

# Prompt Payment & Adjudication

New rules proposed for Alberta's construction industry

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## *Builders' Lien (Prompt Payment) Amendment Act*

The Government of Alberta is proposing 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 in this multi-billion-dollar sector of Alberta's economy.

The proposed 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, including when an invoice may be issued. However, the government is proposing that once a proper invoice has been issued, payment must be received within 28 calendar days.

Parties would not be allowed to opt out of payment timelines, and would have 14 calendar days from the receipt of an invoice to dispute it.

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



If a dispute cannot be resolved it could be taken to a formal adjudication process.

## 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.



The government is proposing to establish an adjudication system to resolve payment disputes. The Minister of Service Alberta would appoint Authorized Nominating Authorities (ANAs), who would in turn appoint qualified third-party adjudicators to resolve payment disputes in the construction industry.

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

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

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<https://www.alberta.ca/introducing-prompt-payment-for-construction-industry.aspx>

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## 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 in order to protect against lien claims being filed with Service Alberta's Land Titles Office. Holdbacks are released after 45 calendar days following completion of work, but are often held longer.

The government is proposing to allow the release of holdbacks at pre-set times, without risk to a project owner, for multi-year projects. Using pre-set release points (i.e. annually or as pre-determined project milestones are reached) will alleviate the necessity of retaining holdbacks to protect against liens for long periods or for using 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 completion of work to file a lien against a construction project (parties in the oil and gas industry have 90 days).



The government is proposing to extend the lien filing period to 60 calendar days after completion of work 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).

## Ending 'pay-when-paid'

### 'Pay-when-paid' clauses prohibited

Currently many construction contracts in Alberta include 'pay-when-paid' clauses, which allow contractors to withhold payment to subcontractors until the contractor has received payment. This unfairly transfers the risk of payment default to the subcontractor.

The government is proposing to end this practice. 'Pay-when-paid' clauses will be legally prohibited from construction contracts in Alberta.

## What's in a name?

### Other minor changes proposed

The government is proposing to change the name of the *Builders' Lien Act* to the Prompt Payment and Construction Lien Act. This change will more accurately reflect the intention of the law, and the industry to which it applies.

The government is proposing 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.
- to 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 October 21, 2020. It will be debated during the fall 2020 legislative session.

If the legislation passes, Service Alberta will work with industry experts to develop regulations. Service Alberta intends to bring the new rules into force during 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.