

Prompt Payment and Construction Lien Act

On August 29, 2022, Bill 37: The Builders' Lien (Prompt Payment) Amendment Act, 2020 came into effect in Alberta. The need for a stronger legal framework in the construction industry prompted these legislative changes, as it would increase reliability and consistent payments for all parties involved in a construction project.

Overview and Key Changes

The new act, called Prompt Payment and Construction Lien Act (the PPCLA or the Act) will introduce timelines and rules for payments and liens in all construction industry sectors, which ensures both contractors and subcontractors to be paid on time. Alberta will be the third province in the country to implement the prompt payment and adjudication system in its lien legislation.

Previously, Alberta had no rules for payment timelines in the construction industry, which meant these timelines were vague if not addressed in a contract. These changes will set a clear timeline of 28 calendar days for general contractors to receive payments, and seven calendar days after payment is received for contractors to pay subcontractors, giving construction industry professionals the confidence they need to operate successfully.

Other key changes from this act includes:

- A seven-day timeline for contractors to pay subcontractors after receiving payment
- Extension of timelines for registering liens:
 - For construction industry: from 45 days to 60 days
 - For concrete industry: from 45 days to 90 days
- An increase of the minimum amount owed that can be subject to a lien from \$300 to \$700
- Dispute resolution through adjudication, which is faster and less costly than going to court
- New rules allowing holdback money on large, multi-year projects to be released without risks at pre-set times
- Improvement of subcontractors' access to payment information

Who is Affected?

For anyone who performs work, provides services, or furnished goods or materials with respect to an "improvement in land", this legislation is directly applied, and must comply to the new legislation. This may include working groups like owners, developers, consultants (architects and professional engineers who are providing consulting services), and home builders.

Notably, provincial government projects that are governed by the Public Works Act are exempt from the PPCLA as the legislation is not intended to apply to projects using the public-private partnership delivery method.

Transition Period

The legislation does not affect contracts and subcontracts entered before the legislation took effect.

If, however, the contract is scheduled to remain in effect for longer than two years after the new Act, the contract must be amended and updated by the two-year mark (August 29, 2024) so that the new provisions can apply to the contract.

For any new contract entered into after the date of the new Act, (August 29, 2022), must follow and conform to the new provisions.

Adjudication

Adjudication is a dispute resolution process typically used outside of court. It describes the legal process that helps expedite and deliver a court's resolution regarding an issue between two parties.

Adjudication becomes mandatory when one party to the contract or subcontract issues a notice of adjudication to the other contracting party with whom it has a dispute.

Typically, issues involving valuation of work or services and materials finished under a contract/subcontract, or issues involving non-payment would be the subject of an adjudication. Other matters of dispute in relation to the contract/subcontract may be adjudicated if both parties agree to do so.

An adjudicator is appointed by a Nominating Authority and presides over an adjudication.

Conclusion

The construction industry in Alberta will go through many procedural changes that have been around for years. The PPCLA introduces many significant changes that will require participants to carefully review their contracts and internal processes to ensure they comply with the new provisions.

If you have any specific questions to your business, or would like additional information about the Prompt Payment and Construction Lien Act, please reach out to your Lloyd Sadd advisor.

References:

"Introducing Prompt Payment for Construction Industry." Alberta.ca, <https://www.alberta.ca/introducing-prompt-payment-for-construction-industry.aspx>.

"An Overview of Alberta's Prompt Payment and Construction Lien Act." BLG, <https://www.blg.com/en/insights/2022/07/overview-of-albertas-prompt-payment-and-construction-lien-act#checklist>.

"Construction Law Reform: Prompt Payment, Adjudication, and Modernization." Gowling WLG, <https://gowlingwlg.com/en/topics/construction-law-reform/>.

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Edmonton: 1.800.665.5243

Calgary: 1.866.845.8330

Kelowna: 1.800.665.5243

lloydsadd.com

navacord.com

info@lloydsadd.com

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