



Chapter 3

NEW DEVELOPMENTS

Construction Deficiencies

The architect will issue a *Certificate of Completion* when the contract for a new development is substantially complete, or when the outstanding balance payable on the contract reaches a particular amount defined in the *Builders Lien Act*. We explain how to calculate this amount on page 49.

Prior to issuing the certificate, the architect and someone from your organization should inspect the building to list any construction deficiencies, such as missing trim or defective window locks. The architect is responsible for ensuring the building is completed in accordance with the contract documents (drawings and specifications). A sample *Inspection Report* is included on page 97 in the appendix. The other design consultants should also conduct substantial performance inspections and prepare deficiency reports. The contractor should be present during this inspection.

The architect should make a list of the deficiencies and place a value on each. The contract allows you to hold back twice the value of the deficiencies, until the work is completed or corrected. Retain the full deficiency holdback until all deficiencies are corrected. This deficiency holdback is different from the builder's lien holdback, which is explained in the next section. Ensure your organization retains funds to cover both holdbacks.

In addition, whenever the contractor sends you an invoice for part of the work, ask for a *Statutory Declaration*, which is a sworn statement that all the supplies and labour used so far have been paid. This declaration will provide you with recourse if suppliers or subcontractors place liens against the development for unpaid materials or wages. (Refer to page 48 for more information on paying contractors.)

Identify deficiencies during the first year after the date of the *Certificate of Completion*, because the contract stipulates contractors must make repairs during this period. Ask residents to help identify any deficiencies they find in their suites or the common areas. Conduct a complete unit and building inspection ten months after the date of the *Certificate of Completion*. This timing allows the contractor time to correct any deficiencies before the expiry of the one-year warranty. Your organization or the architect will have to follow up with the contractor to ensure the remedial work is completed.



Builders Lien Act

The *Builders Lien Act* requires you to hold back 10 per cent of the contract value for 55 days, from the day the architect gives you a declaration of substantial completion. The holdback is intended to give you adequate funds to pay subcontractors or suppliers, if the contractor fails to pay them. You are also required to establish a holdback account for each contract valued at \$100,000 or more.

If you hold back 10 per cent, your liability as owner will be limited to this amount, unless more than 10 per cent is still owing.

The contractor can submit a *Statutory Declaration 9A* form requesting release of the lien holdback funds any time after substantial completion of the project has been declared. When you receive the *Statutory Declaration 9A*, do a lien search with the Land Titles office. The search can also be done online at www.bconline.gov.bc.ca, but first you need to set up an account with BC OnLine by calling 604-660-6970 in Vancouver, 250-952-6777 in Victoria, or 1-800-373-6393. If no liens are found related to the project, release the holdback to the contractor on the 55th day.

Contract Documents

Your contractor is required to provide you with a number of important contract documents including:

- Appliance warranties.
- As-built drawings and specifications.
- Maintenance manuals including registered material and product-specific warranties, and instruction manuals for the operating systems.
- A letter scheduling the date for the one-year warranty inspection.
- Copies of all municipal Building and Occupancy Permits.
- A list of construction contacts for the development, including the contractor and sub-trades.

The architect should review these documents to ensure they are complete and accurate.

The contractor is also required to conduct a demonstration of the mechanical and electrical systems and equipment before applying for substantial completion. The contractor should explain where to find operating and maintenance information in the maintenance manuals during this meeting. Your caretaker and/or building manager should attend. The architect should also attend to ensure the demonstration is complete. We recommend you videotape the demonstration for your caretaker to use as a reference.