

PUBLICATION

Reminder: Beginning January 1, 2023, Virginia "Pay-if-Paid" Clauses No Longer Valid

Authors: Michael A. Schollaert, Timothy F. Maffett
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On January 1, 2023, SB 550 will take effect, invalidating pay-if-paid clauses in construction contracts in Virginia. With this change on the immediate horizon, contractors should update their contracts and policies to adapt. In anticipation, here is a summary of the new requirements:

Private Projects

- Contracts between the owner and general contractor must now contain a provision that requires the owner to pay the general contractor within 60 days of the submission of an invoice. Owners can withhold payment based on failure to comply with the contract, but the owner must notify the general contractor in writing of its intent to withhold payment and the reasons for doing so.
- Contracts between a general contractor and subcontractors now require the general contractor to pay subcontractors within the earlier of (i) 60 days from satisfactory completion of work or (ii) seven days after receipt of payment from the owner. Importantly, payment by the owner to the general contractor can no longer be a condition for paying lower-tiered subcontractors (unless the owner is insolvent or a debtor in bankruptcy). Still, the general contractor is not obligated to pay for work performed by a subcontractor that fails to comply with the subcontract. If that's the case, the general contractor must notify the subcontractor of its intent to withhold payment, the specific reasons for withholding payment, the specific failures to comply with the subcontract, the dollar amount being withheld, and the lower-tiered subcontractor responsible for the failure to comply with the subcontract.
- Owners and contractors who fail to make timely payment under the rules face interest penalties and potential court-imposed remedies for non-compliance. Also noteworthy, these changes do not apply to retainage provisions.

Public Projects

- Contractors on public projects will now be liable for the entire amount owed to any of their subcontractors, regardless of that contractor receiving payment, and payment can no longer be a condition precedent. However, contractors can withhold payment based on failure to comply with the contract, but the contractor must notify the subcontractor in writing of its intent to withhold payment and the reasons for doing so.

These changes can influence the way you negotiate and draft contracts, and how you manage relationships throughout a project's lifecycle. For help with understanding how this new law applies to your business, please contact [Michael Schollaert](#), [Tim Maffett](#), or a member of Baker Donelson's [Construction Group](#).