

# Certificates of Completion: You're (Probably) Doing it Wrong

Certificates of completion are crucial documents in the construction industry. They start lien periods running and ultimately enable contractors and subcontractors to obtain their holdback payments. Despite the important role played by certificates of completion, payment certifiers (usually the project's architect, engineer, owner, or contractor as specified in the contract) often do not follow the correct process. If the certificate of completion process is not completed properly, the certificate is not worth the paper it is printed on. The following "Issues" highlight the common pitfalls at each step of the process and suggests best practices which will ensure your certificates of completion are unimpeachable.

## ARTICLE I. ISSUE 1: THERE MUST BE A REQUEST

A certificate of completion cannot be issued unilaterally. Section 7(3) of the *Builders Lien Act*, SBC 1997, c 45 (the "Act") states that the payment certifier must issue a certificate of completion "on the request of a contractor or subcontractor." The best practice is to require a written request from the relevant contractor or subcontractor via email to ensure that there is a dated record of that request.

## ARTICLE II. ISSUE 2: USE THE CORRECT FORM FOR THE CERTIFICATE

Section 7(10) of the Act states that the certificate of completion may be in the prescribed form and that if the certificate is in the prescribed form, it is sufficient to comply with the Act. The prescribed form can be found in the *Builders Lien Forms Regulation*, B.C. Reg. 1/98 which is accessible online.<sup>1</sup> Even though a different form that contains the same information could be acceptable, there is no reason to deviate from the prescribed form. The best practice is to use the prescribed form to ensure that you comply with the Act.

In terms of the content of the certificate, the certificate of completion must not be backdated – meaning the date on the document cannot be earlier than the actual date at the time of filling it out. The courts have been clear that the process of issuance is not complete unless there is some communication of the document.

## ARTICLE III. ISSUE 3: DELIVER THE CERTIFICATE

Once the payment certifier determines that the certification of completion should be issued, section 7(4)(a) of the Act states that the payment certifier must, within 7 days, deliver a copy of the certificate to the owner, the head contractor (if there is one), and the person at whose request the certificate was issued. Again, best practice is for the payment certifier to deliver that certificate by email to ensure that there is a dated record of that delivery.

## ARTICLE IV. ISSUE 4: DON'T FORGET THE NOTICE OF CERTIFICATION OF COMPLETION!

The most common mistakes relating to certificates of completion are:

- (1) failing to complete the notice of certification of completion in addition to the certificate of completion itself, or
- (2) not using the correct form for the notice.

<sup>1</sup> [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/10\\_1\\_98](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_1_98)

The notice of certification of completion is defined in section 1 of the Act as a notice in the prescribed form stating that a certificate of completion has been issued. The prescribed form can be found in the *Builders Lien Forms Regulation* which is accessible online (see above). The form set out in that regulation is the form that must be used as the notice of certification of completion.

#### **ARTICLE V. ISSUE 5: POST THE NOTICE OF CERTIFICATION OF COMPLETION CORRECTLY**

Section 7(4)(c) of the Act requires that the payment certifier post the notice of certification of completion "in a prominent place on the improvement". It is crucial to note that the improvement is the actual thing being built. It is not acceptable to post the notice of certification of completion in a site office or on the site trailer; it must be posted on the actual improvement. Best practice would be to post it as close to the front door as possible.

#### **ARTICLE VI. ISSUE 6: DOCUMENT AND DELIVER THE NOTICE OF CERTIFICATION OF COMPLETION**

To ensure that there is no issue establishing that the notice of the certification of completion was posted, we recommend documenting it by taking a series of photographs of the notice from close up, and then from progressively further away to show clearly where it was posted. Best practice would be to then email those photographs to the owner, head contractor (if any), and party who requested the certificate of completion to establish a dated written record of the notice of certification of completion having been posted.

#### **ARTICLE VII. CHECKLIST SUMMARY:**

Use the following checklist when you are issuing a certificate of completion:

- Written request from person requesting the certificate of completion
- Certificate of completion in the prescribed form
- Email or letter delivering the certificate of completion to the owner, the head contractor (if there is one), and the person who requested the certificate of completion, including a copy of the certificate of completion.
- Notice of certification of completion in the prescribed form
- Photograph(s) of where the notice of certification of completion was posted on the improvement
- Email photographs of the notice of certification of completion to the owner, the head contractor (if there is one) and the person who requested the certificate of completion