

AN ACT

1 Amending the act of February 17, 1994 (P.L.73, No.7), entitled
2 "An act requiring timely payment to certain contractors and
3 subcontractors; and providing remedies to contractors and
4 subcontractors," further providing for definitions, for
5 application of act, for owner's payment obligations, for
6 owner's withholding of payment for good faith claims, for
7 contractor's and subcontractor's payment obligations, for
8 errors in documentation, for retainage and for contractor's
9 withholding of payment for good faith claims.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. The definitions of "contractor", "owner" and
13 "subcontractor" in section 2 of the act of February 17, 1994
14 (P.L.73, No.7), known as the Contractor and Subcontractor
15 Payment Act, are amended and the section is amended by adding
16 definitions to read:

17 Section 2. Definitions.

18 The following words and phrases when used in this act shall
19 have the meanings given to them in this section unless the
20 context clearly indicates otherwise:

21 * * *

1 "Contractor." A person authorized or engaged by an owner to
2 improve real property by construction contract.

3 * * *

4 "Owner." A person who has an interest in the real property
5 that is improved and who ordered the improvement to be made. The
6 term includes successors in interest of the owner, tenants for
7 life and tenants for a term of years, if a contract exists
8 between the tenants and the contractor, and agents of the owner
9 acting with their authority.

10 * * *

11 "Retainage." The amount earned, but retained under the terms
12 of a construction contract.

13 "Subcontractor." A person who has contracted to furnish
14 labor or materials to or has performed labor for a contractor or
15 another subcontractor in connection with a construction contract
16 to improve real property.

17 "Townhouse." A single-family dwelling unit constructed in a
18 group of three or more attached units in which each unit extends
19 from foundation to roof with a yard or public way on at least
20 two sides.

21 Section 2. Section 3(a) of the act is amended to read:

22 Section 3. Application of act.

23 (a) Number of residential units.--This act shall not apply
24 to improvements to real property which consists of [six or fewer
25 residential units which are under construction simultaneously.]
26 a single townhouse or building that consists of one or two
27 dwelling units used, intended or designed to be built, used,
28 rented or leased for living purposes.

29 * * *

30 Section 3. Section 5 of the act is amended by adding a

1 subsection to read:

2 Section 5. Owner's payment obligations.

3 * * *

4 (e) Suspension of performance.--If payment is not received
5 by a contractor in accordance with this section, the contractor
6 may suspend performance of the work, without penalty, until
7 payment is received. Any term in a construction contract that is
8 contrary to this subsection shall be unenforceable as a matter
9 of public policy.

10 Section 4. Section 6(b) of the act is amended to read:

11 Section 6. Owner's withholding of payment for good faith
12 claims.

13 * * *

14 (b) Notice.--If an owner withholds payment from a contractor
15 for a deficiency item, [it shall notify] the amount withheld
16 shall be reasonable and the owner shall provide written notice
17 to the contractor of the deficiency item and the amount withheld
18 within seven calendar days of the date that the invoice is
19 received.

20 Section 5. Section 7 of the act is amended by adding a
21 subsection to read:

22 Section 7. Contractor's and subcontractor's payment
23 obligations.

24 * * *

25 (e) Suspension of performance.--If payment is not received
26 by a subcontractor in accordance this section, the subcontractor
27 may suspend performance of the work, without penalty, until
28 payment is received. Any term in a contract which is contrary to
29 this subsection shall be unenforceable as a matter of public
30 policy.

1 Section 6. Section 8(a) of the act is amended to read:

2 Section 8. Errors in documentation.

3 (a) Notice of defect.--If an invoice is filled out
4 incorrectly or incompletely or if there is any other defect or
5 impropriety in an invoice, the person who receives the invoice
6 shall give written notice specifying the defect or impropriety
7 to the person who sent the invoice within [ten] seven working
8 days of receipt of the invoice.

9 * * *

10 Section 7. Section 9 of the act is amended by adding a
11 subsection to read:

12 Section 9. Retainage.

13 * * *

14 (e) Certain terms.--

15 (1) A construction contract may include terms for the
16 retainage of a portion of the amount due to ensure the proper
17 performance of the contract, except that the sum withheld may
18 not exceed 10% of the amount due until 50% of the performance
19 under the contract is completed. When the performance under
20 the contract is 50% completed, one-half of the amount
21 retained shall be returned and released.

22 (2) Before payment is required under paragraph (1):

23 (i) where applicable, the architect or engineer must
24 approve the application for payment under paragraph (1);

25 (ii) the contractor or subcontractor must be making
26 satisfactory progress; and

27 (iii) there must be no specific cause for greater
28 withholding.

29 (3) The sum withheld after the performance under the
30 contract is 50% completed may not exceed 5% of the value of

1 completed work based on monthly progress payment requests. A
2 term in a construction contract that is contrary to the terms
3 under this subsection shall be unenforceable as a matter of
4 public policy.

5 Section 8. Section 11(b) of the act is amended to read:

6 Section 11. Contractor's withholding of payment for good faith
7 claims.

8 * * *

9 (b) Notice.--If a contractor or subcontractor withholds
10 payment from a subcontractor for a deficiency item, the amount
11 withheld must be reasonable and it must notify the subcontractor
12 [or supplier and the owner of the reason] in writing of the
13 deficiency item and the amount withheld within seven calendar
14 days of the date after receipt of the notice of the deficiency
15 item.

16 Section 9. This act shall take effect in 60 days.