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FIRST READING

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MS. MARY POLAK

BILL M 223 – 2019
BUILDERS LIEN (PROMPT PAYMENT) AMENDMENT ACT, 2019

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 of the Builders Lien Act, S.B.C. 1997, c. 45 is amended by adding the following definition:

"proper invoice" means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and, subject to section 7.3 (2), meets any other requirements that the contract specifies:

(a) the contractor's name and address;

(b) the date of the proper invoice and the period during which the services or materials were supplied;

(c) information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied;

(d) a description, including quantity where appropriate, of the services or materials that were supplied;

(e) the amount payable for the services or materials that were supplied, and the payment terms;

(f) the name, title, telephone number and mailing address of the person to whom payment is to be sent; and

(g) any other prescribed information; **.**

2 The following sections are added:

Subject to holdback requirements

3.1 A requirement to pay an amount in accordance with sections 3.3, 3.4 and 3.5 is subject to any requirement to retain a holdback in this Act.

Giving of proper invoices

3.2 (1) Proper invoices shall be given to an owner on a monthly basis, unless the contract provides otherwise.

(2) A provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner's prior approval is of no force or effect.

(3) For greater certainty, subsection (2) has no application to a provision in a contract that provides for the certification of a payment certifier or the owner's approval after a proper invoice is given.

(4) Subsection (2) does not apply to a provision in a contract that provides for the testing and commissioning of the improvement or of services or materials supplied under the contract.

(5) A proper invoice may be revised by the contractor after the contractor has given it to the owner, if,

(a) the owner agrees in advance to the revision;

(b) the date of the proper invoice is not changed; and

(c) the proper invoice continues to meet the requirements referred to in the definition of "proper invoice" in section 1.

Payment deadline, owner to contractor

3.3 (1) Subject to the giving of a notice of non-payment under subsection (2), an owner shall pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice from the contractor.

(2) An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice within the time specified in subsection (1) if, no later than 14 days after receiving the proper invoice from the contractor, the owner gives to the contractor a notice of non-payment, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing all of the reasons for non-payment.

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice under subsection (2).

Payment deadlines, contractor to subcontractor

3.4 (1) Subject to the giving of a notice of non-payment under subsection (6), a contractor who receives full payment of a proper invoice within the time specified in section 3.3 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor.

(2) Subject to the giving of a notice of non-payment under subsection (6), if the payment received by the contractor from the owner is only for a portion of the amount payable under a proper invoice, the contractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice from the amount paid by the owner.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

(a) if the amount not paid by the owner is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the owner in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable;

(b) in any other case, subcontractors shall be paid on a rateable basis.

(4) Subject to the giving of a notice of non-payment under subsection (5) or (6), if the owner does not pay some or all of a proper invoice within the time specified in section 3.3 (1), the contractor shall, no later than 35 days after giving the proper invoice to the owner, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2).

(5) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (7), the contractor gives to the subcontractor, in the prescribed manner,

(a) a notice of non-payment, in the prescribed form,

(i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the owner,

(ii) specifying the amount not being paid, and

(iii) providing an undertaking to refer the matter to adjudication no later than 21 days after giving the notice to the subcontractor; and

(b) a copy of any notice of non-payment given by the owner under section 3.3 (2).

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than,

(a) seven days after receiving a notice of non-payment from the owner under section 3.3 (2); or

(b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4).

(8) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (5), once the amount is paid by the owner.

Payment deadlines, subcontractor to subcontractor

3.5 (1) Subject to the giving of a notice of non-payment under subsection (7), a subcontractor who receives full payment from a contractor in respect of a proper invoice within the time specified in section 3.3 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor.

(2) Subject to the giving of a notice of non-payment under subsection (7), if the payment received by the subcontractor from the contractor is only for a portion of the amount payable to the subcontractor in respect of a proper invoice, the subcontractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice from the amount paid by the contractor.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

(a) If the amount not paid by the contractor is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the contractor in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.

(b) In any other case, subcontractors shall be paid on a rateable basis.

(4) Subject to the giving of a notice of non-payment under subsection (6) or (7), if the contractor does not pay some or all of the amount payable to a subcontractor in respect of a proper invoice within the time specified in section 3.4, the subcontractor shall, no later than the date specified in subsection (5), pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2).

(5) For the purposes of subsection (4), the subcontractor shall pay the amounts no later than,

(a) seven days after the subcontractor receives payment from the contractor; or

(b) if no payment is made by the contractor to the subcontractor, 42 days after the proper invoice was given to the owner.

(6) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (8), the subcontractor required to pay under subsection (4) gives to the other subcontractor, in the prescribed manner,

(a) a notice of non-payment, in the prescribed form,

(i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the contractor,

(ii) specifying the amount not being paid, and

(iii) unless the failure of the contractor to pay is as a result of non-payment by the owner, providing an undertaking to refer the matter to adjudication no later than 21 days after giving the notice to the subcontractor; and

(b) a copy of any notices of non-payment received by the subcontractor in relation to the proper invoice.

(7) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (8), the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than,

(a) seven days after receiving a notice of non-payment from the contractor under section 3.4 (5) or (6); or

(b) if no notice was given by the contractor, before the expiry of the period referred to in subsection (5) (b).

(9) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (6), once the amount is paid by the contractor.

(10) On the request of a subcontractor who is required to make payments in accordance with this section, a contractor shall, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

(11) This section applies, with necessary modifications, in respect of a subcontractor who is entitled to payment in accordance with this section and any amounts payable by that subcontractor to any other subcontractor under a subcontract in respect of the improvement.

Reasons for non-payment

3.6 Reasons for non-payment in accordance with sections 3.3, 3.4 and 3.5 may include the retention of amounts under section 12 *[set-off by trustee]* or under section 17 (3) *[lien set-off].*

No effect on wages

3.7 Nothing in sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages as provided for by statute, contract or collective bargaining agreement.

Interest on late payments

3.8 Interest begins to accrue on an amount that is not paid when it is due to be paid under sections 3.3, 3.4 and 3.5, at the prejudgment interest rate determined under section 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.

Commencement

3 This Act comes into force by regulation of the Lieutenant Governor in Council.

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