

Kentucky Fairness in Construction Act protects contractors and subs

Construction is a competitive business, especially in these times. Many contractors and subcontractors need work, which plays to the owner's advantage. Owners can dictate onerous terms under a construction agreement — and withhold earned compensation for months on end.

To rectify this situation, the General Assembly passed Kentucky's Fairness in Construction Act, which protects contractors and subcontractors from overreaching owners. Owners must now comply with new standards that govern a construction agreement. Let's take a quick look at some of the standards.

Contractors' right to earned compensation

A contractor is entitled to receive payment on his undisputed compensation, less permitted retainage, within 30 business days of a pay request. Also called holdback, retainage is the part of a contractor's payment that is withheld until final inspection and acceptance of the work.

If the owner fails to make this payment, he must pay 12 percent interest on the amount due. To obtain the entitlement, the contractor must ensure the pay request is completed properly and on time. He must also send the owner a written notice that documents the unpaid account and the date when interest kicks in. The notice must be sent by certified mail 25 days following a pay request.

Subcontractors' right to earn compensation

Subcontractors are entitled to receive payment on their undisputed compensation, less permitted retainage, within 15 business days following the contractor's receipt of payment. If that payment isn't made, the contractor must also pay 12 percent interest on the money due. How-



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ever, the subcontractor must submit a properly completed pay request to get the entitlement.

Payment of retainage

There are three new rules on retainage:

Staggered limits — The owner may retain 10 percent of a contractor's earned compensation when a project starts. However, that retainage must be reduced to 5 percent when the project reaches 51 percent completion. Contractors and subcontractors will now be paid 50 percent of the retainage halfway through the job.

Payment — The owner must pay the remaining retainage within 30 business days following the date of substantial completion. The contractor must then pay the subcontractors their portion of the retainage within 15 business days. Failure to make these payments will result in 12 percent interest being tacked onto the amounts owed.

Holdback exception — There is one exception to this payment rule. If the contractor has not completed all his work, the owner has the right to hold back 200 percent of the estimated cost of the remaining work. The contractor has the same holdback right against subcontractors.

LAW: New law protects contractor's right to assert claims

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Right to file claims

The new law protects a contractor's and subcontractor's right to assert claims against the owner under a construction agreement. This includes a claim for added costs caused by owner delays. The owner is expressly prohibited from impairing these rights under the agreement. However, an owner does have the right to designate how claims will be resolved, such as in arbitration. The act also authorizes a court or arbitrator to award reasonable attorney fees to the prevailing party if the other party has acted in bad faith.

Right to file mechanic liens

The act offers the same protection for mechanic liens. The owner can no longer require contractors and subcontractors to waive their mechanic lien rights under a construction agreement. The law also increases the time for filing those liens to 60 days following a judgment against the owner.

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