

PROMPT PAYMENT FOR

HOLDBACKS

It has long been the case that each “payor” on a construction contract is required to hold back 10% of the price of services or materials that are actually supplied under the contract. This is in effect until all liens that may be claimed against the holdback have expired, been vacated, or discharged.

In the case of a prime contract, the basic holdback is payable **61 days** following:

- (i) the date on which a copy of the certificate of substantial performance of the contract is published, or
- (ii) the date the contract is completed, abandoned, or terminated;

whichever is **earlier**, provided that no claims for lien are preserved before the 61st day. This is known as the *trigger date*.

See the fact sheet **How does the Basic Holdback Work?** for a simple example.

What’s Changed?

The old rules still apply, but Prompt Payment now requires any party that does not intend to release the basic holdback to take additional steps.

For Owners

An owner may only refuse to pay basic holdback if:

- (i) within **40 calendar days** of the trigger date, the owner publishes a notice of non-payment in **Form 6** (available for download at ontariocourtforms.on.ca/en/construction-lien-act-forms/) in a Construction Trade Newspaper (e.g. the DCN, Link2Build, Ontario Construction News); and
- (ii) no later than **three calendar days** after its publication, the owner notifies the contractor of the publication of the notice of non-payment.

Otherwise, the owner must pay the holdback in full, even if it may have a valid reason not to pay. The contractor can enforce payment of the holdback by referring the dispute to adjudication.



For Contractors

A contractor may refuse to pay some or all of the holdback to the subcontractor if:

- (i) The owner refuses to pay all or part of the holdback payable to the contractor; and
- (ii) The contractor refers its dispute with the owner regarding payment of holdback to adjudication; and
- (iii) Within **three days** of receiving proper notice of non-payment from the owner, the contractor notifies every subcontractor to whom the contractor is required to pay holdback that their holdback will not be paid in full or in part, and that its dispute with the owner has been referred to adjudication. This notification must include a copy of the notice of non-payment from the owner.



If the contractor does not take these steps, then it must pay the subcontractors their holdback even though it has not been paid by the owner.

For Subcontractors

A subcontractor may refuse to pay some or all of the holdback to a sub-subcontractor or supplier if:

- (i) the contractor refuses to pay all or part of the holdback to the subcontractor; and
- (ii) The subcontractor refers its holdback dispute with the contractor to adjudication; and
- (iii) Within **three days** of receiving proper notice from the contractor, the subcontractor notifies every sub-subcontractor and supplier to whom the subcontractor is required to pay holdback that their holdback will not be paid in full or in part, and that its dispute with the contractor has been referred to adjudication. This notification must include a copy of the notice of non-payment from the contractor.



The same rules apply, with necessary modifications, with respect to the payment of holdback by any sub-subcontractor to its creditors on the project.

Ready to Learn More?**See our related fact sheets:**

Prompt Payment & Adjudication 101
 Prompt Payment for Owners
 Prompt Payment for Contractors
 Prompt Payment for Subcontractors
 How does the Basic Holdback Work?
 What is a Proper Invoice?
 Adjudication Basics

Other resources:

- Ontario Dispute Adjudication for Construction Contracts (odacc.ca)
- COCA Webinar on Prompt Payment and Adjudication (coca.on.ca/advocacy/prompt-payment)
- Ontario Construction Act (ontario.ca/laws/statute/90c30)



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Disclaimer: This fact sheet is intended to provide information to the industry at large and should not be considered legal advice. Contact a lawyer to find out how Prompt Payment and Adjudication may apply in your particular circumstances.