



WeirFoulds

Bill 142, *The
Construction Lien
Act Amendment
Act, 2017*

Barrie Construction
Association
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Prompt Payment

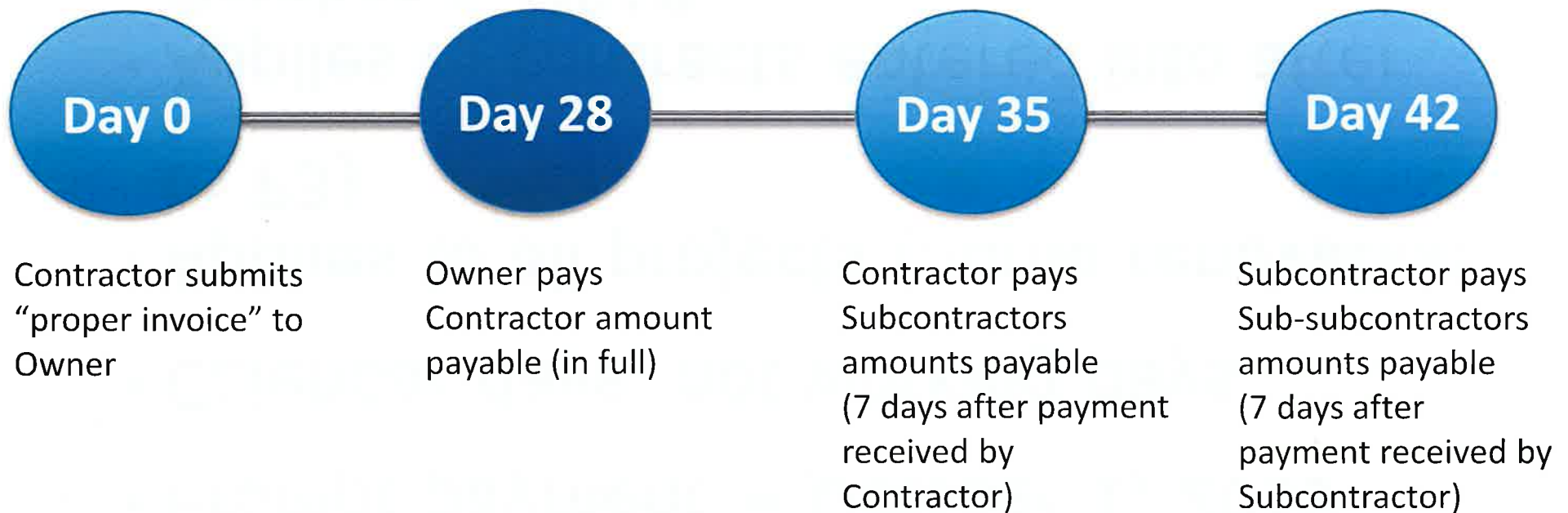
Part I.1 – Prompt Payment

Prompt Payment

- Prompt payment = October 1, 2019
- Calendar days, not working days
- Applies to all projects (home renovation to P3)
- Applies to contracts entered into after October 1, 2019
- Cannot contract out of prompt payment

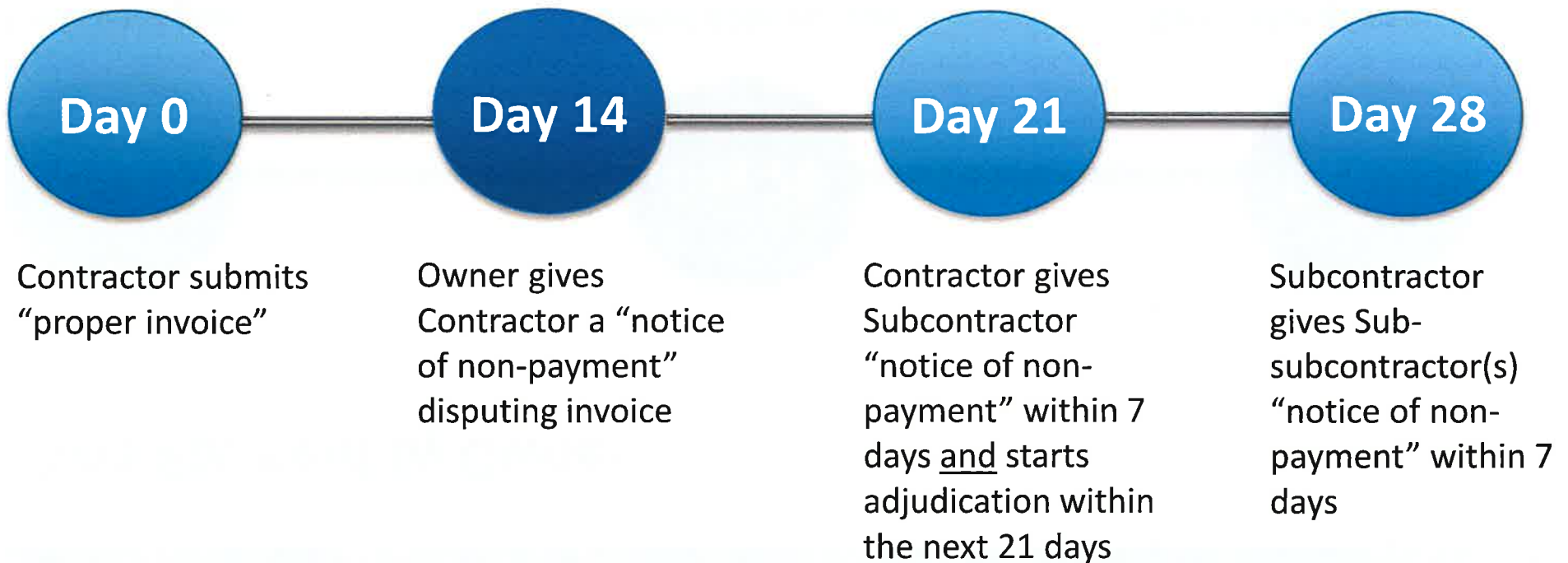
Prompt Payment

No Project Payment Issues



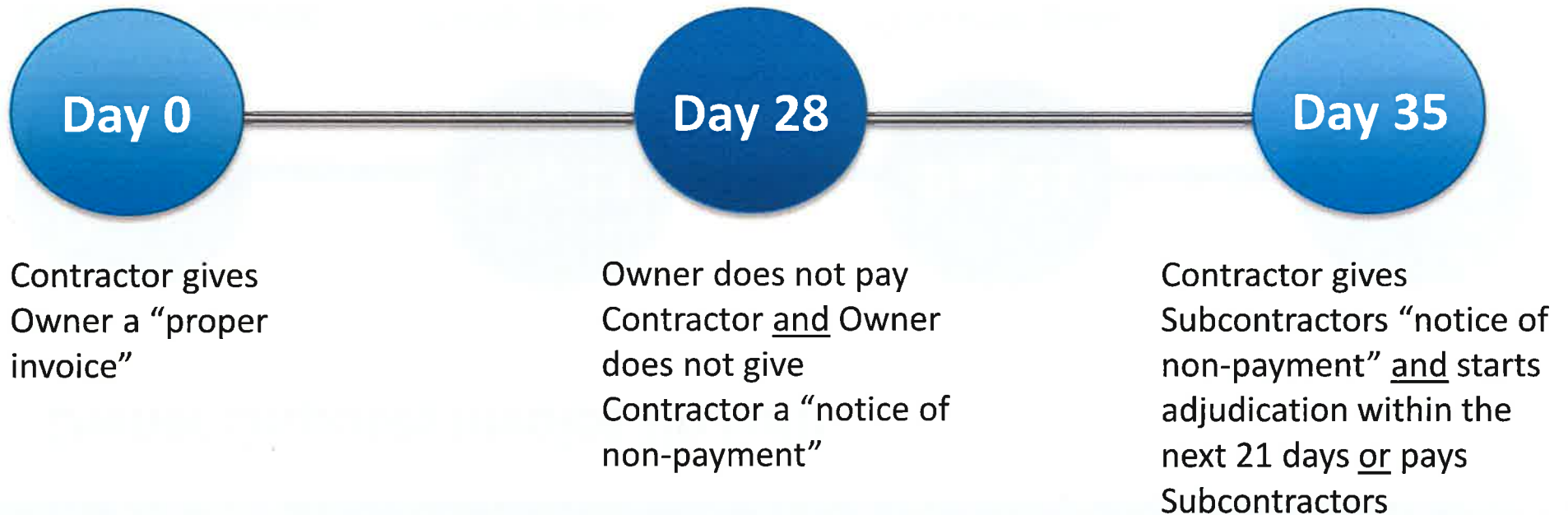
Prompt Payment Issues – Scenario 1

Owner Disputes Invoice (In Full)



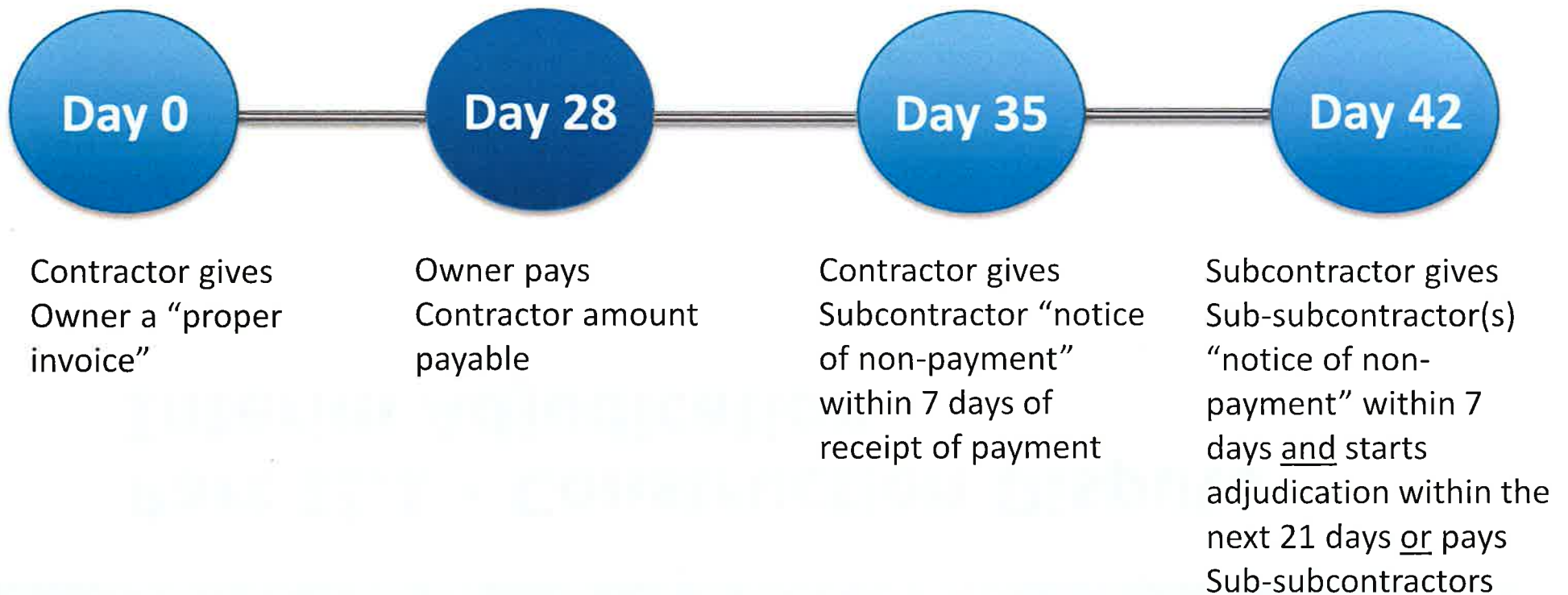
Prompt Payment Issues – Scenario 2

Non-Payment by Owner



Prompt Payment Issues – Scenario 3

Dispute between Contractor & Subcontractor



Adjudication

Part II.1 - Construction Dispute Interim Adjudication

Highlights

- Completely new section
- Freedom to include adjudication “rules” in contract, but must comply with legislation
- Adjudicator can also set “ground rules”
- Cannot pre-select adjudicator in contract/ subcontract
- Cannot refer dispute to adjudication after contract/ subcontract complete

Highlights

- Can adjudicate dispute even if dispute before court or arbitration, but adjudicate before decision made by court or arbitrator
- Any contracting party can refer dispute to adjudication (owner, contractor, subcontractor, sub-subcontractor)
- Adjudication is not mandatory
- Option to terminate adjudication, if notice of termination given before decision made
- Parties still have lien rights

Highlights

- Adjudicator's determination is binding until:
 - a) dispute decided by court or arbitrator; or
 - b) written agreement between the parties regarding matter.

Highlights

- Types of disputes to be adjudicated:
 - a) valuation of services
 - b) payment (including COs or proposed COs)
 - c) notice of non-payment under “Prompt Payment”
 - d) claims for set-off (against trust funds or against lien)
 - e) payment and non-payment of holdback
 - f) other disputes the parties agree to adjudicate

Highlights

- General Rule: One dispute per adjudication
 - Contractor can elect to consolidate contract and subcontract adjudications
- General Rule: Adjudicator's fee paid equally
- General Rule: Parties pay own costs

Who Are the Adjudicators? (*draft regulations*)

- Managed by Authorized Nominating Authority (government body)
- Must have certificate of qualification to adjudicate (can be renewed, cancelled, suspended)
- Need at least 7 years of relevant working experience in construction industry and may be an accountant, architect, engineer, quantity surveyor, project manager, lawyer, arbitrator

Adjudicator's Powers

- Power comes from Construction Act and contract/ subcontract
- Adjudicator can:
 - a) issue directions regarding conduct of adjudication
 - b) ascertain relevant facts and law
 - c) draw inferences
 - d) on-site inspection
 - e) retain others – accountant, building contractor, architect, engineer (to be paid as determined by adjudicator)
 - f) make a determination (decision)

Adjudicator's Powers

- If decision issued after 30 days from receipt of documents, decision not binding
- Decision must be in writing, with reasons

How to Start Process – Notice of Adjudication

- Give written notice of adjudication
- No standard/ prescribed form
- Notice of adjudication must include:
 - a) Parties' names and addresses
 - b) nature and description of dispute (how and when arose)
 - c) relief sought
 - d) name of proposed adjudicator
- Adjudicator's fee negotiated
- General rule: adjudicator's fee paid equally

Documents Given To Adjudicator

- Notice of adjudication
- Contract/ subcontract
- Any documents party will rely on

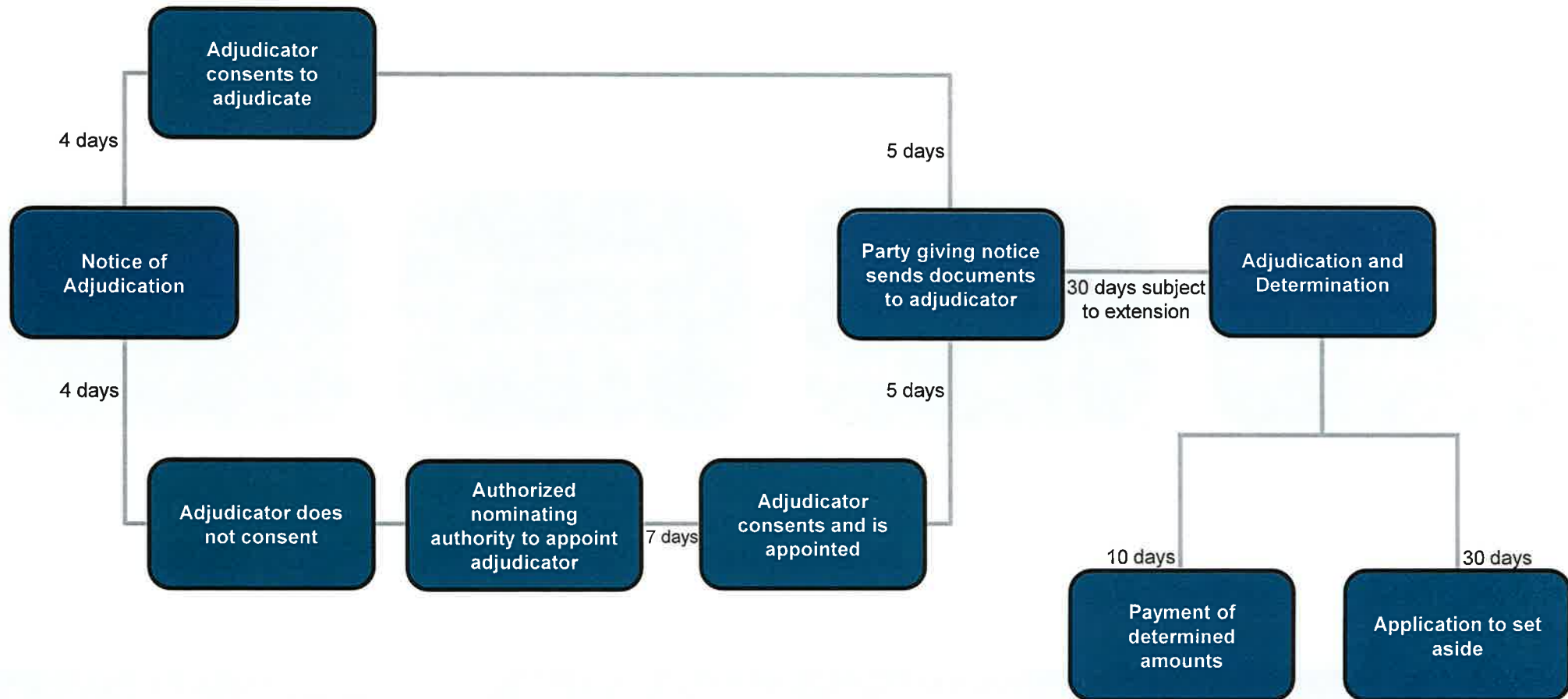
Goals of Adjudication

- Timely resolution of disputes
- Keep money flowing down construction pyramid
- Prevent accumulation of disputes from being dealt with at end of project
- Deal with disputes as project being constructed
- Quick way of dealing with stalemates
- Qualified adjudicator considers dispute and makes timely decision

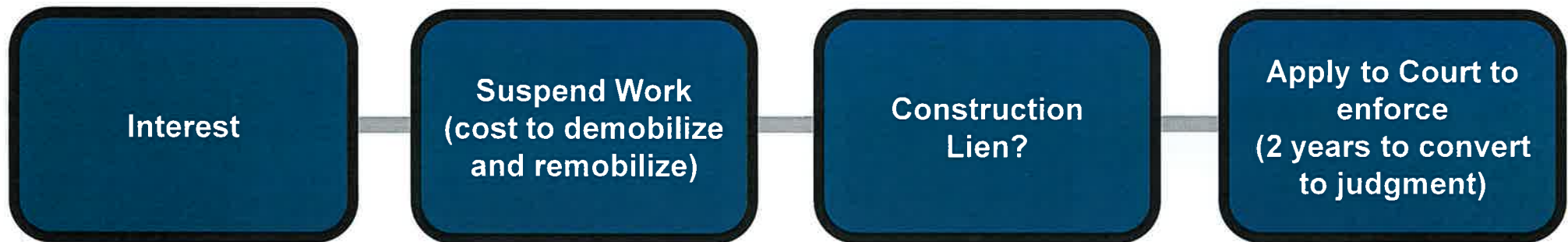
How To Achieve Goals

- Review and modify document management system
- Review or set up method of keeping track of issues and dates (limitation periods)
- Consider how to keep staff on site while also preparing for adjudication
- Consider how to simplify complex disputes
- List of adjudicators
- List of lawyers

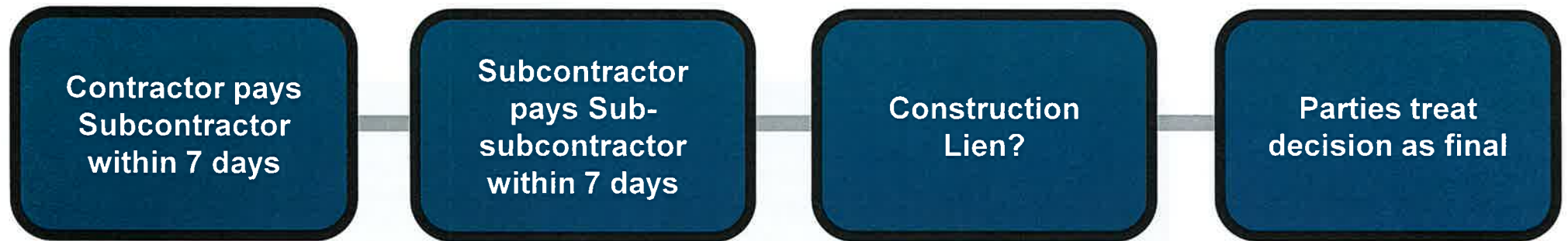
Adjudication Process



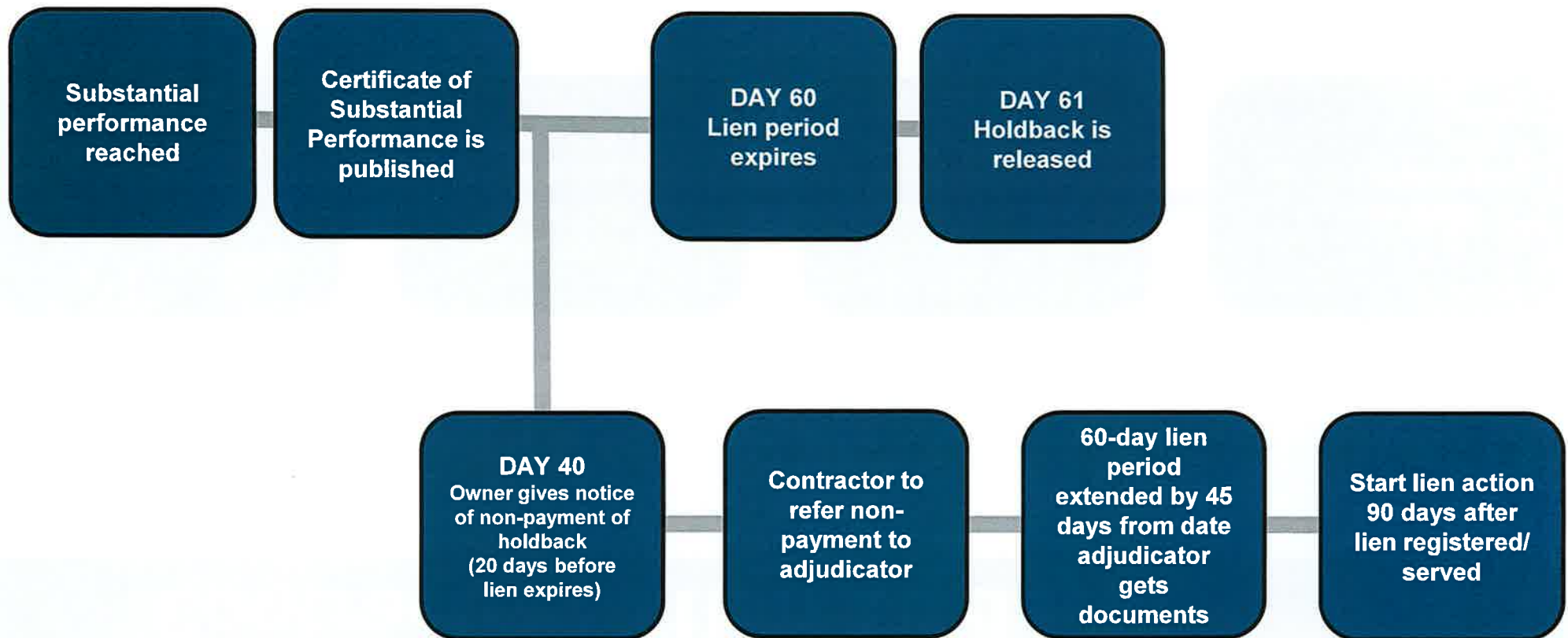
Remedies for Non-Payment of Adjudicator's Determination within 10 days



What Happens After Owner Pays Contractor within 10 days?



Holdback & Construction Lien Periods



Lien Modernization

**Lien Modernization comes into effect =
July 1, 2018**

Liens

Preservation

- Deadline to register or serve lien increases from 45 days to 60 days

Perfection

- Deadline to start lien action increases from 90 days to 150 days

Holdback

Mandatory Release of Holdback

- General Rule: Mandatory release of holdback
- Exception: Owner can retain holdback if it publishes a Notice within 40 days

Annual or Phased Release of Holdback

- For certain projects, holdback may be released on an annual or phased basis

Substantial Performance

Substantial Performance occurs when the improvement is ready for its intended use, and the cost is not more than:

- i. 3% of the first \$1,000,000 of the contract price;
- ii. 2% of the next \$1,000,000 of the contract price
- iii. 1% of the balance of the contract price

Completion of Contract

Deemed Completion of Contract

- Contract deemed completed and services/materials deemed to be last supplied when the price of completion, correction of known defect, or last supply is not more than lesser of:
 - i. 1% the contract price; and
 - ii. \$5,000

QUESTIONS?