



# Construction Lien Act Trust Provisions



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# Two Types of Trusts

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- **Owner's trust**

- Amounts received by the owner used in financing the improvement
- For the benefit of the contractor

- **Contractor's and subcontractor's trust**

- Amounts received by a contractor or subcontractor, OR
- Amounts owing to a contractor or subcontractor, whether or not due or payable
- For the benefit of the subcontractors and suppliers

# When is the Trust To be Established?

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- **Owner's trust**

- When amounts become payable to the contractor on a certificate of a payment certifier (e.g. architect, engineer)
- Where substantial performance of a contract has been certified

- **Contractor's and subcontractor's trust**

- When a subcontractor or other person (supplier) has provided services or materials to the improvement and are owed amounts by the contractor or subcontractor

# Obligations of Trustee

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- **May not appropriate or convert any part of the trust funds for their own use until the contractor/subcontractor/supplier has been paid all amounts owing**
  - This includes payment of overhead costs
- **Trust funds must be deposited in a bank account in trustee's name**
- **Trustee must maintain written records respecting the trust funds, detailing the amounts received and spent, as well as any transfers**

# Trust Account Details

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- **One bank account can be used for all trust funds**
  - However, each trust fund must be accounted for separately
- **The trust funds can be deposited into the trustee's main operating account**
  - However, this is not recommended
- **If there is more than one trustee of the funds, the account must be in all of the trustees' names**

# Trust Account Details cont'd

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- **If the trustee pays the contractor/subcontractor out of their own funds, they are permitted to be reimbursed by the trust**
- **If the beneficiary owes the trustee, the trustee is permitted to use the trust funds to offset the amount owing**
  - If the beneficiary is solvent - only against debts related to the project
  - If the beneficiary is insolvent - against all debts for all projects

# Owner Sells Property While Owing Contractor

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- If the owner sells the property (or their interest in the property), an amount equal to the value of the property sold less reasonable expenses, less amounts to discharge any existing mortgage constitutes a trust fund for the benefit of the contractor
  - The owner cannot use the net proceeds for their own use until the contractor is paid



# Breach of Trust

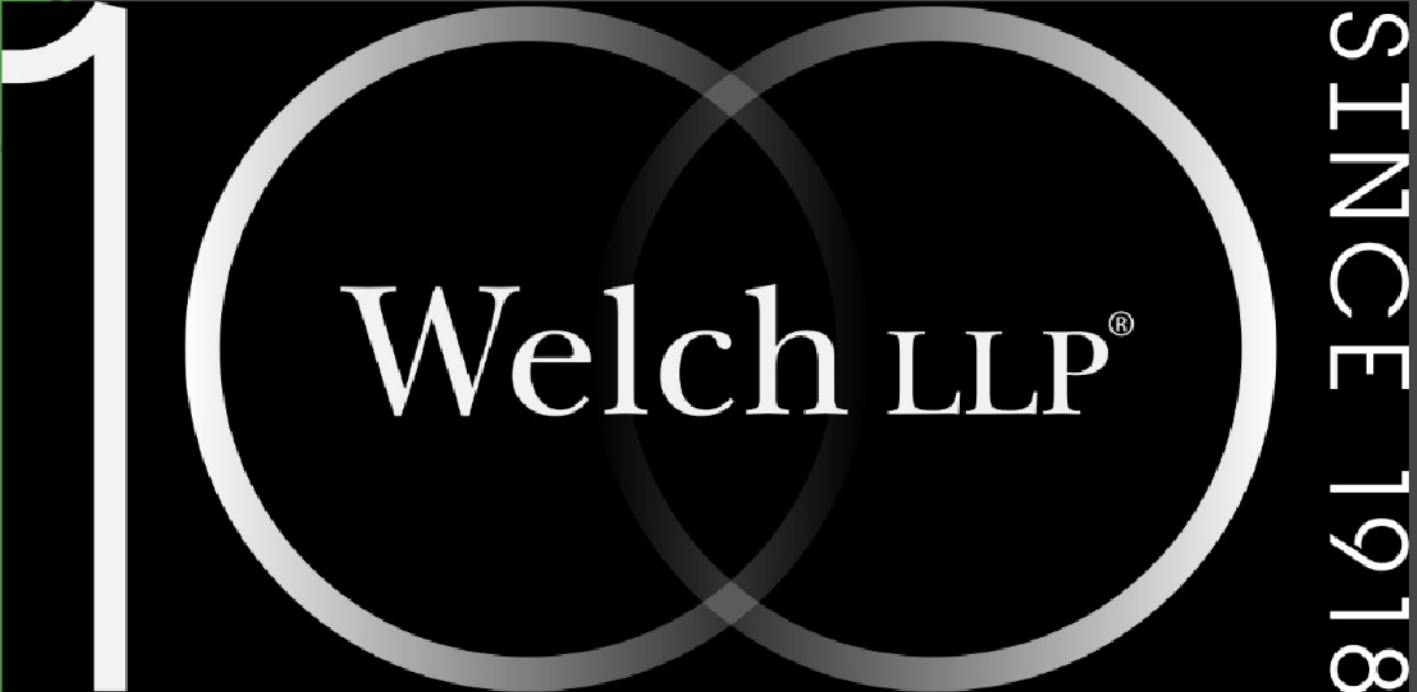
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- **Those liable for a breach of trust (if multiple, liability is joint and several):**
  - The corporation
  - Each director of the corporation
  - Any person who has effective control of the corporation or its relevant activities, including employees (i.e. potentially management)
- **Prevents the use of a shell company to circumvent the trustee obligations**

# Bankruptcy

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- **Trust funds are not available for normal distribution**
- **Trust funds are paid**
  - First to those who have registered claims for liens
  - Next to those who did not register liens



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