



British
Columbia
Construction
Association

GUIDE TO THE CLOSEOUT OF CONSTRUCTION CONTRACTS & PROJECTS



Developed and Endorsed by the British Columbia Construction Association with the support of legal counsel

Read this Guide in conjunction with BCCA's "A Guide to the Builders Lien Act"

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203-3531 Uptown Blvd.
Victoria, BC V8Z 0B9

bccassn.com

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GUIDE TO THE CLOSEOUT OF CONSTRUCTION CONTRACTS AND PROJECTS

INTRODUCTION

The purpose of this Guide is to provide general guidance to help facilitate closing stages of a construction contract and closeout of a project, including compliance with the BC Builders Lien Act, release of Holdback funds and the Ready-for-Takeover milestone, which was introduced in CCDC **2-2020**. This Guide is meant to be an educational tool for contractors and subcontractors. It can also be a valuable resource for Owners and Consultants. Readers are strongly encouraged to review BCCA's "A Guide to the Builders Lien Act" in conjunction with this Guide.

Much of the Guide content has application regardless of project delivery method and form of CCDC contract being used. However, this Guide makes the following assumptions:

1. In use is a design-bid-build project delivery method and a CCDC **2-2020** stipulated price contract is the prime contract.
2. The contract being administered is a CCDC contract without substantive modification by Supplementary Conditions.
3. Construction contract administration is the Consultant's responsibility and they act as *Payment Certifier*.

Where this is not the case, and where necessary, the Guide should be interpreted accordingly.

As of this Guide's publication date, other CCDC contracts may not yet include the *Ready-for-Takeover* milestone, as was implemented in CCDC **2-2020**. In recognition that this Guide is intended for application on a variety of different types of CCDC contracts, in the event the *Prime*

Contract Documents do not include the *Ready-for-Takeover* milestone, references to *Ready-for-Takeover* in this Guide can be considered to be references to *Substantial Performance of the Work*, with the guidance adapted appropriately. This approach is adapted from the CCA **1-2021** Stipulated Price Subcontract.

In CCDC contracts, "[t]he law of the *Place of the Work* shall govern the interpretation of the *Contract*." (CCDC **2-2020** – GC **1.2.1**). As such, this document references the BC *Builders Lien Act* (referred to throughout this Guide as "the BLA") as the requirements of the BLA form an integral part of a project's closeout. The requirements and obligations set out in the BLA take precedence over any *Contract* language: you cannot contract out of or override BLA requirements.

Readers should refer to CCDC and CCA guides for additional advice, in particular CCDC **20** and CCDC **24 – 2022 A Guide to Model Forms and Support Documents**.

As and if required, readers should seek qualified construction legal advice since every project is significantly fact dependent and various statutory and contractual clauses must be reviewed.



Acknowledgements

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BCCA gratefully acknowledges that we live and work on the unceded traditional and ancestral homelands of hundreds of Indigenous Peoples and Nations across British Columbia, each with their own unique traditions, history and culture. Thank you.

Notice to the Reader

Throughout the Guide, readers should make note of the intentional effort to use 'shall', 'will,' 'must' and 'should' as follows:

- *Shall*: denotes a *Statutory ▲* requirement under the Builders Lien Act and as such, cannot be modified by a *Contract ●*.
- *Must/will*: denotes a *Contractual ▲* requirement under a standard CCDC or CCA *Contract ●*.
- *Should*: denotes a *Best Practice ▲* to assist in *Closeout ▲*.

In this Guide, "Contractor", "prime contractor" and "Head Contractor" may be used interchangeably and denote

the same meaning. The Contract between the Owner and the Contractor is colloquially referred to as the "prime" contract because the contracting parties are the Owner of the Project and the Prime Contractor.

Exclusion of Liability

The BC Construction Association, including but not limited to its officers, directors, members, consultants or contributors, will not under any circumstances assume any liability whatsoever for the use, misuse or reliance upon this Guide, or any information contained therein or omitted there from. Individuals and entities reading this Guide shall exercise their own judgment with regards to the contents and will irrevocably assume any risks or liabilities attaching thereto.

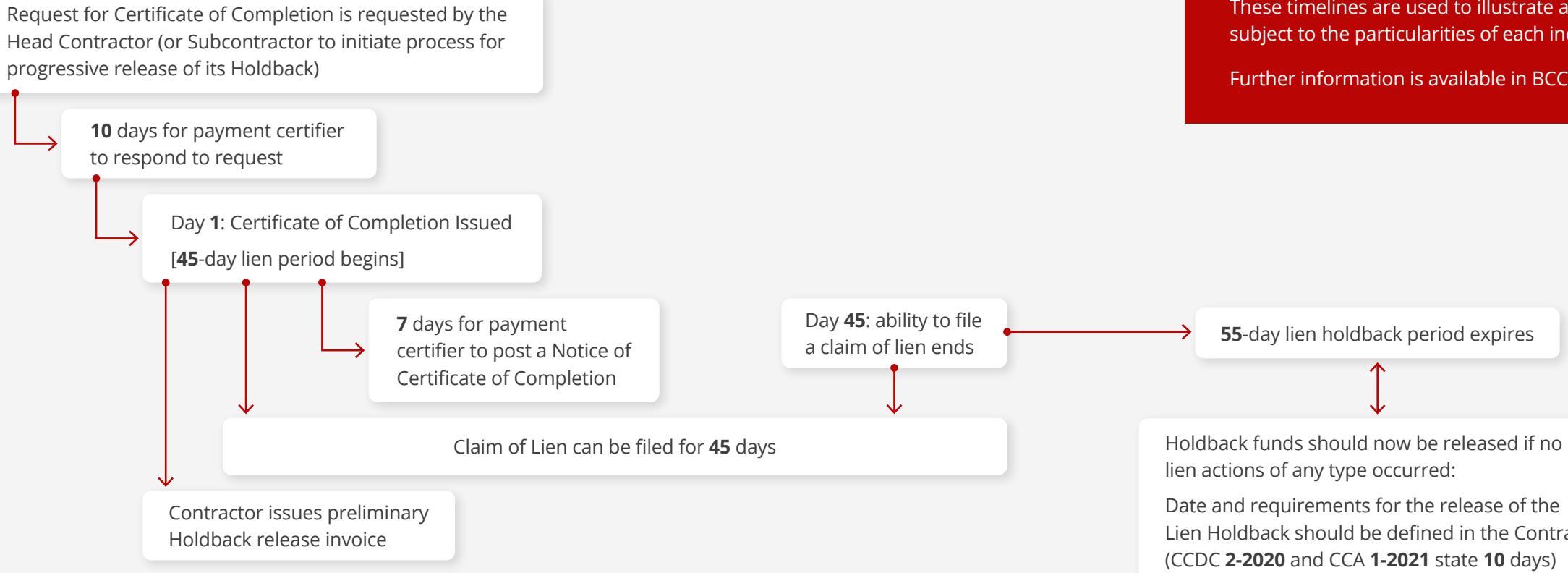
Definitions

Words have meaning and they matter in our industry. Every defined term is capitalized, italicized and colour-coded to illustrate to what type of concept they refer. To assist with accessibility, symbols appear after the defined term. Where there is overlap between definitions, the definition as it relates to the discussed topic is used. Refer to Appendix A for definitions.

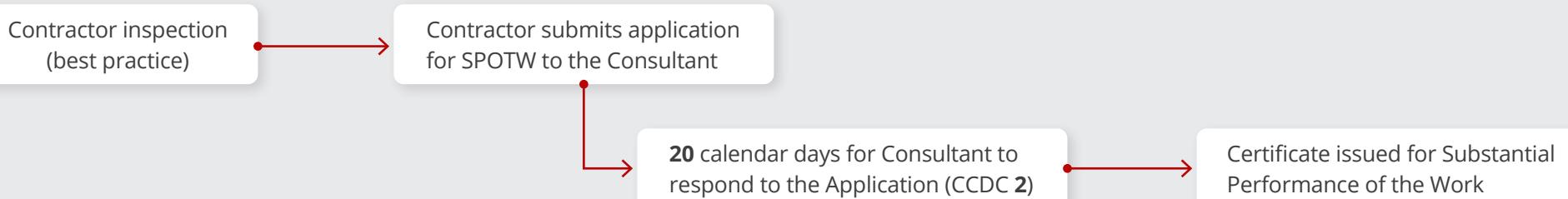
Blue ▲	Specific to this Guide
Green ♦	Builders Lien Act ("BLA")
Orange ●	CCDC 2-2020

TIMELINE OF ACTIVITIES

Statutory: Builders Lien Act Timelines



Contractual: Substantial Performance of the Work Timeline (subject to contract terms)



Contractual: Ready for Takeover Timeline (subject to contract terms)



NOTICE TO READER

These timelines are used to illustrate a typical scenario and are subject to the particularities of each individual project and Contract.

Further information is available in BCCA's Lien Act Guide.



BCCA believes it is a Best Practice to complete both your Contractual and Statutory obligations separately. This is because there are likely different timelines, different certificates to be issued and most critically, different requirements.

CHART: STATUTORY AND CONTRACTUAL ACTIVITIES

ACTIVITY	Statutory	Contractual
ACTIVITY 1: Read the Contract(s)		✓
DEEPER DIVE 1.1: Project Start-Up Best Practices for Project Closeout	✓	✓
DEEPER DIVE 1.2: Substantial Performance of the Work & the BLA	✓	✓
DEEPER DIVE 1.3: The Right to Information	✓	
ACTIVITY 2: Contractor's Inspection for Substantial Completion Under the BLA	✓	
ACTIVITY 3: Contractor's Request for Certificate of Completion Under BLA	✓	
ACTIVITY 4: Use of Deficiency Holdbacks		✓
ACTIVITY 5: Issuance of the Certificate of Completion	✓	
DEEPER DIVE 5.1: Statutory Obligation of the Payment Certifier to Respond	✓	
DEEPER DIVE 5.2: How Do You Know?	✓	
ACTIVITY 6: Subcontractors and the Progressive Release of Lien Holdback	✓	✓
DEEPER DIVE 6.1: Best Practices When Requesting Progressive Release of Holdback Funds	✓	✓
ACTIVITY 7: Timeline and Payment of Lien Holdback Funds	✓	
DEEPER DIVE 7.1: Timeline to Release Holdback Funds		✓
DEEPER DIVE 7.2: Submitting the Holdback Release Invoice		✓
ACTIVITY 8: Contractor's Inspection for Substantial Performance of the Work		✓
ACTIVITY 9: Application for Substantial Performance of the Work		✓
ACTIVITY 10: Contractor's Inspection for Ready-for-Takeover		
ACTIVITY 11: Application for Ready-For-Takeover		✓
DEEPER DIVE 11.1: Operations and Maintenance ("O&M") Manuals		✓
ACTIVITY 12: Ready-for-Takeover Confirmation		✓
DEEPER DIVE 12.1: Insurance and Closeout		✓
DEEPER DIVE 12.2: Early or Partial Occupancy by the Owner		✓
ACTIVITY 13: Final Inspection for Closeout of Project		✓
DEEPER DIVE 13.1: Deferred Work		✓
ACTIVITY 14: Warranty-Guarantee Period(s)		✓
DEEPER DIVE 14.1: Written Confirmation of Early Startup		✓

ACTIVITY 1

READ THE CONTRACT(S)

It will take time, but it is of critical importance to read fully and understand every contract you intend to execute. Readers are encouraged to review BCCA's [Read Your Contract](#) tips.

You should always read supplementary conditions.

For *Subcontractors* ● and *Suppliers* ●, you should always read the *Prime Contract* ▲ and its supplementary conditions when a flow-down or incorporation-by-reference clause is included in the subcontract.

- The prime *Contractor* ● or *Owner* ● may raise concern or object to sharing the prime *Contract* ● with *Subcontractors* ●. This concern is misplaced since every *Subcontractor* ● has a right to review and consider a *Prime Contract* ▲ where the *Prime Contract* ▲ is incorporated-by-reference into a subcontract. *Subcontractors* ● should demand disclosure of a *Prime Contract* ▲ that is incorporated into a subcontract, prior to bidding the *Work* ● or providing a bid, even if such *Prime Contract* ▲ can only be shared with financial information redacted.

As a *Best Practice* ▲, refer to and re-read the *Contract* ● throughout the Project. All of the *Contractor's* ● management personnel, including project managers, coordinators and the superintendent should read and be familiar with all of the *Contract Documents* ●.

Read fully and understand every contract you intend to execute.

Critically, the BLA and your contract are only as good as the implementation of their terms and conditions. Read your contract but also use your contract.

DEEPER DIVE 1.1: Project Start-Up Best Practices for Project Closeout

Creating the lien *Holdback* ♦ account and establishing the *Closeout* ▲ criteria are all tasks that should be undertaken at the start of the *Project* ●. Where applicable, create a lien *Holdback* ♦ account (s5.1 (a)) for the lien *Holdback* ♦ funds as required by

the Builders Lien Act and ensure Builders Lien Act amounts held back from each progress payment are paid into the account. Government entities for instance are not required to create a trust account at a financial institution. However, they shall still retain the **10%** BLA lien holdback.

Working collaboratively in accordance with the BLA and the *Contract Documents* ●, the *Owner*, *Consultant* ●/*Payment Certifier* ♦ and *Contractor* ● should:

1. At the *Project's* ● kick off meeting, the *Contractor* ● should add *Project* closeout as an agenda item to initiate its planning.
2. Submit all documentation required for project startup under the *Contract Documents* ●. As a *best practice* ▲, establish if any of the *Owner's* ● Requirements have changed since the *Contract* ● was signed. Reviewing and confirming the *Closeout* ▲ milestones at the onset of a project can highlight any schedule concerns, issues with *owner* ● supplied items or requests for early occupancy, so they can be addressed early, before they impact *closeout* ▲.
3. Establish value of *Contract* ● completion requirements (if not already in *Contract Documents* ●) such as *Deficiency Holdback* ▲ values of manuals, commissioning, education, certificates and contractor schedules (design professional services by the *Contractor* ●), etc. As a *Best Practice* ▲, *Contractors* ● and *Subcontractors* ● should ask for this clarity early.
4. The schedule of values, see GC 5.2 Applications for Payment, are an opportunity for the *Contractor* ● to establish the value of *Closeout* ▲ items, such as O&M manuals and other prerequisites for *Ready-for-Takeover* ● and *Closeout* ▲. While not binding, they can provide helpful backup documentation during the *Closeout* ▲ process.
5. *Subcontractors* ● should request and receive the contact information of the *Payment Certifier* ♦.
6. Parties should review or establish warranty start date criteria. *Owners*, *Consultants* ●, *Contractors* ● and *Subcontractors* ● should examine and review individual warranties to confirm they are consistent and compatible.
7. *Contractors* ● and *Subcontractors* ● should ensure there is a clear timeline in the *Contract Documents* ● for the release of lien *Holdback* ♦ funds.

DEEPER DIVE 1.2: Substantial Performance of the Work & the BLA

In section **1(1)** of the BLA, "Completed" is a defined term. In the BLA there are two interpretations of "substantially performed" in section **1(2)** and **1(4)**. These are not the same as *Substantial Performance of the Work* ●.

<i>Substantial Performance of the Work</i> ●	= <i>Contractual</i> ▲
<i>Certificate of Completion</i> ♦	= <i>Statutory</i> ▲
Release of <i>Holdback</i> ♦ funds	= <i>Contractual</i> ▲

Substantial Performance of the Work ● and the requirements to obtain a *Certificate of Completion* ♦ per BLA are two different milestones: one is *Contractual* ▲, the other *Statutory* ▲. On some projects, this may occur concurrently or at different times.

In some contracts where the BLA is cross-referenced with the *Contractual* ▲ requirements of *Substantial Performance of the Work* ●, such as CCDC 2-2020, this may occur concurrently. In the CCDC 2-2020, the definition of *Substantial Performance of the Work* ● is defined as lien legislation in BC. However, *Contractors* ● should carefully review any supplementary conditions as this maybe altered.

As a *Best Practice* ▲, *Contractors* ● should submit two separate written requests for each of these two milestones: *Substantial*

Performance of the Work ● and the *Certificate of the Completion* ♦ as per the BLA. For instance, these requests would require two separate emails to be sent.

- This is recommended because supplementary conditions frequently include additional requirements to achieving Substantial Performance of the Work, such as requiring statutory declarations.

DEEPER DIVE 1.3: The Right to Information

Section **41** of the BLA clearly lays out the right to information that a lien holder can request. The *Owner* ♦ also has rights to request information. *Contractors* ♦ and *Subcontractors* ♦ should review and use these rights to ensure they are well-informed. This section requires a response within **10** days after the day the request is delivered.

Deeper Dive 1.4: Giving Timely Notice

As you apply for or request certification for the various milestones, ensure you give timely notice to the Consultant, Payment Certifier or Owner. They may need to schedule in those inspections or reviews, and while there may be stipulated timelines for their completion, it is respectful of their time and most importantly, help you achieve the milestones as quickly as possible.

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ACTIVITY 2

CONTRACTOR'S INSPECTION FOR SUBSTANTIAL COMPLETION UNDER THE BLA

As a *Best Practice* ▲ leading up to the request for *Substantial Completion* ♦, the *Contractor* ♦ should initiate a list for its own use to identify work to be corrected or completed.

This will assist the *Contractor* ♦ in determining if it meets the

requirement of the BLA for achieving substantial completion.

Subcontractors ♦ should also follow this guidance if seeking a *Certificate of Completion* ♦ when looking for progressive release of its *Holdback* ♦ funds.

ACTIVITY 3

CONTRACTOR'S REQUEST FOR CERTIFICATE OF COMPLETION UNDER BLA

When the *Contractor* ♦ believes that the *Statutory* ▲ requirements under the BLA have been met regarding contract completion, the *Contractor* ♦ shall then make a written request to the *Payment Certifier* ♦ for a *Certificate of Completion* ♦ as prescribed by the BLA.

1. The format or a specified form for this request is not identified in the BLA.
2. As a *Best Practice* ▲, *Contractors* ♦ may wish to provide

reasonable additional information to the *Payment Certifier* ♦.

3. The BLA does not require additional information with respect to the request for the *Certificate of Completion* ♦.

This request should include a statement to the *Payment Certifier* ♦ to the effect that the contract is complete as per the requirements of the BLA.

Refer to the BCCA "A Guide to the Builders Lien Act" for sample requests.



As a *Best Practice* ▲, deficiency management is an ongoing process throughout the course of a *Project* ●. Correcting non-conforming and deficient *Work* ● as it arises can assist greatly with *Closeout* ▲. *Consultants* ●, as the administrator of the *Contract* ●, should be noting deficient work as they inspect the *Work* ●, through the issuance of field reports or other written documentation.

The *Contract* ● may establish a *Deficiency Holdback* ▲:

- This is entirely separate and distinct from the 10% *Statutory* ▲ lien *Holdback* ♦ required by the BLA and must be administered separately.

It is typically understood that the *Owner* ● will withhold funds for deficient work equal to the value of deficient work. If an *Owner* ● wishes to use a *Deficiency Holdback* ▲, it should be included in supplementary conditions as it is not included in CCDC contracts. Two times the value of the deficient work is typical. However, the *Contract* ● may not always be the end of the story. Common law rights of set-off (i.e., “judge-made law”) may entitle an *Owner* ● to retain funds for deficiencies, even if the *Contract* ● is silent.

In the opinion of BCCA, a *Deficiency Holdback* ▲ is determined at the time the *Owner* ● is ready to occupy the improvement and/or *Ready-for-Takeover* ●.

It is important to note that incomplete work and deficient work are not the same and should not be conflated. In the opinion of BCCA, a *Deficiency Holdback* ▲ should not include incomplete work. This is because it is not deficient work, it simply has not been completed yet. This may be interpreted differently in *Contract Documents* ●.

As recommended in Activities 8 and 10 in this Guide, the *Contractor* ●, as a *Best Practice* ▲, should review the *Work* ● to identify work needing correction or completion ahead of any *Statutory* ▲ or *Contractual* ▲ milestone applications, such as *Substantial Performance of the Work* ● or *Ready-for-Takeover* ●. Such a list is also required as part of the Contractor’s application for Ready-for-Takeover (see Activity 11.)

The *Consultant* ● should review the deficiencies and incomplete work identified by the *Contractor* ● with its application for

Ready-for-Takeover ●. If the *Consultant* ● identifies additional items, they should be listed by the *Consultant* ● and provided to the *Contractor* ●.

Along with the recognition of deferred work (such as seasonal items), this list should be recognized as the only deficiency list for purposes of completion of the *Work* ● under the *Contract* ●. Contractors should ask for this agreement in writing. These deficiencies should be corrected by a date mutually agreed between the *Contractor* ● and the *Owner* ●, in consultation with the *Consultant* ●, unless a specific date is required by the *Contract* ●.

Subject to any supplementary conditions, the *Owner* ● should make monthly progress payments from the *Deficiency Holdback* ▲ on completed deficiencies. This is in order to be fair to all *Subcontractors* ● and *Suppliers* ● and considers deferred/seasonal work.

The *Owner* ●, without contractual entitlement to do so, should not hold back 100% of payments due and owing for deficiencies valued at a lesser amount. For example, in the event the deficiency holdback is \$25,000.00, then the *Owner* ● cannot, without express *Contract* ● language to the contrary, withhold a \$100,000.00 payment that is rightfully due and owing. In the opinion of BCCA, the *Owner* ● should in the previous example release \$75,000.00.

The Contract may establish a Deficiency Holdback: This is entirely separate and distinct from the 10% Statutory lien Holdback required by the BLA and must be administered separately.

ACTIVITY 5

ISSUANCE OF THE CERTIFICATE OF COMPLETION

If the *Payment Certifier* ♦ determines that the *Contract* ♦ is substantially performed or complete as per the BLA, the *Payment Certifier* ♦ shall issue a *Certificate of Completion* ♦, or provide reasons for its refusal to do so. The *Certificate of Completion* ♦ shall be completed by the *Payment Certifier* ♦ on Form 3.

In construction, the most common date used to determine if a *Contract* ♦ is complete is the issue of a *Certificate of Completion* ♦.

Within **10** days of the date of the request from the *Contractor* ♦ (or *Subcontractor* ♦):

1. If a certificate of completion is issued: the *Payment Certifier* ♦ shall set out in the *Certificate of Completion* ♦ the date on which the requirements of the BLA were achieved.
2. If a *Certificate of Completion* ♦ is NOT issued: In the event that the *Contractor's* ♦ application for performance *Certificate of Completion* ♦ under the BLA is not accepted by the *Payment Certifier* ♦, the *Payment Certifier* ♦ shall advise the *Contractor* ♦ in writing why it is not accepted. The *Contractor* ♦ shall complete the work necessary to achieve completion as per the BLA and the *Contractor* ♦ shall submit a subsequent request for *Certificate of Completion* ♦ thereafter. The same timelines apply as above.

Within **7** calendar days of the issuance of the *Certificate of Completion* ♦:

The Subcontractors (and any lien holder) have a Statutory right to contact the Payment Certifier to request particulars of any certificate of completion information. Refer to s7(2) of the BLA.

1. The *Payment Certifier* ♦ shall give a copy of the *Certificate of Completion* ♦ to the *Owner* ♦ and to the *Contractor* ♦.
2. The *Payment Certifier* ♦ shall post in a prominent place at the project site a Notice of Certification of Completion in Form **2** prescribed by the BLA and deliver copies of the Notice of Certification of Completion to any persons who requested copies under subsection **7(2)** of the BLA.

Refer to the [BCCA Lien Act Guide](#) for more detailed information. A similar process outlined above also applies to *Subcontractors* ♦ requesting their *Certificate of Completion* ♦.

DEEPER DIVE 5.1: Statutory Obligation of the Payment Certifier to Respond

The steps described above must be undertaken by the Payment Certifier when a request is received. Otherwise, they are liable. This applies to subcontracts as well.

Per s7 Certificate of Completion in the BLA:

- (8) A payment certifier who receives a request under subsection (3) and who fails or refuses, without reasonable excuse and within the time specified in that subsection, to issue a certificate respecting the contract or subcontract is liable to anyone who suffers loss or damage as a result.
- (9) A payment certifier who fails or refuses to comply with subsection (4) or (7) is liable to anyone who suffers loss or damage as a result.

DEEPER DIVE 5.2: How Do You Know?

The *Subcontractors* ♦ (and any lien holder) have a *Statutory* ▲ right to contact the *Payment Certifier* ♦ to request particulars of any certificate of completion information. Refer to [s7\(2\) of the BLA](#).

As a *Best Practice* ▲, the *Contractor* ♦ should notify all *Subcontractors* ♦ when its *Contract* ♦ has had its *Certificate of Completion* ♦ issued. Similarly, *Subcontractors* ♦ should notify their sub-subcontractors.

As a *Best Practice* ▲, *Subcontractors* ♦ should be proactive and contact the *Contractor* ♦ to see if and when the *Certificate of Completion* ♦ is anticipated to be issued by the *Payment Certifier* ♦.

ACTIVITY 6

SUBCONTRACTORS AND THE PROGRESSIVE RELEASE OF LIEN HOLDBACK

There is often an opportunity to start the release of the *Subcontract* ♦ lien *Holdback* ♦ funds prior to the completion of the *Contractual* ▲ obligations of the head *Contract* ●. As described in this Guide, *Statutory* ▲ and *Contractual* ▲ requirements are different.

To begin the process to progressively release *Holdback* ♦ funds, a *Subcontractor* ♦ must request a *Certificate of Completion* ♦ from the *Payment Certifier* ♦. This is critical for a *Subcontractor* ♦ to maintain its rights.

As a *Best Practice* ▲, *Subcontractors* ♦ should include the *Contractor* ♦ in correspondence with the *Payment Certifier* ♦. This is because the request initiates contractual processes, such as the release of *Holdback* ♦ funds.

Subcontractors ♦ have *Statutory* ▲ rights under the BLA (**s.9**) for the release of their pro-rata share of the lien *Holdback* ♦ funds to the *Contractor* ♦ if and when:

- 1.1. their subcontract has been issued a *certificate of completion* ♦ under the BLA, and
- 1.2. the lien *Holdback* ♦ period has expired with no liens filed.

Critically, there is no provision in the BLA for issuance of a *Certificate of Completion* ♦ for a portion or phase of a multi-phased contract, subcontract, or deferred work. The only *Certificates of Completion* ♦ recognized by the BLA are for entire contracts or subcontracts. If parties wish to break up a particular scope of work or project, then multiple *Contracts* ● might be signed for different parts of work. This way each *Contract* ♦ might be certified complete since the entire *Project* ● can be broken into multiple contracts using smaller scopes of work for each.

In the event the subcontract is issued a *certificate of completion* ♦, then that subcontract portion of the *Holdback* ♦ funds shall be released to the *Head Contractor* ♦ on the **56th** calendar day following issuance of the *Certificate of Completion* ♦ with respect to the subcontract. The lien *Holdback* ♦ money shall flow through the *Head Contractor* ♦ to the *Subcontractor* ♦.

In the opinion of BCCA, when the *Head Contractor* ♦ receives the *Subcontractor's* ♦ pro-rata portion of the lien *Holdback* ♦, it should be released to the *Subcontractor* ♦, notwithstanding any reasonable *Contract* ● requirements. This may include WCB clearance letters and statutory declarations.

Critically, where a subcontract contains a *Prime Contract* ▲ flow down provision, the *Holdback* ♦ release requirements in the *Prime Contract* ▲ for the *Contractor* ● may also apply to the *Subcontractor* ●. Read your contract.

A *Certificate of Completion* ♦ must be issued for a *Subcontract* ♦ if a *Subcontractor* ♦ wishes to make use of the progressive release procedure under the BLA. The claim of lien filing period and lien *Holdback* ♦ period are triggered on the date of issuance of a *Certificate of Completion* ♦, either for that particular Subcontract or the Head Contract.

Refer to the BCCA "A Guide to the Builders Lien Act" for more detailed information.

DEEPER DIVE 6.1: Best Practices When Requesting Progressive Release of Holdback Funds

Subcontractors ♦ wishing to have their lien *Holdback* ♦ funds released should review and follow similar steps as outlined in this Guide for *Contractors* ♦ in Activity 5.

Subcontractors ♦ have a *Statutory* ▲ right to contact the *Payment Certifier* ♦ but an early request for the release of lien *Holdback* ♦ funds may not be initiated by the *Contractor* ♦ through to the *Payment Certifier* ♦ and *Owner* ♦ until an appropriate request is received from the *Subcontractor* ♦. This request should be in writing.

As a *Best Practice* ▲, *Contractors* ♦ can assist *Subcontractors* ♦ by:

- Sending a formal written request to the *Payment Certifier* ♦: identifying the value of the subcontract, value of work completed to date and lien *Holdback* ♦ funds held to date.
- After receipt of the related *Certificate of Completion* ♦ to the subcontract, send a holdback invoice after the certificate of completion which includes the date of completion, the lien holdback period and the payment due date. This allows time for administrative processes. When the final holdback amount is known, a revised invoice can be sent.

There is no requirement within the BLA to provide statutory declarations by either the *Contractor* ♦ or *Subcontractor* ♦, however the *Contract* ● may require these preconditions as part of applications for final payment or release of holdback funds.

ACTIVITY 7

TIMELINE AND PAYMENT OF LIEN HOLDBACK FUNDS

It is critical to have a clear contractual timeline for the release of the lien **Holdback** ♦ funds (which a CCDC contract and a CCA-1 contract provides, subject to any supplementary conditions.)

When the **Payment Certifier** ♦ notifies the **Owner** ♦ that no claims of lien have been filed and no BLA related lien-enforcement actions have been commenced, and no proceedings have commenced to enforce a lien against the Holdback, payment of lien **Holdback** ♦ may be due and payable one day after the expiry of the prescribed **55**-day lien **Holdback** ♦ period.

- As a **Best Practice** ▲, the **Payment Certifier** ♦ should check for actions filed after the **45**-day filing deadline but before the **55th** day of the lien **Holdback** ♦ period, to allow for a few days for the administrative processing of any liens and advise the **Owner** ♦ accordingly.

The release of any lien **Holdback** ♦ funds which are due and payable after the issuance of the **Certificate of Completion** ♦ and the expiry of the lien period will occur in accordance with the terms of the **BLA (s8 and s8.4)** and most especially, the **Contract** ● clauses. To calculate the lien **Holdback** ♦ period, day one (or the first day counted) is the day following the day of issuance. Refer to the BCCA “[A Guide to the Builders Lien Act](#)” for more detailed information.

*Questions regarding Shimco actions that may provide recovery options beyond the **45**-day lien filing period should be directed to an experienced construction lawyer.*

DEEPER DIVE 7.1: Timeline to Release Holdback Funds

In CCDC and CCA 1 **Contracts** ● there is a firm deadline to release the **Holdback** ♦ funds. This is yet another reason why it is critical to use industry standard contracts.

A **Contract** ● may add additional requirements, such as WorkSafeBC clearance letters and statutory declarations that must be provided before the release of the lien **Holdback** ♦ funds. This is due to the wording of the BLA and its use of the permissive “may” within s. **8(4)**. As a result, requiring a **Contractor** ● or **Subcontractor** ● to provide various documents prior to paying the **Holdback** ♦ amounts is possible within the language included in the BLA.

These requirements can alter the timing to release the lien **Holdback** ♦ funds, however, they cannot alter the statutory timelines of the lien **Holdback** ♦ period.



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Requiring a Contractor or Subcontractor to provide various documents prior to paying the Holdback amounts is possible within the language included in the BLA.

DEEPER DIVE 7.2: Submitting the Holdback Release Invoice

The lien period extends **55** days beyond the date of the *Certificate of Completion* ♦. This conflicts with the **30**-day progress billing period because lien holdback is applied until **55**

days after the issuance of the *certificate of completion* ♦. Under the BLA, *Holdback* ♦ funds are still entitled to be withheld from each progress payment during the *Holdback* ♦ period. Under the CCDC 2-2020, GC 5.4 states the *Contractor* ● will submit an application for payment for the release of the *Holdback* ♦ funds and also states the timeline for release.

As a *Best Practice* ▲, *Contractors* ♦ should send a *Holdback* ♦ related invoice after the issuance of the *Certificate of Completion* ♦ which includes the date of completion, the lien *Holdback* ♦ period and the payment due date. Because of the tight timelines, it may be necessary to approximate the amount, understanding any remaining funds will be released as part of the *Contract* ●.

As a *Best Practice* ▲, *Contractors* ● should be prepared to immediately issue an application for payment (or submit a revised invoice) for the lien *Holdback* ♦ amount due after the expiry of the lien *Holdback* ♦ period, in accordance with the *Contract* ●. It should be separate from the applications for regular monthly progress payments.

ACTIVITY 8

CONTRACTOR'S INSPECTION FOR SUBSTANTIAL PERFORMANCE OF THE WORK

Depending on the timing of closeout activities, there may be a significant time difference between *Substantial Performance of the Work* ● and *Ready-for-Takeover* ●.

As a *Best Practice* ▲ leading up to the written request for *Substantial Performance of the Work* ●, the *Contractor* ● should initiate a list that details deficient work and incomplete *Work* ● for its own use to identify deficient and incomplete work to both itself and *Subcontractors* ●.

- Also include mutually agreed dates for the completion of the *Subcontractor's* ● work. This will help *Subcontractors* ● to achieve *Substantial Performance of the Work* ● under their contracts.

By undertaking this list leading up to *Substantial Performance of the Work* ●, there is a greater likelihood that *Subcontractors* ● will still be on site and can respond expeditiously to identified deficiencies.



ACTIVITY 9

APPLICATION FOR SUBSTANTIAL PERFORMANCE OF THE WORK

As discussed in Deeper Dive 1.2, achieving the requirements under the BLA may also mean achieving *Substantial Performance of the Work* ●. But depending on the *Contract* ● and its supplementary conditions, this should not be assumed. As such:

- Read your *Contract* ● and its supplementary conditions
- For *Subcontractors* ● and *Suppliers* ●, read the *Prime Contract* ▲ and supplementary conditions when a flow down clause exists.

Critically, this Guide believes it is a *Best Practice* ▲ to complete both your *Contractual* ▲ and *Statutory* ▲ obligations separately. This is because there are different timelines, different certificates to be issued and critically and potentially, different requirements. Although separate, the requests can be made at the same time.

The below applies to CCDC 2-2020:

1. When the *Contractor* ● has determined that the *Contractual* ▲ requirements for *Substantial Performance of the Work* ● have been met, the *Contractor* ● must then make an application for a certificate of *Substantial Performance of the Work* ●.
2. The *Consultant* ● must respond within 20 calendar days:
3. However, under the BLA a response shall be issued within 10 days of the request for a *Certificate of Completion* ♦ but under the CCDC 2-2020, it must be completed within 20

calendar days. This is why it is important to keep them separate: to maintain your rights. Contracting parties may also amend the *Contract's* ● timeline from 20 calendar days to 10. This way the timelines match for both contractual and statutory requirements.

4. In the event that the *Contractor's* ● application for *Substantial Performance of the Work* ● is not accepted, the *Consultant* must advise the *Contractor* ● in writing why it is not valid.
5. The *Consultant* ● will issue a certificate of *Substantial Performance of the Work* ●. This is separate and distinct from the *Certificate of Completion* ♦ required under the BLA.

Critically, this Guide believes it is a Best Practice to complete both your Contractual and Statutory obligations separately. This is because there are different timelines, different certificates to be issued and critically and potentially, different requirements.

ACTIVITY 10

CONTRACTOR'S INSPECTION FOR READY-FOR-TAKEOVER

To assist the *Contractor* ● efficiently managing any deficiencies and achieving the major *Contractual* ▲ milestone of *Ready-for-Takeover* ●, the *Contractor* ● should prepare a list of work needing correction or completion for its own use with the *Subcontractors* ●.

This is best achieved while the *Subcontractors* ● are still on site and can respond expeditiously to identified deficiencies. This list can then be used with the *Contractor's* ● application for *Ready-for-Takeover* ●.

The inspection team could be comprised of:

- The *Contractor* ● and/or the *Contractor's* ● representative(s).
- Any other *Subcontractor* ● and/or *Subcontractor* ● representative(s) whose participation may be required by the *Contractor* ● in order to fully determine the work to be completed.

ACTIVITY 11

APPLICATION FOR READY-FOR-TAKEOVER

When the *Contractor* ● believes they have met the *Contract* ● requirements of *Ready-for-Takeover* ●, they will submit a written application to the *Consultant* ●. The written application will be accompanied by a comprehensive list of items to be completed or corrected.

DEEPER DIVE 11.1: Operations and Maintenance ("O&M") Manuals

In achieving *Ready-for-Takeover* ● under a CCDC 2-2020, the *Contractor* ● must provide reasonably ready O&M manuals for the immediate operation and maintenance of the *Work* ●. This is not intended to be the final and complete version of the O&M.

As a *Best Practice* ▲, the *Contractor* ● should begin contacting

and encouraging the *Subcontractors* ● and *Suppliers* ● to provide O&M materials well before the completion of their *Contract* ● and scope.

As a *Best Practice* ▲, *Contractors* ● should:

- As discussed in Deeper Dive 1.1, provide and reference back to the dollar value for O&M manuals in addition to any other *Closeout* ▲ pre-requisites on the schedule of values given at the start of the *Project* ●
- As early as is feasible, provide the table of contents for the O&M manual,
- Provide a draft O&M in digital format,
- Complete and provide the final O&M manuals promptly.

ACTIVITY 12

READY-FOR-TAKEOVER CONFIRMATION

Within 10 calendar days of receipt, the *Consultant* ● must review and respond to the *Contractor's Ready-for-Takeover* ● application and list of items to be completed or corrected.

If the *Consultant* ● determines that the *Contract* ● has achieved *Ready-for-Takeover* ● as per the *Contract* ●, the *Consultant* ● must prepare and issue a written confirmation of *Ready-for-Takeover* ●. The *Consultant* ● will set out in the written response to the application of *Ready-for-Takeover* ● the date on which the *Contract* ● achieved *Ready-for-Takeover* ●. The *Consultant* ● must provide this written response of *Ready-for-Takeover* ● to the *Owner* ● and to the *Contractor* ●.

Immediately following the confirmation of the date of *Ready-for-Takeover* ●, the *Contractor* ●, in consultation with the *Consultant* ●, will establish a reasonable date for finishing the *Work* ●.

In the event that the *Contractor's* ● application for *Ready-for-Takeover* ● is not accepted, the *Consultant* ● must advise the *Contractor* ● in writing why it is not accepted. The *Contractor* ● must complete the work necessary to achieve *Ready-for-*

Takeover ● as defined in the *Contract* ● and the *Contractor* ● must submit a subsequent application for *Ready-for-Takeover* ● thereafter.

Upon agreement of the date on which the *Contract* ● achieved *Ready-for-Takeover* ●, the care, custody and control of the work transfers from the *Contractor* ● to the *Owner* ● (unless otherwise agreed). At this time, all direct costs (and risks) related to the work transfer from the *Contractor* ● to the *Owner* – utility costs (power, water, sewer, phone, cable, etc.), security (fencing, watchman, fire protection, etc.) and insurance.

Ready-for-Takeover ● also triggers the start of the warranty period (refer to Activity 14), Indemnification Claims (GC 13.1) and Waiver of Claims (GC 13.2), unless otherwise amended by supplementary conditions.

Achieving *Ready-for-Takeover* ● does not negate the requirement to complete the Work, including remediation of deficiencies.

DEEPER DIVE 12.1: Insurance and Closeout

Consult with your professional construction insurance broker on the specific clauses detailed in the *Contract Documents* ●, including and especially in the supplementary conditions.

In CCDC 2-2020, the “Broad Form” (also known as Builder’s Risk or Course of Construction) property insurance will continue for **10** days after the *Ready-for-Takeover* ●, unless the *Work* ● (or any part) is being used for the purpose intended.

In other contracts, it may be typical for the “Broad Form” property insurance to continue for **10** days after the *Substantial Performance of the Work* ●, unless the work (or any part) is being used for the purpose intended.

DEEPER DIVE 12.2: Early or Partial Occupancy by the Owner

Most contracts allow the *Owner* ● to take early occupancy all or part of the *Project* ● subject to other *Contractual* ▲ obligations.

For instance, CCDC and CCA contracts allow the *Owner* ● to take early occupancy subject to the agreement of the *Contractor* and *Subcontractor* ● among other *Contractual* ▲ conditions. This agreement, where stipulated, is critical.

Ideally, a *Best Practice* ▲ is to discuss early occupancy with the authorities having jurisdiction during permitting, as required by the *Owner* ● and *Consultant* ●, and the *Contractor* ● may be included in those conversations. Early *Owner* ● occupancy could add to the *Contract* ● price. Additional inspections by the *Consultant* ● may be required for the *Project* ● to be approved for use.

Partial *Owner* ● occupancy is a complex process: it requires negotiation and mutual agreement. As a *Best Practice* ▲, ensure every discussion item and every decision is documented in writing and agreed to in writing. Items to be discussed include but are not limited to insurance, life and safety and the role of the authorities having jurisdiction, warranties, and release of lien *Holdback* ♦.

ACTIVITY 13

FINAL INSPECTION FOR CLOSEOUT OF PROJECT



When the *Contractor* ● is satisfied that the entire *Work* ● achieved *Total Completion* ▲, it is *Best Practice* ▲ for the *Contractor* ● to undertake its own inspection, prior to requesting a final inspection by the *Consultant* ● for *Total Completion* ▲ and submitting its application for final payment. The *Contract Documents* ● may stipulate the form and content of the application for final payment.

The *Consultant* ● should invite the *Contractor* ● to attend the final inspection when appropriate. The *Contractor* ● may wish to request *Subcontractors* ● attend as well.

If there are any reasons to reject the *Contractor’s* ● application for final payment (e.g. deficiencies), they must be listed and provided to the *Contractor* ●.

When all *Work* ● has been completed and approved, then all amounts due under the *Contract* ● become payable, and a final certificate for payment should be issued.

DEEPER DIVE 13.1: Deferred Work

There may be instances where work is deferred due to reasons beyond the control of the *Contractor* ● (e.g. seasonal work such as landscaping or delays caused by supply chain issues.)

The *Owner* ●, in consultation with the *Consultant* ● and *Contractor* ●, may withhold the monies necessary to complete the deferred work. The *Contractor* ● is still required to complete that Work.

BCCA's "A Guide to the Builders Lien Act" provides the following suggestion:

"If your contract includes a large amount of seasonal work, you may be waiting for quite a while to receive your lien holdback funds. You might want to think about separating out seasonal work into a second contract." BCCA Guide to the Builders Lien Act, Page 9.

"If your contract includes a large amount of seasonal work, you may be waiting for quite a while to receive your lien holdback funds. You might want to think about separating out seasonal work into a second contract."

ACTIVITY 14

WARRANTY-GUARANTEE PERIOD(S)

Subject to the terms of the *Contract* ●, the warranty period(s) for the *Contract* ● commences on the date of *Ready-for-Takeover* ● is achieved.

Throughout the warranty period, the *Owner* must give prompt notice in writing to the *Contractor* ● and *Consultant* ● of any observed defects and deficiencies (as outlined by the *Contract* ●).

In consultation with the *Owner* ● and *Consultant* ●, the *Contractor* ● should provide the repairs as soon as is practicably possible. The *Contractor* ● is ultimately responsible for coordinating warranty work but in practice, it is likely a *Subcontractor* ● performing the repairs.

Where repairs are critical to the operation of the *Work* ●, the repairs should be expedited and completed promptly.

As a *Best Practice* ▲ and prior to the completion of the *Contractual* ▲ warranty period, the *Consultant* ●, and other parties that the *Contract* ● requires, should carry out a review of the *Work* ● for any defects or deficiencies and will notify the *Contractor* ● in writing of those items requiring attention by the *Contractor* ●. The *Contractor* ● should be invited to attend the inspection when appropriate.

For extended warranties, the *Contractor's* ● responsibility is typically limited to obtaining any such extended warranties from the warrantor to the benefit of the *Owner* ●. The obligations under such extended warranties are solely the responsibilities of the warrantor (for example the equipment manufacturer.)

DEEPER DIVE 14.1: Written Confirmation of Early Startup

If a portion of the space is partially occupied by the *Owner* ● and building systems and/or equipment, as a *Best Practice* ▲, written confirmation from the *Owner* ● should be issued to confirm that the warranty on that building systems and/equipment in that space has begun. Those items should be clearly referenced and the start date clearly included.

Ideally, this written confirmation is a condition of partial occupancy in the *Contract* ●. Regardless and as a *Best Practice* ▲, the *Contractor* ● should require this prior to handover. The party responsible for the affected system or equipment should ask for this written confirmation and receive a copy.

FINAL GUIDANCE

The closing stages of a project can be the most challenging and knowledge is power.

As described throughout this Guide, the Contract Documents should be read carefully but also implemented in accordance with its terms by all parties. Statutory rights and obligations under the BLA cannot be altered by a contract.

This Guide reminds you to read *all* the Contract Documents and understand your statutory rights and obligations under the BLA. However, it is just as important to exercise your rights under the contract and the BLA. Use your contract, follow your contract. Enforce your rights under the BLA.

The many references in this Guide to contractual and statutory content are an encouragement for you the reader to take

advantage of opportunities for further education. Contact your Regional Construction Association for information on their educational courses.

**Read all the Contract Documents...
Use your contract, follow your
contract. Enforce your rights under
the BLA.**



NRCA Education & Training

3851 18th Avenue, Prince George, BC V2N 1B1
Phone: (250) 563-1744
Fax: (250) 563-1107
Web: nrca.ca



SICA Education & Training

#104-151 Commercial Drive, Kelowna, BC V1X 7W2
Phone: (250) 491-7330
Fax: (250) 491-3929
Web: sicabc.ca



VICA Education & Training

1075 Alston St, Victoria, BC V9A 3S6
Phone: (250) 388-6471
Toll Free: 1-877-847-6471
Fax: (250) 388-5183
Web: vicabc.ca



VRCA Education & Training

3636 East 4th Avenue, Vancouver, BC V5M 1M3
Phone: (604) 294-3766
Fax: (604) 298-9472
Web: vrca.ca

Every defined term is capitalized, italicized and colour-coded to illustrate to what type of concept they refer. To assist with accessibility, symbols appear after the defined term. Where there is overlap between definitions, the definition used is in relation to the discussed topic.

Blue ▲	Specific to this Guide
Green ♦	Builders Lien Act ("BLA")
Orange ●	CCDC 2-2020

DEFINITIONS SPECIFIC TO THIS GUIDE

Terms used in the Guide that are capitalized, italicized and highlighted in **blue ▲**, denote terms that are unique to this document, and apply as is defined below.

Best Practice

Best Practice ▲ is a method or approach that could produce preferred outcomes if followed.

Closeout

Closeout ▲ is a process to complete activities required to achieve **Total Completion** ▲ and warranty provisions, as required under the **Contract** ●.

Contractual

Contractual ▲ means the requirements included in a written **Contract** ●.

Deficiency Holdback

Deficiency Holdback ▲ are the funds to be held back on account of identified deficiencies, agreed by the parties and if stipulated in the **Contract** ●.

Prime Contract

Prime Contract ▲ refers to the **Contract** ● between the **Owner** ● and the **Contractor** ●.

Ready-for-Takeover

Ready-for-Takeover ▲ of the **Work** ● will have been attained when the conditions set out in the **Contract Documents** ● (and for clarity, any supplementary conditions) have been met. In the event that the prime **Contract Documents** ● do not include the **Ready-for-Takeover** ▲, then references to **Ready-for-Takeover** ▲ in this Guide should be deemed references to **Substantial Performance of the Work** ●.

*This definition is adapted from the CCA 1-2021 Stipulated Price Subcontract.

Statutory

Statutory ▲ means relating to or created by statutes and laws, specifically the BLA.

Total Completion

Total Completion ▲ is when the entire **Work** ●, except those items arising from the requirements of any warranty provisions, have been performed to the requirements of the **Contract Documents** ● and is so certified in writing and accompanied by final payment.

DEFINITIONS FROM THE BC BUILDERS LIEN ACT 1997 (“BLA”)

Terms used in the Guide that are capitalized, italicized and highlighted in green ♦ text denote terms that are defined in the BLA, and those definitions apply.

Certificate of Completion (section 1 (1))

Means a certificate under section 7 stating that work under a contract or subcontract has been completed and includes an order made under section 7(5)

Completed

If used with reference to a contract or subcontract in respect of an improvement, means substantially completed or performed, not necessarily totally completed or performed.

Contractor

A person engaged by an *Owner* ♦ to do one or more of the following in relation to an improvement:

- (a) perform or provide work;
- (b) supply material;

but does not include a worker;

Head Contractor

Means a contractor who is engaged to do substantially all of the work respecting an improvement, whether or not others are engaged as *Subcontractors* ♦, material suppliers or workers;

Holdback (refer to section 4 (1))

The person primarily liable on each contract, and the person primarily liable on each subcontract, under which a lien may arise under this Act must retain a *Holdback* ♦ equal to **10%** of the greater of

- (a) the value of the work or material as they are actually provided under the contract or subcontract, and
- (b) the amount of any payment made on account of the contract or subcontract price.

Owner

Includes a person who has, at the time a claim of lien is filed under this Act, an estate or interest, whether legal

or equitable, in the land on which the improvement is located, at whose request and

- (a) on whose credit,
- (b) on whose behalf,
- (c) with whose knowledge or consent, or
- (d) for whose direct benefit

work is done or material is supplied, and includes all persons claiming under the *Owner* ♦, but does not include a mortgagee unless the mortgagee is in possession of the land

Payment Certifier (refer to section 7 (1))

(a) an architect, engineer or other person identified in the contract or subcontract as the person responsible for payment certification, or

- (b) if there is no person as described in paragraph (a),

- (i) the *Owner* ♦ acting alone in respect of amounts due to the contractor, or
 - (ii) the *Owner* ♦ and the contractor acting together in respect of amounts due to any *Subcontractor* ♦.

Subcontractor

Means a person engaged by a contractor or another *Subcontractor* ♦ to do one or more of the following in relation to an improvement:

- (a) perform or provide work;
- (b) supply material;

but does not include a worker or a person engaged by an architect, an engineer or a material supplier

DEFINITIONS FROM CCDC 2 – 2020

Terms used in the Guide that are capitalized, italicized and are in orange ● text denote terms that are defined in the CCDC **2-2020** contract, and those definitions apply. Where “agreement” is referenced, it refers to the prime Contract between the Owner and Contractor.

Consultant

The *Consultant* ● is the person or entity engaged by the *Owner* ● and identified as such in the Agreement. The *Consultant* ● is the Architect, the Engineer or entity licensed to practise in the province or territory of the Place of the Work.

Contract

The *Contract* ● is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* ● and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* ● consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contractor

The *Contractor* ● is the person or entity identified as such in the Agreement.

Owner

The *Owner* ● is the person or entity identified as such in the Agreement.

Project

The *Project* ● means the total construction contemplated of which the Work may be the whole or a part.

Ready-for-Takeover

Ready-for-Takeover ● shall have been attained when the conditions set out in paragraph **12.1.1 of GC 12.1 – READY-FOR-TAKEOVER** have been met, as verified by the *Consultant* ● pursuant to paragraph **12.1.4.2 of GC 12.1 – READY-FOR-TAKEOVER**.

Subcontractor

A *Subcontractor* ● is a person or entity having a direct *Contract* ● with the *Contractor* ● to perform a part or parts of the Work at the Place of the Work.

Substantial Performance of the Work

Substantial Performance of the Work ● is as defined in the lien legislation applicable to the Place of the Work.

Supplier

A *Supplier* ● is a person or entity having a direct *Contract* ● with the *Contractor* ● to supply Products.

Work

The *Work* ● means the total construction and related services required by the *Contract Documents* ●.



British
Columbia
Construction
Association

203-3531 Uptown Blvd.
Victoria, BC V8Z 0B9

bccassn.com