

## LUMBERMEN'S ONTARIO BULLETIN

Construction Credit Reports Since 1915

*The below article is the fifth in a series of legal articles written by Anna M. Esposito, head of the Construction Group at Pallett Valo LLP in Mississauga which will focus on pitfalls to avoid when exercising lien rights.*

### INCORRECTLY CALCULATING THE LIEN EXPIRY DATE

When a lien expires depends upon a number of factors, some of which are not in the control of the lien claimant.

The lien of a contractor (a person who supplied directly to the owner) expires 45 days after publication of the Certificate of Substantial Performance of the contract or the date the contract is completed or abandoned, whichever occurs first. The lien of any other person in the construction pyramid expires 45 days from the date of publication of the Certificate of Substantial Performance of the contract (between the owner and the contractor) or the lien claimant's date of last supply, whichever comes first. If there is no Certificate of Substantial Performance, the triggering point is the date of contract completion, in the case of a contractor, or last supply, in the case of anyone else. However, where a Certificate of Substantial Performance has been published, it has the potential of shortening the lien expiry period.

In some cases, a subcontract is certified as complete, using a procedure in section 33 of the *Construction Lien Act*. If the subcontract was so certified then the lien of that subcontractor expires 45 days from the date of its last supply or the date the subcontract was certified as complete, whichever occurs first.

Where a person has supplied services or materials before and after the date of substantial performance of the contract, the lien rights for the supply on or before the date of substantial performance expire without affecting the lien rights for the supply after substantial performance.

The Act also contains a "deemed completion" provision which affects the lien expiry period of a contractor. A contract is deemed to be completed and services and materials are deemed to be last supplied when the price of completion, correction of a known defect or the last supply is not more than the lesser of, 1% of the contract price and \$1,000.00.

If the lien expiry period falls on a Saturday, Sunday or holiday, then the lien may be preserved on the next day.

For those who thought that liening was nothing more than 'counting 45 days', this may come as a surprise.

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