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Getting Paid on Construction Projects: A Brief Refresher on Retainage

INSIGHTSARTICLE

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Receiving timely payment is a key priority for all construction companies. Retainage clauses are a crucial point of interest because they determine when a portion of payment will be released for the work. Retainage is a withholding of a percentage of each progress payment until a later point of release that is usually the end of the project. Various contract clauses and statutes can influence the timing of when retainage is released. Let's examine those details more closely.

Contract Clauses

When negotiating retainage terms, there are several issues to consider. First, how much will be retained? Typical retainage tends to be 5% or 10%. Some contracts provide that retainage will be reduced at certain points on the project. For example, on some jobs, if the retainage is 10%, then, once the project has progressed to half-completion, the owner will release half the retainage held at that point, and the remaining portion of the project will hold retainage at 5% on each payment.

Another point for negotiation is the release of retainage. Some contracts release retainage when the “work” is completed. Other jobs release retainage when the “project” is completed. For a subcontractor, or if there are multiple primes, this could have a significant effect on the timing of payment.

Finally, there are different ways to handle release of retainage in conjunction with substantial and final completion. Some projects hold retainage and release as part of final payment. Other projects will release all retainage at the point of substantial completion, except for an estimated amount to complete the remaining punch list work. All of these items are up for negotiation.

Statutes

Different federal or state statutes may affect the details of retainage, particularly depending on the project type, location, and bonding. On Maryland private jobs per statute, if payment and performance bonds are posted the retainage cannot exceed 5%.

Pennsylvania private projects are governed by the Contractor and Subcontractor Payment Act (CASPA). Under CASPA, the owner is required to release final retainage within 30 days of the final acceptance of the prime contract work, and the contractor must in turn pay all subcontractors within 14 days after receipt of retainage. Also, under CASPA, a contractor or subcontractor is entitled to post a bond and receive all retainage once its portion of work is completed.

Pennsylvania public projects are governed by the Procurement Code and Prompt Pay Act. These statutes require retainage to be no more than 10% and to be reduced to 5% once half-completed. After substantial completion has been reached, the government must release the full payment and retainage, except for one and a half times the amount required to complete the remaining work.

Maryland public projects can only retain 5%. Retainage must be released within 120 days after completion of the prime contract work. Also, if so elected, the retainage can be placed in an investment escrow account, with the earnings paid to the contractor.

Seek Trusted Legal Counsel

Properly negotiating retainage clauses can greatly influence the economics of any given project. Saxton & Stump’s experienced [Construction Law](#) attorney [Ron Pollock](#) is available to assist with negotiation of contract terms and to

draft or review your contract for compliance and favorable outcomes.

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