

STATUTORY DECLARATIONS: PURPOSE AND PRACTICAL APPLICATION

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CCDC forms 9A-2001 and 9B-2001 replace the obsolete 1982 forms 9A, 9B, and 9C. These two new forms address concerns expressed by the industry relating to the understanding, value and effect of Statutory Declarations and the appropriate times at which they are to be provided. The purpose of this bulletin is to introduce the new, improved Statutory Declaration forms and to review their purpose and practical application.

A Statutory Declaration of Progress Payment Distribution is a sworn declaration made before a commissioner for oaths, notary public or justice of the peace, whereby a Contractor (on form 9A-2001) or Subcontractor (on form 9B-2001) declares that all amounts payable by them as a result of their receipt of a specified progress payment have been paid, subject to the three exceptions which are identified on the forms.

CCDC contracts require a Contractor to provide a Statutory Declaration only with the Contractor's application for holdback release. In practice, contract documents often require Statutory Declarations to be submitted also with the second and subsequent applications for progress payment by both Contractors and Subcontractors. However, payment of the immediately preceding application may not have been made to the Contractor or Subcontractor when the current application is submitted. Requiring the Statutory Declaration to be submitted with the current application may make it difficult or impossible for a Contractor or Subcontractor to submit a truthful declaration.

In order to enable a Contractor or Subcontractor to make an application for progress payment and have it reviewed and certified by the consultant, the new forms 9A-2001 and 9B-2001 state clearly that these Statutory Declaration forms are to be provided as a condition of payment, but not necessarily at the same time as the application.

The New Forms

CCDC 9A-2001 is for use only by Contractors as a condition of receiving payment for either the second and subsequent applications for progress payment or the release of holdback funds. CCDC 9B-2001 is for use only by Subcontractors, similarly. By marking the appropriate box at the top left of the forms, the declarant identifies for which type of payment the form is a condition. The CCDC has made the forms user-friendly by dividing the required information graphically into self-explanatory sections. A note highlights the seriousness and risk of making a false or fraudulent declaration.

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