

Arizona Significantly Broadens Prompt Payment Protections

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by Gregory R. Shaughnessy

Arizona recently enacted legislation that significantly broadens the rights of contractors and subcontractors to prompt payment on construction projects. Previously, such prompt payment protections applied only to contractors and subcontractors on public works projects (Arizona Statutes §34-221) and to subcontractors on private projects (Arizona Statutes §32-1129).

Under the former law, on public projects contractors and subcontractors that were not paid in a timely manner as required by the statute were entitled to interest on the unpaid amount at a rate of 1 percent per month, but there was no entitlement to recover attorney fees. On private projects, subcontractors were entitled to identical remedies.

The new prompt payment laws (Arizona Statutes §§32-1129 to 1129.6) apply only to private works of improvement. The public works statute was not changed. Besides providing prompt payment protections to general contractors on private works, the new statute effectively rewrites the prior law.

Under the new law, unless the owner and contractor agree, payments on all private construction projects are to be made “on the basis of a duly certified and approved billing or estimate of the work performed... during the preceding thirty day billing cycle.” Payments are to be certified and approved within 14 days after submission, and payments are to be issued within 7 days after certification. If payment is to be based on other than a 30-day cycle or if certifications or payments are to be made or issued over a period longer than the 14- and 7-day periods, “the construction contract and each page of the plans” must “specifically identify such other billing cycle in a clear and conspicuous manner” and special notices regarding the extended periods also must appear on “each page of the plans.” Given the burden of inserting such information on every page of the drawings, it appears that a 30-day billing cycle with a 14-day certification period followed by a 7-day payment period is likely to become the norm on private construction projects in Arizona.

The new law requires general contractors to make progress payments to subcontractors within 7 days of receiving payment from owners, a reduction from the 14-day period under prior law. The legislation also provides that subcontractors are entitled to be informed by the owner of progress payments to the prime contractor within 5 days of payment, provided the subcontractor makes a written request for this information.

Other provisions of the new law include:

- The level of retainage withheld from a subcontractor cannot exceed the percentage withheld by the owner from the general contractor.

- Subcontractors and prime contractors are entitled to suspend performance or terminate their contracts (after supplying proper notice) when payments are late.
- Subcontractors and prime contractors that have suspended work in compliance with the law are entitled to recover payment for demobilization and remobilization costs.
- Subcontractors and prime contractors are not required to recommence work after a non-payment suspension until they have actually received past due payments plus payment for their demobilization and remobilization costs.
- A monthly interest rate of 1.5 percent (an increase from the prior 1 percent rate) is applicable to late payments.
- By law, the venue for disputes concerning Arizona construction is Arizona.
- The prevailing party in a civil dispute or arbitration involving late payment is entitled to recover its reasonable attorney fees and costs (something still not provided for on public works projects).

Since the early 1990s, prompt payment legislation has been adopted by a number of states, and new, more detailed and complex prompt payment laws are enacted on a regular basis. For example, *see* California Public Contract Code §§7107, 10261.5, 10262 and 10262.5; Business and Professions Code §7108.5; and Civil Code §§3260 and 3260.1). Prudent owners, contractors and subcontractors must keep abreast of these common changes in prompt payment laws.

Gregory R. Shaughnessy specializes in construction and real estate and regularly advises owners, general contractors and subcontractors on their legal rights and remedies and in the negotiating and drafting of general contracts, subcontracts and related documents.

For more information about the issues discussed in this article, Mr. Shaughnessy can be reached at (415) 435-2409

E-Mail: grs@grs-law.com

Website: www.grs-law.com