ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Practice Guideline: Builders Lien Act – Considerations for Architects

August 2026

1.0 The Builders Lien Legislation

1.1 The *Builders Lien Act*, SBC 1997, c. 45 (the "*Act*", the "legislation" or the "statute") has been in effect since 1997. The full statute is available from the provincial government: bclaws.ca/civix/document/id/complete/statreg/97045_01

1.2 An essential regulation under the *Act*, the *Builders Lien Forms Regulation,* B.C. Reg. 1/98, can be found here: bclaws.gov.bc.ca/civix/document/id/complete/statreg/10_1_98

1.3 Another important regulation under the *Act* is the *Builders Lien Public Bodies Holdback Exemption Regulation*, B.C. Reg. 265/98: bclaws.gov.bc.ca/civix/document/id/complete/statreg/265_98

1.4 Capitalized terms in this document are defined terms in the AIBC Bylaws and have the same meaning.

2.0 Scope, Implications and Practical Recommendations

2.1 The purpose of this Practice Guideline is to give a general idea of the rights and responsibilities which flow from the most important provisions in the *Act* and inform Architects about recommended practice.

2.2 This guideline's scope is reserved for those aspects of the *Act* likely to be of direct and ongoing interest and value to Architects and their Clients, as well as to builders whose construction contracts are administered by Architects. Its focus is on providing both 'hard' information as well as general advice with respect to practical and professional issues. However, this guideline should not be relied on as a substitute for the legislation itself, which in many areas is complex, ambiguous, and not conducive to summarization. **These guidelines do not constitute legal advice to Architects, Clients or other parties. Architects and others should consult their legal advisors in relation to builders' liens as the circumstances warrant.**

3.0 Ambit

3.1 The *Act* is designed to provide contractors, subcontractors, consultants, suppliers and workers with security, in the form of an interest in the land and improvements they have been working on, until they have been paid in full for their services and materials. Without the *Act*, these claimants would

need to rely on their contractual rights, generally by initiating a lawsuit or alternative resolution based on the contract. The ultimate remedy available to lien claimants who remain unpaid is court-supervised sale of the lands.

3.2 The *Act* benefits most of those who contract to perform or to provide work or to supply material in relation to an 'improvement' and the lien security it creates is capable of attaching to nearly all registered or equitable interests in land, including for example, to secondary interests such as leases. There are exceptions: interests of the federal Crown cannot be liened, and neither can highways or roads; and provincial Crown and municipal lands, while lienable, cannot be sold to satisfy liens (although money judgments are available against Crown and municipal owners instead).

> Under the *Act*, an 'improvement' includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunneling, filling, grading or ditching of, in, on or under land.)

4.0 Consultants' Lien Rights

4.1 Architects and engineers who have a 'prime' consulting contract with an owner, or who are engaged directly by a contractor, have lien rights for their services. There are two important caveats to an Architect's lien rights. First, Architects or engineers who are engaged by each other have no lien rights as against the other. Secondly, and crucially, British Columbia's courts[1] have ruled that Architects' lien rights are contingent upon construction having commenced. In other words, there must be a 'physical improvement' on the land in order for an Architect's lien rights to crystallize.

> Under the *Act*, 'services' includes services as an Architect or engineer whether provided before or after the construction of an improvement has begun. Case law, however, has established that some physical construction or 'improvement' is required on site before lien rights for services can be acted upon. The *Act* defines improvement to mean:
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> > anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;

[1] See *Chaston Construction Corp. and Werner Foster Architects v. Henderson Land Holdings (Canada) Ltd.*, 2002 BCCA 357 (CanLII) https://www.canlii.org/en/bc/bcca/doc/2002/2002bcca357/2002bcca357.html?autocompleteStr=henderson%20land&autocompletePos=2

4.2 Under the statute and for its purposes, payments made by their Clients to Architects or engineers are not deemed to be in trust and those payments are not subject to any holdback. Accordingly, no one (including an employee and/or a sub-consultant) who provides work or supplies material to an Architect or an engineer has a corresponding lien right.

5.0 Holdback Percentage

5.1 Owners and contractors must retain holdbacks equal to 10 percent of all amounts earned under contract or subcontract. This is the legal minimum requirement to satisfy builders liens exposure and is not to be confused with so-called 'deficiency' holdbacks under construction contracts, which are separately aggregated amounts of money withheld for purposes of correcting or completing the work. It is important to note that the purpose of a lien holdback is **not** to address incomplete work or deficiencies – these are distinct holdbacks and concepts.

> Under the *Act*, a 'contractor' means a person (excluding a worker) engaged by an owner; a 'subcontractor' means a person (excluding a worker or a person engaged by an Architect, engineer or a material supplier) engaged by a contractor or another subcontractor...in relation to an improvement...to perform or to provide work or to supply material.

6.0 Multiple Holdbacks

6.1 All unpaid lien holders who claim under the same contractor or subcontractor are entitled to share *pro rata* in a fund equal to the greater of (a) the amount owing to the contractor or subcontractor by the person who engaged the contractor or subcontractor, and (b) the 10 percent holdback in relation to the contract between the contractor or subcontractor and the person who engaged the contractor or subcontractor. This compartmentalizes the claims and denies lower-tiered claimants access to higher-tiered holdbacks. In this way the holdbacks are simultaneously a method of securing a lien holder's payment, as well as a method of limiting an owner's (or contractor's) financial exposure in the event that an intermediate party has diverted funds or become insolvent.

7.0 Lien Filing Deadline

7.1 Determining the date by which a lien must be filed depends on the method of project delivery. If a single contractor – called in the *Act* a 'head contractor' – has been engaged to do substantially all the work, the lien filing deadline is 45 days after the earliest of:

(a) substantial completion of the head contract;

(b) termination of the head contract;

(c) abandonment of the head contract;

(d) issuance of the prescribed 'Certificate of Completion' for the head contract;

(e) issuance of the prescribed 'Certificate of Completion' for any subcontract under which the lien claimant is claiming; and

(f) for strata lots only: the date the strata lot is sold by the developer or is occupied.

7.2 If project delivery is by construction management, with multiple contracts with the owner and no head contractor, the lien filing deadline is 45 days after the earliest of:

(a) substantial completion of the improvement (meaning that a substantial part of it is in use or ready for use for the purpose intended);

(b) abandonment of the improvement;

(c) issuance of the prescribed 'Certificate of Completion' for any contract or subcontract under which the lien claimant is claiming; and

(d) for strata lots only: the date the strata lot is sold by the developer or is occupied.

7.3 Architects who are fulfilling the role of 'payment certifier' for a contract or subcontract (see discussion below) will find themselves responsible under the *Act* for preparing a 'Certificate of Completion' in a prescribed form. The text is Form 3 in the *Builders Lien Forms Regulation*, link noted at the beginning of this guideline. Issuance of this certificate (which may or may not be the same certificate required by the construction contract) is the most common trigger for the 45-day lien filing period. For a certificate to have this effect, however, it cannot have been generated unilaterally: it must have been the subject of a specific request from the contractor or subcontractor. Furthermore, it is the date of *issuance* which triggers the lien and holdback periods, not the date the certificate is prepared. Finally, it is important to realize that if actual completion (according to the definitions in the *Act*; see discussion below) has already occurred, the issuance of a certificate will not extend the lien and holdback periods.

7.4 Lien filing (which takes place at the Land Title Office) is relatively inexpensive. However, filing is only the first step in perfecting the claim. If a lawsuit to enforce the lien is not initiated within one year (or within 21 days of a demand from the owner or another lien claimant), the lien will be automatically extinguished.

7.5 If a lien is filed on a Project, Architects providing payment certifier services are cautioned to provide those services in strict accordance with the *Act* and are advised to seek practice advice and/or legal advice if uncertain as to their correct course of action. Architects must advise their Clients (owners) to seek legal advice in the resolution of the lien and must not 'take sides' in legal disputes between owners, contractors, and subcontractors. Refer to Professional Standard 9.3 in Schedule A: Code of Ethics and Professional Conduct in the AIBC Bylaws.

8.0 Holdback Trust Account

8.1 Both owners and contractors have obligations to retain lien holdback monies from all payments to contractors and subcontractors. Owners are required to take the further step of actually depositing the monies into a dedicated trust account (one per contract). Failure to do so creates a default which would entitle the contractor, after 10 days' notice, to suspend operations without penalty. Interest on the holdback monies accrues to the benefit of the owner until expiry of the holdback period; thereafter, to the contractor.

8.2 The holdback trust account provisions do not apply:

(a) when the project owner is the provincial government or a designated public body; or

(b) to a contract with respect to an improvement with aggregate value below $100,000.00; or

(c) to subcontracts or sub-subcontracts.

> Under the *Act*, the *Builders Lien Public Bodies Holdback Exemption Regulation*, lists the entities that are exempted from the requirement to open a holdback account. It includes local governments, school boards, colleges and universities, and others.

8.3 Administration of holdback trust accounts is the joint responsibility of the owner and contractor (not the Architect).

9.0 Payment Certifier

9.1 The *Act* introduces this term to represent whomever (under contract or subcontract) is designated to undertake the responsibility for certifying completion status. The *Act* specifically notes that "an architect, engineer or other person" may be named in the contract or subcontract as the individual responsible for payment certification (see section 7(1)).

9.2 If the matter has not been addressed in the contract, the default rule is that the payment certifier will be (a) the owner acting alone in respect of amounts due to the contractor, or (b) the owner and the contractor acting together in respect of amounts due to any subcontractor.

> Under the *Act*, "completed" means substantially completed or performed, not necessarily totally completed or performed.

9.3 The *Act* contains additional duties and responsibilities which may not be included in the standard Client-Architect Contract for payment certification, such as those having to do with: multiple holdbacks; formula for determination of completion; progressive release of subcontracts' holdback components (necessitating certification of subcontracts' completion); time lines for certification; and communicating completion. Good record-keeping and observance of required response deadlines are always recommended practices, but especially so with regard to statutory obligations (and consequences for failure to comply) under the lien legislation relative to third parties (i.e. contractors and subcontractors). The payment certifier for the prime contract need not necessarily be the payment certifier for any subcontract thereunder. Architects may take on the role of payment certifier for the prime contract as well as payment certifier for subcontracts, however, are cautioned that the additional payment certification role under subcontracts *may* require considerable administrative resources, and brings added liability exposure, not contemplated in 'basic services' under standard Client-Architect Contracts.

9.4 What is common practice is for the Architect to act as the payment certifier for the prime contract, and the head contractor and owner acting together as the payment certifier for the subcontracts.

9.5 The role of payment certifier, whether under the standard prime contract role or prime and additional subcontracting payment certification is not to be acquired by default but, rather, by specific inclusion in the Client-Architect Contract. Architects are cautioned to avoid limited roles and scopes of service not consistent with the obligations of the payment certifier under the *Act*. For example, issuing only a 'Certificate of Completion' at the request of an owner or contractor when not having acted as payment certifier throughout the project.

10.0 Formula for Determination of Completion

10.1 The *Act* sets out a simple formula for determining whether a 'head' contract, contract (or subcontract) is substantially performed. In order to qualify, the extent of work remaining must be evaluated as being capable of completion or correction at a cost of not more than 3 percent of the first $500,000.00 of the contract plus 2 percent of its second $500,000.00 plus 1 percent of the balance.

10.2 The intention of a 'threshold formula' is to prevent premature or frivolous applications for completion, and to make it easier to anticipate and calculate a valid application. Equally, however, Architects are cautioned that missing or defective items, even if by themselves small or apparently inexpensive, may well (if not properly supplied, installed, reviewed and tested) jeopardize the performance of an improvement or a substantial part of it, especially with regard to matters of public safety, health or welfare. It may well be the case that the certification of completion for contract purposes or permit purposes will require a completely different analysis than certification of completion for lien purposes, and that the certifications take place on different dates. There is no requirement that one certificate must suit all purposes.

10.3 Note that for purposes of the statute, an improvement is completed if it or a substantial part of it is ready for use or is being used for the purpose intended. This definition is important to the calculation of lien filing and holdback release deadlines where project delivery is by construction management, as set out above.

11.0 Holdback Release

11.1 If a 'Certificate of Completion' is issued with respect to a contract, the relevant lien holdback may be safely released 55 days thereafter (unless a search has revealed liens on the owner's title, in which case the holdback should be retained). Even in the absence of a certificate, the holdback is technically due for release 55 days after: (a) the head contract meets the statutory definition of 'complete', or has been abandoned or terminated, if the owner engaged a head contractor; or (b) the improvement is completed or abandoned, if paragraph (a) does not apply.

11.2 The *Act* also provides for progressive release of the owner's holdback from the contractor. The payment certifier, upon application from that subcontractor, is required to review and certify completion of that subcontract's work, thereby triggering (at the appropriate later date) the release (by the contractor) of that subcontract's holdback (10 percent of its value), 55 days after the certificate's issuance. The statute provides the payment certifier with a right to information to assist determination of subcontract performance

11.3 Architects acting as payment certifiers should make sure their scope of services in the Client-Architect Contract is clear, particularly with respect to whether or not they are providing payment certification services for the head contract alone, or the head contract as well as the subcontracts.

11.4 In order to properly certify completion of a subcontract, an Architect must be aware of the subcontract's terms; the statute requires that a subcontract's terms be made known. As a practical matter, however, on some projects for which the contractual chain is not characterized by integrated, standard, consistent and equitable conditions, an Architect might discover that unusual, unwritten or contradictory terms exist. In such cases, taking on the role of payment certifier may be unwise, given that there may be no reasonable means to fairly judge such an arrangement's performance, let alone in a timely fashion, and likely not without higher and perhaps unnecessary risk exposure. Furthermore, it is highly recommended that the standard General Condition 3.6 of CCDC-2-2020 be used and relied upon, so that any review and certification with respect to any subcontract is based upon that subcontract's terms being those of its 'parent' contract, and so stated and agreed.

11.5 An Architect would also have to know the actual price (and scope) of the subcontract, as opposed to the 'schedule of values' normally provided under the 'parent' contract against a breakdown of the work. Those values do not necessarily represent subcontracts and commonly include apportioned amounts attributable to the 'parent' contractor's general conditions, profit and overhead. It is strongly recommended that schedules of values be required to be prepared by the 'parent' contractor which accurately represent the subcontracts' prices, upon which the Architect is entitled to and will rely.

> Under the *Act*, the contractor is obligated to reveal actual subcontract prices to the payment certifier.

11.6 Regarding subcontracts which encompass work that is largely or wholly of an engineering nature (e.g., structural steel; mechanical system; emergency generator supply), there are several reasonable approaches. The Architect could, simply, not undertake to be the payment certifier for those subcontracts; the likely candidate(s) would then be the project's Professional Engineer(s) of the appropriate discipline(s), under agreement with the owner. On the other hand, under a general contract through which the Architect is the payment certifier, the Architect would rely significantly upon the pertinent Professional Engineer.

11.7 Finally, it is possible to receive numerous applications for 'Certification of Completion' by every subcontractor, generating considerable additional costs and administrative burden with tight, coincidental deadlines. In practical terms this is neither intended nor realistic and, by potentially overloading the payment certifier(s), would be counter-productive. The subcontracts which can reasonably expect to obtain separate 'Certification of Completion' (and progressive release of their holdback) are relatively few, encompassing (typically) those clearly in and done quite early (e.g., excavation); large structural systems around a project's middle (e.g. structural steel; framing); and the occasional stand-alone item. For the most part, the mechanical and electrical works are intimately connected with each other and require testing and commissioning at the end of the project. The finishing trades tend to come together, similarly, and the project's overall completion is effectively dependent upon and simultaneous with such determination.

12.0 Timelines for Certification

12.1 There are specific requirements regarding the allowable lapse of time (10 days) within which a payment certifier is obliged to respond to an application (from a contractor or subcontractor) for certification of completion. The *Act* is quite elaborate in setting out a payment certifier's obligations (and corresponding timelines) as to responses to request from lien holders for any of the payment certifier's completion certificates' particulars, along with a payment certifier's associated liability exposure with respect to loss or damage arising out of failure to exercise properly the administrative duties relating to certification.

> Under the *Act*, a 'lien holder' means a person entitled to a lien; i.e. not necessarily a 'lien claimant', which means a person who files a claim of lien.

13.0 Communication Completion

13.1 The payment certifier for a contract or subcontract is required to deliver copies to relevant parties and to post conspicuous notice regarding that contract's or subcontract's being certified complete, within 7 days of having certified completion (or be exposed to liability, similarly). The payment certifier is not obliged to publish an advertisement of completion, although an owner may request that an Architect provide this service.

14.0 Contract Considerations

14.1 Provincial legislation such as the *Act* cannot be overridden by an agreement between parties. It is important to use forms of agreement or contract that are either specifically consistent with, do not contradict, or that are silent in relation to the statute, which will govern and apply in any case. A review of some of the more familiar, industry-standard documents in relation to the *Act* follows – note that this is not a complete comparison of agreements as against the statute.

Client-Architect Contracts: AIBC 6C, AIBC 6C-H and RAIC 6

14.2 The scope of the Architect's basic services thereunder in the administration of construction refers to and contemplates review and certification of the work, i.e. one general (head) contract for the total construction and related services required by the contract documents.

Construction Contracts: CCDC 2-2020 Stipulated Price Contract and CCDC 3-2016 Cost Plus Contract

14.3 This national standard owner/contractor form of contract (the terms of reference of which are consistent with those of the standard/endorsed Client-Architect Contracts) specifically acknowledges the fact that there is relevant, differing legislation in each province and makes provisions for addressing builders lien holdback The contract states "Substantial Performance of the Work is as defined in the lien legislation applicable to the Place of Work". As such, it defers to the *Act*, and its definition of 'completion'. Again, as with the above-noted Client-Architect Contracts, the consultant's responsibilities contemplate a single general (head) contractor and review/certification of the work, identically defined as the total construction and related services required by the contract documents. Under General Condition 5.4 in CCDC 2-2020, payment of the builders lien holdback for the contract is done once, triggered by 'completion' of the work per the *Act,* as discussed in section 10 of this guideline.

14.4 The foregoing observations generally apply to CCDC 3, the cost-plus form of agreement as well.

CCDC 5A-2025, 5B-2025 and 17-2026 Construction Management Contracts

14.5 Commonly delivered in a construction management format or in an owner-builder context, each separate contract must be handled on its own merits and each attracts its own holdback trust account, unless so exempted by its characteristics under the *Act*.

CCDC 14-2026 Design-Build Stipulated Price Contracts

14.6 If the design/builder (under contract with an owner) is the project's Architect (or one of its engineers), the *Act's* holdback provisions do not apply. Should the Architect (or the engineers) be subcontracted to the design/builder, however, while there is no holdback respecting their earnings under such subcontract(s) from the design/builder, the builders lien holdback provisions apply to the 'parent' design/build contract with the owner, in full.

15.0 Professional Ethics and Legal Obligations

15.1 Notwithstanding the facts that: (i) an Architect who is a prime consultant (i.e., engaged by a Client and who in turn hires subconsultants to fulfill part(s) of the primary obligation) is not subject to builders lien holdback; and (ii) those subconsultants are not entitled to lien the client's property; it remains so that:

(a) an Architect nonetheless has a legal obligation to pay a subconsultant monies due under the agreement between them; and

(b) an Architect with such a legal obligation and who has been paid by the Architect's Client on account of the subconsultant's earnings, nonetheless, has also an ethical duty to pay the corresponding monies to the subconsultant (see Professional Standard 7.5 in AIBC Bylaws Schedule A: Code of Ethics and Professional Conduct).

15.2 Architects are reminded that their decisions when reviewing construction for conformance must be rendered impartially; they must keep apprised of laws applicable to the practice of their profession; and must take such laws into account (see Professional Standards 4.1 and 9.3 in AIBC Bylaws Schedule A: Code of Ethics and Professional Conduct). In doing so, Architects may rely on the advice of other knowledgeable professionals and qualified persons. Architects are encouraged to obtain legal advice and to consult with their professional liability insurers.

16.0 Additional Resources

16.1 The standard references on contract administration are:

- RAIC *Canadian Handbook of Practice for Architects* (available from www.raic.org)
- CCDC 20-2024 *Guide to Construction Contract Administration* (available from the AIBC)
- CCDC 23-2018 *A Guide to Calling Bids and Awarding Contracts* (available from the AIBC)
- CCDC 24-2022 *A Guide to Model Forms and Support Documents* (available from the AIBC)
- Construction Specifications *Canada Construction Contract Administrator Manual* (available from Construction Specifications Canada at csc-dcc.ca)

16.2 Feedback on this Practice Guideline is welcome and should be directed to PracticeAdvice@aibc.ca.

Practice Guideline Amendment History

2026 August 6 – Reviewed. Updates to documents and Bylaw references, minor clarifications.

2019 October – Updated. Renamed Practice Guideline: Builders Lien Act – Practice Guideline for Architects, formerly Practice Note. New graphic template.

1998 January – First edition, Issued as Practice Note 9: Builders Lien Act – New Legislation & Implications; in response to changes to the *BC Builders Lien Act 1997*

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