

**Presentation to  
The Construction Design Alliance Ontario**

**Bill 142, the *Construction Lien  
Act Amendment Act, 2017***

**Bill 142**  
**Construction Lien Act Amendments**  
**Website “Hub”**



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**Construction Lien Act Amendments:**  
**MODERNIZING THE ACT**

## Lien periods extended

- s. 31(3): Longer lien “preservation” period – 60 days
- s. 36(2): Longer lien “perfection” period – 90 days

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- No need to file lien by (or to check title on) 45<sup>th</sup> day
  - Do you have the cash flows for the extra 15 days?
  - Do you contracts need to be updated?
  - Are your lien “trackers” updated?

## Holdback Changes

- ss. 26/27: Mandatory release of holdback at end of lien period by all payers
- s. 27.1: Owner must publish a notice of non-paying if not paying the full amount of the holdback
  - must publish notice no later than 40 days after publication of certificate of substantial performance

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- Extra 20 days to settle disputes and avoid stand-off
  - Check and update your contracts
  - Check *Daily Commercial News* on 40<sup>th</sup> day

## Holdback – Release on Phases or Annually

➤ s. 26.1/26.2: Owner can release of holdback on an annual basis or on a phased basis for large projects

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- Does the contract expressly allow for this (it must)
  - Is the contract price for \$10,000,000 or more
  - Are there any liens?

## Multiple Improvements treated as separate contracts

- s. 2(4): Multiple improvements under a contract can be deemed to be under separate contracts, if:
  - improvements are on non-contiguous lands
  - contract expressly allows for it

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- Impacts lien periods and expiration of lien rights for improvements
  - Impacts determination of substantial performance and completion
  - Impacts holdback release dates
  - How does this impact supplies and subcontracts?

## New trust accounting rules

- s. 8.1(1): trust funds must be deposited in trust account and trustee must follow trust accounting rules

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- No change to creation of basic trust obligation
  - Need to set up a trust account
  - Single trust account is acceptable; no need for separate trust account for every project
  - trust funds to be segregated and traceable, as much as possible
  - What is the impact on your bank loans? On your borrowing base and financial covenants to lenders?
  - Take your fees out of trust account or leave in?



## New Bonding Requirements for Public Sector

- s. 85.1: Mandatory 50% performance bond and 50% labour & material payment bond on public projects where contract price is above \$500,000

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- Can you get a bond?
  - Have you factored in additional cost in pricing model?
  - Need to review the prescribed form of bond
  - Will you pass this down to subcontractors?
  - For “Master Agreement” type contracts, consider taking advantage of new multiple improvements section (s. 2(4))

# CLA Amendments – Modernizing the Act

## Heavier Use of Forms

- 18 new forms created
- New “Notice of Lien” form

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- Update documents, contracts and forms

## Other relevant changes

- Recognizes the PPP/AFP delivery model and practice
- s. 16: Liens do not attach to premises of a municipality [in force October 1, 2019]
- s. 12/s. 17(3): Set-offs allowed, but only if related to same improvement
- s. 19: Automatic lien rights for tenant improvements
- s. 31(6): If owner or contractor terminate, a notice of termination must be published in a construction trade newspaper
- s. 34(2): Liens do not attach to public highways
- s. 34(9): Notice of lien on condominiums to be given to condominium corporation and unit owners in prescribed form

## Other relevant changes

- s. 35: liability for exaggerated, false claims for lien if claim is wilfully exaggerated, not just grossly
- Part VIII: Summary procedure changes and other dispute/claims process changes
  - e.g., can combine lien, trust and contract dispute claims
  - small claims court
  - case management
- Various technical amendments
  - e.g., substantial performance certificates (32(2)), written notice of lien (defined), vacating lien requirements (44(3.1)), requests of information (39)

## Bill 142 Modernization “To Do” List

- Review and update template contracts and supplementary conditions
- Review and update forms
- Set up a trust account
- Implement trust accounting/record keeping protocols
- Consider bondability for public projects and pricing models
- Change payment timelines for holdback

*And while you are doing that...*

- Get ready for prompt payment and adjudication**


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