

It is also crucial to consider the value of the bonds. In many cases, the value of the bond may not constitute the full value of the contract. [Remember to think about HST.]

The bond documents will also confirm the obligations of the condominium, including any reporting and notice requirements that the Condominium Corporation will need to fulfill in order to exercise on the bond.

## **CONSTRUCTION LIEN ACT**

For most Condominium Corporations, the *Construction Lien Act* really only comes into play, on a regular basis, in relation to the 10% holdback: when can it be released and when can it be held back in standard circumstances.

The reason for this holdback is, of course, really for the benefit of subcontractors and suppliers. Under the *Construction Lien Act* (the “Act”), contractors who provided services or materials in a project, but have not been paid by the general contractor, can register a construction lien as against the property of the owner. In the condominium context, this could result in a lien being registered on the title of every unit in the condominium.

While this is an important security in the construction industry, for unit owners who are trying to sell their unit, the construction lien (or in some cases, liens) registered on their unit can cause challenges in the sale of their unit. For these unit owners it becomes critical that the lien(s) registered on title to their units become discharged as soon as possible.

Generally construction lien(s) are discharged when the Condominium Corporation (as the owner) pays the lien holder with money retained in its holdback (portion of money retained by the corporation).

However, in situations where there is not enough money to pay out the lien holders or there are competing claims and the rights of the bonding company to consider, the registered liens on title can often remain for an extended period of time as the claims are worked out. This is when it is possible for the liens to become a problem for certain owners.

Fortunately, an amendment to the *Construction Lien Act* will allow unit owners (after July 1, 2018) to discharge/vacate the lien(s) registered to their specific unit. Under s. 44(2.1) of the Act, individual unit owners will be able, on a motion to the court, to obtain an order vacating the lien(s) attached to their specific unit by paying the portion of the lien amount(s) that is attributable to the owner’s common interest as outlined in the corporation’s declaration. This will provide unit owners who are selling their property a fast method of clearing such encumbrances to their unit.

Some of the other new amendments that will be helpful to Condominium Corporations include:

- A new dispute resolution mechanism that allows construction projects to continue without disruption while disputes such as payment, changes in services, and some other matters are resolved;
- Allowing the small claims court to have jurisdiction in matters under \$25,000;
- Requiring a party who preserves a lien to provide notice to the condominium corporation *and* every unit owner in the corporation;
- New thresholds for substantial performance and timelines for preserving and perfecting liens; and
- New prescribed forms (such as the Notice of non-payment).

Portions of the amendments (such as the new prescribed forms) come into force on July 1, 2018 while other amendments (such as the new dispute resolution mechanism) come into effect October 1, 2019.

It is also important to note that the amendments contain grandfathering provisions. This means that the current *Construction Lien Act* continues to apply for contracts, procurement processes, and leases that were in effect prior to July 1, 2018.

Overall, a Condominium Corporation should consider using bonds to protect itself from the possibility of a general contractor defaulting from its obligations. Working in conjunction with the new amendments to the Act, this would best ensure that the challenges associated with such a default is ameliorated while also providing a way for the eventual completion of the project. ■

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## **ALL CONDOMINIUMS ARE LEGALLY REQUIRED TO FILE CONDO RETURNS**

Under the Condominium Act, 1998 (the Act) and Ontario Regulation 377/17, all condominium corporations are legally required to file condominium returns with the Condominium Authority of Ontario (CAO).

Any condominium corporations that have not yet filed their returns with the CAO and paid their annual assessments, must act immediately to avoid legal consequences for not complying with the Act, including late penalties.

**PLEASE CONTACT THE CAO AT:  
416-901-9356 or toll-free: 1-(800) 854-9014**