



Advice from Alan

Building Payment Schedules

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If a builder has issued a valid Payment Claim under a construction contract, then unless the owner pays or puts in a valid Payment Schedule, they must pay the amount in the Payment Claim. My column dealing with Payment Claims appeared in Issue 213.

A Payment Schedule is issued by a client after they have received a Payment Claim if they dispute part or all of the claimed amount. A Payment Schedule must be in writing, identify the Payment Claim to which it relates, and state an amount of the Payment Claim (if any) which is not disputed and which the owner proposes to pay (which is referred to as the 'scheduled amount' and can be \$0).

Where the scheduled amount is less than the claimed amount, the Payment Schedule must also include an indication of how the scheduled amount has been calculated, an explanation of why the scheduled amount is less than the claimed amount, and, if the payer is withholding payment, the reasons why payment is being withheld.

If the client-payer wishes to issue a Payment Schedule, they must do so within 20 working

days of the Payment Claim being issued, unless the building contract expressly provides for a different timeframe. If you are signing up to a construction contract, you should carefully check how long you have to issue a Payment Schedule as it is a strict timeframe with no extensions. Negotiate a reasonable timeframe so you can consider the work done and whether there are any reasons why you dispute the quality of the work and the amounts claimed. It usually takes more time than you expect to gather the information, prepare the Payment Schedule, and seek professional assistance.

If, within the required timeframe, a client does not pay, doesn't issue a Payment Schedule, or issues a Payment Schedule disputing a partial amount, but does not pay the undisputed amount, you are entitled to suspend work under the Construction Contracts Act (CCA). You are also entitled to seek an Adjudication under the Act or commence court proceedings to recover the full debt.

If you disagree with a Payment Schedule, you can initiate the dispute process outlined in the building contract, or seek Adjudication under the CCA.