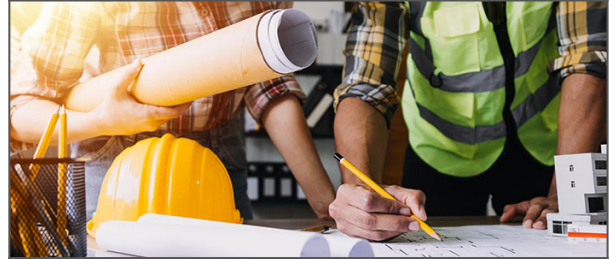


The Statutory Trust Under *The Builders' Liens Act*

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The *Builders' Liens Act* of Manitoba imposes a statutory trust that attaches to any monies received by an owner or contractor prior to and throughout the course of construction. This includes all funds received by an owner for the purpose of financing a construction project.



As monies become payable to the contractor, the project funds being held by the owner, or at any time thereafter received by the owner, are deemed to constitute a trust fund. The owner is the trustee of these funds. Any party that provided work or services or materials in respect of the Project is a beneficiary of the trust. This includes contractors, subcontractors, employees, suppliers and other material and project service providers.

Subject to certain exceptions, the owner, as trustee, cannot use, appropriate or convert any of the funds that it receives on a given project until:

- a. the contractor has been paid all sums justly owed to them in respect of the performance of the contract; and
- b. provision for the payment of other affected beneficiaries of the trust has been made.

Unless all contractors, subcontractors and beneficiaries have been paid, owners and contractors (as trustees) are not permitted to use the trust funds for anything other than project-specific work and services.

The Supreme Court of Canada summarized the purpose of the statutory trust in a case with Manitoba origins called *Stuart Olson Dominion Construction Ltd. v Structal Heavy Steel*. The Supreme Court observed that: "The trust provisions are designed to help assure that money payable by owners, contractors and subcontractors flows in a manner which is in accord with the contractual rights of those engaged in a building project and it is not diverted out of the proper pipeline."

If an owner obtains financing for a specific project, all of the monies received through each progress draw, mortgage advance or lump sum payment must be kept within the "project pipeline". At least while contractors, suppliers and other beneficiaries remain unpaid on the project, the owner cannot use, divert or spend any portion of the amounts that it receives for non-project specific purposes.

When an owner or contractor receives funds on a project for the benefit of those below them on the construction pyramid, the funds are impressed with a trust and cannot be used for

non-project specific, albeit legitimate, business reasons. For example, they cannot use these trust funds to pay unrelated debt or overhead, nor can they divert the funds to another project that they are engaged in. Again, as long as beneficiaries remain unpaid on a given project, all funds must stay in the “project pipeline”.

If you would like to know more about The *Builders’ Liens Act* of Manitoba or have another construction law matter to discuss, please contact someone **in the TDS Construction Law group**.

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