

# HOW DOES THE BASIC HOLD BACK WORK?

Section 22 of the Construction Act requires each “payor” on a construction contract to hold back 10% of the price of the services or materials as they are actually supplied under the contract until all liens that may be claimed against the holdback have expired. We call this the basic holdback.

For contracts that last less than one year, the basic holdback is released when all liens that may be claimed against the holdback have expired. A simple example of the basic holdback is set out below. The following example also applies to the final release of holdback on a contract that lasts longer than one year.

For projects that last more than one year, the owner needs to make an interim distribution of holdback shortly after each anniversary of the contract. **See the fact sheet for Annual Release of Holdback.**

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## Example of a Basic Holdback

**Project:**  
An addition to a commercial plaza

The contract requires the owner to pay 30% of the contract price upon the completion of the foundation, 30% when the addition is closed-in, and the balance upon completion. All invoices are due and payable within 28 days.

**Contract Price:**  
\$2,000,000  
plus HST

When the foundation is complete, the value of the services and materials supplied by the contractor is 30% of the contract price, or \$600,000.

*The contractor should deduct 10% for the basic holdback (i.e. \$60,000), apply HST to the balance of \$540,000 (i.e. \$70,020), and invoice the owner for a total of \$610,200. The owner should pay the invoice within 28 days.*

When the addition is closed in, the value of the services and materials supplied by the contractor since its last invoice is \$600,000.

*Again, the contractor should deduct 10% for the basic holdback (i.e. \$60,000), apply HST to the balance of \$540,000 (i.e. \$70,020), and invoice the owner for a total of \$610,200. The owner should pay the invoice within 28 days.*

When the addition is complete, the value of the services and materials supplied by the contractor since its last invoice is \$800,000.

*The contractor should again deduct the basic holdback of 10% (i.e. \$80,000), apply HST to the balance of \$720,000 (i.e. \$93,600), and invoice the owner for \$813,600. The owner should pay the invoice within 28 days.*



**Finally, the contractor should issue a separate invoice to the owner for the basic holdback.**

*The amount of the basic holdback is 10% of the contract price, or \$200,000. The contractor should apply HST to the value of the holdback (i.e. \$26,000), and invoice the owner for \$226,000.*

The 28-day payment terms do not apply to the basic holdback. The basic holdback invoice is payable by the owner after any construction lien that may be claimed against the holdback relating to the contract has expired.

All construction liens will have expired **61 days after the earlier of:**

- the date that the contract is completed, abandoned, or terminated; or
- The date that a certificate of substantial performance is published in a construction trade news website

[the “Trigger Date”]

The owner should have their lawyer review title to the property on the 61st day after the Trigger Date:

- If no claims for lien have been preserved, then the owner should pay the holdback to the contractor.
- If a claim for lien is preserved before the 61st day, then the owner should not pay anything further to the contractor and seek further advice from their lawyer.

### Did you know?

**The obligation to maintain the basic holdback applies despite any wording in the contract to the contrary.**

### Ready to Learn More?

#### See our related fact sheets:

Prompt Payment for Owners  
 Prompt Payment for Contractors  
 Prompt Payment for Subcontractors  
 Prompt Payment for Holdbacks  
 What is a Proper Invoice?  
 Adjudication Basics  
 Prompt Payment for Annual Release of Holdbacks

#### 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.