

## Lien Preservation Timeframes under the July 1, 2018 Changes

### **The July 1, 2018 Threshold**

The lien timeline changes apply under contracts procured or entered into after July 1, 2018 (with the exception, due to a legislative quirk, of those procured or entered into before December 6, 2018 where a lease was registered against the Premises). A contract is deemed to have been “procured” when the procurement process commences. Examples of a “procurement” process includes a call for tenders, an RFP, an RFQ or a “request for qualifications”. The date a *subcontract* was procured or entered into is irrelevant: it is the date the contract was procured or entered into that governs.

### **Lien Timeframes: Contractor**

- under the **prior provisions**, the lien of a **Contractor** expires if not preserved **45 days** following the completion or abandonment of the Contract or (as regards the lien against the basic holdback) the publication of a certificate of substantial performance;
- under the **new provisions**, the lien of a **Contractor** expires if not preserved **60 days** following the completion, abandonment **or termination** of the Contract or (as regards the basic holdback) the publication of a certificate of substantial performance. Termination occurs when any person whose lien is subject to expiry publishes a notice of termination in (currently) the *Daily Commercial News*. There is (currently) no requirement under the *Act* for the notice to be sent to any other party (although there may, and should, be such a requirement set out in the contract and subcontracts). The 60 day timeframe for lien expiry on termination is from the date of termination set out in the published notice, and **not from the date of publication**. This makes timely notice of the termination even more important. The validity of the termination can be contested where it was improper (for example where there were insufficient grounds for termination or where a contractual notice provision was not followed).

### **Lien Timeframes: SubContractor**

- under the **prior provisions**, the lien of a **Subcontractor** expired **45 days** following the subcontract’s deemed completion, the Subcontractor’s last supply of services or materials or the publication of a certificate of substantial performance (as regards the lien against the basic holdback). Under the new *Act*, the timeframe is **60 days**.

### **Lien Timeframes: When an Adjudication has been Commenced**

- notwithstanding the above, if a lien has not expired and the subject of the lien is before an adjudicator under the *Act*, the lien expiry will be extended until 45 days after the adjudicator receives the claimant’s documents under s. 13.11 of the *Act*.

### **Other Considerations: re Lien Expiry**

- the time to **perfect** a lien has been extended from 60 to **90 days** under the new *Act*;
- Contractors and Subcontractors may be asked to sign a binding declaration of last supply. Anyone signing such a declaration should be sure their work is complete and insist that any new work be formally done under a new contract or subcontract;
- claimants should be aware that they may effectively lose their lien rights against the land on new home and condominiums improvements on a unit by unit basis as the sale of units close or if the contract provides that liens arise on a lot by lot basis. Claimants should also be aware, at the bid stage, that if the sole ‘Owner’ of an improvement is a mere tenant of the Premises, their liens will most likely not attach to the actual land.