

Information Available under the *Construction Act*

Well informed is well armed under the *Construction Act*. Without key information, obligations can go unfulfilled and rights can be lost forever. Accordingly, the *Act* makes information available through either mandatory publication in the *Daily Commercial News* or in response to a request made in accordance with its provisions. With the new *Construction Act*, the scope and detail of information that parties must publish in the *Daily Commercial News* or be made available on request has been greatly enhanced. All of the entitlements and obligations set out below are those that apply under contracts procured or entered into after October 1, 2019. These must be read in the context of the portions of the *Act* they relate to. Searches of the *Daily Commercial News* may be conducted on-line.

RE: Lien Rights and the Holdback

- to assist them to determine who plays what role in an improvement, which versions of the *Construction Act* apply and when their lien rights will expire, Contractors and Subcontractors are entitled to request the following information:
 - (from a party to a contract/subcontract) the names of the parties, the contract/subcontract price and the date the contract/subcontract was entered into;
 - (from the Owner or Contractor) the date on which any applicable procurement process was commenced;
 - (from the Owner or Contractor) if the contract provides that liens arise and expire on a lot-by-lot basis;
 - (from a Contractor) the date the certificate of substantial performance was published (although searching the *Daily Commercial News* on-line would be more timely);
 - (from a Contractor or Subcontractor) whether a subcontract is required to be, or has been, certified as complete (which is important information for sub-Subcontractors and cannot be obtained through a search of the *Daily Commercial News* as such certificates are not required to be published); and
 - (from a Contractor or Subcontractor) whether the contract provides that payment shall be based on the completion of specified phases or milestones.

- In addition, publication of the following in the *Daily Commercial News* is mandatory:
 - a certificate of substantial performance of a contract, which will commence lien expiry timeframes in relation to the basic holdback for all liens that have not previously expired;
 - a notice of non-payment of holdback by the Owner, specifying the amount of holdback the Owner refuses to pay; and
 - a notice of termination of a contract setting out the date a contract has been terminated. (Care should be taken as the Owner or any person whose lien is subject to expiry can publish the notice and as the lien timeframes commence to run from the date set out in the notice and *not* from the date of publication).

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RE: the Proper Invoice

- to assist Subcontractors to determine when timeframes for prompt payment are triggered under the Act, Subcontractors may ask the Contractor to confirm the date upon which the Contractor gave a proper invoice to the Owner.

RE: Status of Accounts, Mortgage Advances and Leases

- to assist parties in assessing the quantum of the holdback, potential lien recovery and the potential for a trust claim, Contractors and Subcontractors can request the following:
 - the price of the services or materials supplied, the amounts paid the balance owed and the applicable holdbacks under a contract or subcontract;
 - which amounts paid under the contract or subcontract constitute leasehold improvement payments;
 - any amount a payor is alleging as a set-off or backcharge against amounts owing under a contract or subcontract;
 - the dates and amounts of advances and any arrears owing under a mortgage;
 - whether a mortgage was given to finance the improvement and, if it was also given to purchase the land, the amount advanced under the mortgage for each of purpose; and
 - from a landlord whose interest in a premises is subject to a lien, the names of the parties to the lease, the amount payable under the lease to pay for the improvement and the amounts actually paid in that regard.

RE: Bonds

- from an Owner, Contractor or Subcontractor, as applicable, a copy of any labour and material payment bond posted in relation to the improvement.

RE: New Homes, Subdivision and Condo Improvements

- in addition to requesting if the contract provides that liens will arise on a lot-by-lot basis, and towards determining if lien rights will be lost against the land as new home buyer's take title upon the close of an agreement of purchase and sale:
 - anyone with lien rights may request, from the Owner, the name and address of the purchaser it intends to sell the premises to, the sale price, the amount of the purchase price paid or to be paid by the Owner prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale; and
 - an Owner of a premises who intends to register its description as a condominium must publish a notice of that intention in the *Daily Commercial News* at least 5, but no more than 15, days before the description is submitted for condominium approval under the *Condominium Act*.