changes

The government has changed the name of the *Builders' Lien Act* to the *Prompt Payment and Construction Lien Act*. This change more accurately reflects the intention of the law, and the industry to which it applies.

The legislation includes other minor procedural changes to:

- allow any person involved with a project or contract (not just the lienholder, as is currently the case) to request a statement of accounts from the general contractor or project owner; and
- reorganize the legislation into three thematically consistent parts to make it more user-friendly: prompt payment, adjudication, and registration of liens.

What's Next?

The proposed legislation was tabled in the Alberta Legislature on October 21, 2020 and passed third reading on November 26, 2020.

Service Alberta will work with industry experts to develop regulations and intends to bring the new rules into force in July 2021.

The new rules will not apply to contracts drafted and signed under the existing rules. They will only apply after the legislation is proclaimed (currently targeting July 2021).

The new rules will not apply to contracts with the Government of Alberta, which will continue to be governed by the *Public Works Act*. However, the Government of Alberta will continue to hold itself to the standards of prompt payment that are proposed in the new legislation.