

The Adjudication Process after a Notice of Adjudication Is Given



Unless the Parties agree, Adjudication may not be brought after the Contract or Subcontract has been completed

Adjudicator's Fees are split, however the Adjudicator may award costs if a party has acted *in respect of the improvement* in a manner that is frivolous, vexatious, an abuse of process or not in good faith

The Parties and Adjudicator may agree to extend the 30 day timeframe for an Adjudicator's Determination

Only one matter per Adjudication unless the parties agree otherwise, however the Contractor can require the consolidation of the same or related matters

Most Adjudications will likely proceed in writing. Adjudicators have discretion to make decisions, hear evidence, retain experts and engage site visits

There is no Appeal from an Adjudicator's Determination, although an 'Application for Judicial Review' is possible in very limited circumstances

An Adjudicator's Determination is as enforceable as a Judgment however it is not a guarantee of payment. Accordingly, contractors and subcontractors should take care not to let lien rights and bond claims expire

An Adjudicator's Determination, however, is interim: It is binding until a party successfully obtains a different outcome in litigation.

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Prompt Payment for Owners

The Owner's Receipt of a "Proper Invoice" from the Contractor triggers the Owner's Payment Obligation:

-note: it must be a "Proper Invoice!"

Within
14 days

Owner may give Notice of Non-Payment
(of all or part of the invoice amount)

OR

Within
28 days

Owner shall pay Contractor in full

Prompt Payment for Contractors

Within 7 days of receipt of a Notice of Non-Payment from Owner
or within 7 days of the date of payment from the Owner (which ever occurs first):

The Contractor may give notice of Non-Payment to Subcontractor

If Reason for Non-Payment is that Owner did not pay, Contractor must undertake to send Notice of Adjudication of the dispute to Owner within 21 days of giving the Notice of Non-Payment; and

If the Owner paid the Contractor in part, the *Act* provides rules for how the partial payment is to be distributed to Subcontractors

OR

Contractor must pay Subcontractors, even if not paid in full by the Owner.

Prompt Payment for Subcontractors

The Payment Obligation to a Subcontractor is triggered by the Owner's receipt of a "Proper Invoice" which includes for a portion of a Subcontractor's Work

-subcontractor can require the contractor to provide the date the proper invoice was given
-sub-subcontractors can require the subcontractor above them to provide this date as well

Contractor shall pay Subcontractor, in full within 35 days after the Proper Invoice was given to the Owner, even if Contractor was not paid in full by the Owner, unless the Contractor gives a notice of Non-Payment to Subcontractor within:

- 7 days of its receipt of a Notice of Non-Payment from the Owner; or
- 35 days from the date the Proper Invoice was given to the Owner.

Note: The same pattern repeats itself in 7 day increments as between subcontractors and sub-subcontractors, etc., down the payment ladder: on a rung-by-rung basis, payment is to be made no later than 42 days, 49 days and 56 days etc., from the date the Proper Invoice was given.

Note: If a Notice of Non-Payment is given because the party giving the Notice was not paid by the person above it, that party must undertake to submit the dispute to Adjudication within 21 days.

Note: If a part-payment is made by a party, the *Act* provides rules for how the partial payment is to be distributed to the contractor or subcontractor(s) below.

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