

Prompt Pay Act for Private Construction Gets Prompter



By Gregory P. Gillis and Andrea Landeen, Nussbaum Gillis & Dinner

If you are a licensed contractor, subcontractor or material supplier, you're lucky because Arizona has a statute known as the Prompt Pay Act, which speeds up your ability to get paid on a contract or subcontract. True to its name, the act provides for prompt payment on private construction projects. However, recent changes to the act now require certain payments to be made even more promptly. These changes affect all construction contracts where:

- the owner first distributed bid plans, specifications or contract documents to a contractor or subcontractor on or after Jan. 1, 2011, or
- the owner and contractor entered into their contract on or after Jan. 1, 2012.

The act has changed in four major ways:

1. Required Notice for All Residential Projects

For all residential/owner-occupied projects, contractors must include specific language in each invoice or bid that gives the owner notice and an explanation of the payment deadlines in the Prompt Pay Act, otherwise deadlines can't be enforced under that construction contract.

2. Release of Retention Payments

The act now specifically addresses payment of "retention" (usually 10 percent of the contract amount) and final invoices. An owner must pay retention within seven days after the date that the billing or estimate for release of retention is certified and approved—unless the owner issues a written notice stating the reasons for disapproving of the contractor's billing.

Further, an owner may refuse to pay retention for failure to complete a material requirement of the construction contract, failure to complete portions of the work, and for several other reasons outlined in state statute. However, the owner may withhold only 150 percent of the direct costs and expenses that he reasonably expects to incur due to the problems.

3. Final Payment

Upon "final completion," the contractor must submit an invoice for final payment. Then the owner must pay the final invoice within seven days after the billing or estimate for final payment is certified or approved. An exception is made if the owner issues a detailed written notice disapproving of the contractor's final billing.

4. Payment to Subcontractors Whose Work Is Acceptable

Under the act, if an owner withholds payment for "defective work or materials not remedied," and if the contractor as a result doesn't receive sufficient funds to pay subcontractors and material suppliers whose work wasn't the reason the owner withheld payment, the contractor must pay these subcontractors and material suppliers within 21 days.

In other words, if an owner doesn't pay the contractor, the contractor still has to pay the subcontractors and material suppliers whose work and materials were satisfactory and approved by the owner. Such payment must be made within 21 days of the date of when it would otherwise have been made by the owner.

Many other substantial revisions have been made to the Prompt Pay Act, governing private construction contracts. If you are in the construction industry and would like additional information, consult a legal professional. ■

Gregory P. Gillis and Andrea Landeen are attorneys with the North Scottsdale-based law firm of Nussbaum Gillis & Dinner, practicing in the areas of commercial and construction litigation, collections and bankruptcy. More: www.nussbaumgillis.com.

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480-607-1084
e-mail: mike@michaelstuckcpa.com