

New Massachusetts Law Limits Retainage on Private Projects

Last week, Massachusetts enacted an act “Relative to Fair Retainage Payments in Private Construction” (S. 2271), which limits the amount of retainage that can be withheld on a project and establishes procedures at the end of a project for (a) timely identification of punchlist work, deliverables, and claims; (b) determining the date of substantial completion; and (c) payment of retainage. Important features of the Act are:

- Only applies to private projects where the contract between the owner and the prime contractor exceeds \$3 million and is signed after November 6, 2014.
- Does not apply to projects with four or fewer dwelling units.
- Limits retainage on periodic payments to 5%.
- Requires prime contractor to submit a notice of substantial completion to the Owner within 14 days of substantial completion; requires owner to accept or reject notice of substantial completion within 14 days of receipt; provides that notice of substantial completion is deemed accepted if not timely rejected.
- Defines substantial completion as date the work is sufficiently complete so that the owner may occupy or utilize the project for its intended use; provides that this definition may not be changed.
- Requires owner to furnish prime contractor with written punchlist, including deliverables, within 14 days after acceptance of notice of substantial completion; requires prime contractor to furnish subcontractors with written punchlist, including deliverables, within 21 days after acceptance of notice of substantial completion.
- Permits monthly billing for retainage and requires payment within 30 days.
- Requires a party withholding retainage to first provide written notice describing the incomplete or defective work, missing deliverables, or claims on which the withholding is based along with values for same.
- Limits amounts withheld from retainage payment to (a) reasonable value of deliverables but not more than 2.5% of contract price; (b) 150% of cost to perform punchlist work; and (c) reasonable value of claims.
- Requires that (a) notices and lists be certified as made in good faith; (b) rejections include factual and contractual bases for rejection and be certified as made in good faith.
- Requires/allows dispute resolution to proceed promptly.
- Permits sending communications electronically.

Please note the above summarizes many features of the Act, but it is not all-inclusive. Therefore, you should not act based solely on this summary. If you have questions about the Act, please contact your attorney or an attorney in our [Construction Law Group](#).

If you have any questions about the issues addressed here, or any other matters involving Construction Law issues, please feel free to contact:

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