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50-State Survey of State Retainage Statutes for Private Construction

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About This Survey

This survey summarizes state statutes that regulate the amount of retainage that parties to contracts for private construction may withhold, and/or when it must be paid. The survey was conducted by Holland & Knight's Construction Industry Practice Group in October through December of 2011. Statutes adopted or amended thereafter are not reflected.

For the sake of clarity, when a statute makes a distinction between a prime contractor and a subcontractor, even if different nomenclature is used in the statute, the prime contractor is referred to as "prime contractor" in this survey.

This survey summarizes and paraphrases the statutory language in many instances and is not intended to address every possible fact pattern or situation. Actual statutory language should be consulted. This survey is not a substitute for legal advice given by counsel.

Alabama

A prime contract may provide for an owner to withhold retainage of no more than 10 percent of the estimated amount of work properly done and the value of insured, stored materials. After 50 percent completion, no further retainage may be withheld. These limits do not apply to amounts withheld for work not properly performed or payment not earned. Excess retainage bears interest at the rate of 1 percent per month. ALA. CODE §§ 8-29-3(i), (n). This provision applies only to prime contracts entered into on or after September 2, 2011, ALA. ACT 2011-647 § 2, but does not apply to projects for or by an electric utility regulated by the Public Service Commission. ALA. CODE § 8-29-3(m).

The percentage of retainage that a prime contractor may withhold from a subcontractor cannot exceed the percentage of retainage on payments made by the owner to the prime contractor. ALA. CODE § 8-29-3(f). For subcontracts executed on or after September 1, 2011, this percentage cannot exceed 10 percent of the estimated amount of work properly done and the value of insured, stored materials. After 50 percent completion, no further retainage may be withheld. ALA. CODE § 8-29-3(j). Excess retainage accrues interest at the rate of 1 percent per month. ALA. CODE §§ 8-29-3(f), (j). The same rules apply to retainage between subcontractors of different tiers. ALA. CODE §§ 8-29-3(g), (k).

The owner must make progress payments to the prime contractor within the time specified in the agreement or, if not specified, within 30 days of receipt of a payment request covering work completed in accordance with the contract. ALA. CODE § 8-29-3(a). The prime contractor must pay subcontractors, for work properly completed, within the time specified in the subcontract, or, if not specified, within seven days of receipt of payment from the owner. ALA. CODE § 8-29-3(b). The same requirements apply to lower tiers. ALA. CODE § 8-29-3(c). Overdue payments bear interest at the rate of 1 percent per month. ALA. CODE § 8-29-3(d).

For contracts dated on or after September 1, 2011, the owner must release and pay retainage to the prime contractor for work completed no later than 60 days after the completion of the prime contractor's work defined in its contract with the owner, or no later than 60 days after substantial completion of the project, whichever occurs first, and, in both events, with all necessary certificates of occupancy having been issued. The prime contractor must release and pay retainage to its subcontractors for work completed pursuant to the same terms of the statute applicable to other subcontract payments. Substantial completion is defined as the stage in the progress of the project when the project or designated portion thereof is sufficiently complete in accordance with the contract documents with all necessary certificates of occupancy having been issued so that the owner may occupy or utilize the project for its intended purpose. ALA. CODE § 8-29-3(l). <http://www.legislature.state.al.us/>

Alaska

None. <http://w3.legis.state.ak.us/index.php>

Arizona

An owner may withhold a "reasonable amount for retention," but only an amount sufficient to pay the direct expenses the owner reasonably expects to incur to correct any items set forth in the statute, such as defective work, damage or reasonable evidence that the contract cannot be completed. ARIZ. REV. STAT. §§ 32-1129.01(d). A prime contractor must pay subcontractors and suppliers within seven days of each payment received from the owner for "the full amount received for such subcontractor's work" less "a reasonable amount for retention that does not exceed the actual percentage retained by the owner." An owner must notify subcontractors of progress payments and final payment within five days of a written request by the subcontractor. ARIZ. REV. STAT. §§ 32-1129.01, 32-1129.02.

Additional and amended provisions apply to contracts for which either the prime contract was entered into on or after January 1, 2012, or the owner initially distributed bid documents on or after January 1, 2011.

<http://www.azleg.gov/>

Arkansas

None. <http://www.arkleg.state.ar.us/>

California

An owner must release retainage that is not subject to a *bona fide* dispute within 45 days of the "date of completion." The date of completion is defined as any of (1) the date on which a certificate of occupancy is issued, (2) the date indicated on a valid and recorded notice of completion executed by the owner, (3) the owner's use of the property coupled with cessation of the work, (4) the owner's acceptance of the work, or (5) continued cessation of labor for 60 days, or 30 days if the owner records a notice of cessation. In the event of a dispute, the owner may retain up to 150 percent of the disputed amount. CAL. CIV. CODE § 3260(c) (citation applicable until July 1, 2012; after July 1, 2012, cite CAL. CIV. CODE §§ 8812(a), (c)).

The prime contractor must pay subcontractors, within 10 days of receipt of retention from the owner, those funds to which there is no good faith dispute. Should there be a dispute, the prime contractor may withhold up to 150 percent of the disputed amount. CAL. CIV. CODE § 3260(d) (citation applicable until July 1, 2012; after July 1, 2012, cite CAL. CIV. CODE §§ 8814).

Failure to pay retention as noted above carries a penalty of 2 percent per month. Attorneys' fees may be awarded. This is true for an owner that does not pay a prime contractor. It is also true for a prime contractor who has been paid and who does not pay subcontractors. If the prime contractor has not received payment from the owner, the penalties do not apply. CAL. CIV. CODE § 3260(g) (citation applicable until July 1, 2012; after July 1, 2012, cite CAL. CIV. CODE § 8818). These provisions may not be waived. CAL. CIV. CODE § 3260(h) (citation applicable until July 1, 2012; after July 1, 2012, cite CAL. CIV. CODE § 8820).

Effective July 1, 2012, when statutory amendments will supersede former CAL. CIV. CODE § 3260. See CAL. CIV. CODE Part 6 §§ 8000-9566. <http://www.leginfo.ca.gov/>

Colorado

None. <http://www.leg.state.co.us/>

Connecticut

A construction contract cannot call for retainage at a rate greater than 5 percent over the duration of a project. CONN. GEN. STAT. § 42-158k. The owner must establish an interest-bearing escrow account and deposit all retainage into that account. CONN. GEN. STAT. § 42-158p. The escrow account must be terminated and the prime contractor paid in full, with accrued interest, upon substantial or final completion of the project. CONN. GEN. STAT. § 42-158p(d). The owner bears all expenses related to the escrow account. CONN. GEN. STAT. § 42-158p(e). The prime contractor and subcontractors may substitute securities for retainage. CONN. GEN. STAT. § 42-158p(h).

As with other contract payments, an owner must pay a prime contractor its retainage within 30 days after written request for payment. The prime contractor must pay subcontractors their retainage no later than 30 days after receiving such payment from the owner. Subcontractors owe the same obligation to lower tier subcontractors and suppliers. Disputed amounts must be held in escrow and late payments accrue interest at 1 percent per month, with potential liability for attorneys' fees. CONN. GEN. STAT. § 42-158j. <http://www.cga.ct.gov>

Delaware

None. <http://legis.delaware.gov/>

District of Columbia

None. <http://www.dccouncil.washington.dc.us>

Florida

None. <http://www.leg.state.fl.us>

Georgia

An owner may withhold amounts on account of various categories of deficient or incomplete performance enumerated in the statute. In addition, an owner may withhold a reasonable amount from the prime contractor as retainage, not to exceed the retainage percentage set forth in the contract. GA. CODE ANN. § 13-11-5(a). The prime contractor may withhold a reasonable amount from the subcontractor for retainage, not to exceed the amount of retainage the owner withholds from the prime contractor on account of the subcontractor's work. GA. CODE ANN. § 13-11-5(b).

The owner must make payment to the prime contractor within 15 days of receipt of a payment request covering work completed in accordance with the contract. GA. CODE ANN. § 13-11-4(a). Within 10 days of the prime contractor's receipt of retainage from the owner, it must, in turn, reduce proportionally each subcontractor's retainage provided that the subcontractor has completed at least 50 percent of its subcontract value, including approved change orders, is proceeding satisfactorily and has provided assurances of continued performance reasonably required by the prime contractor. GA. CODE ANN. § 13-11-6. Overdue payments bear interest of 1 percent per month, but only if the person to whom the payment application was submitted is simultaneously notified of the statutory section. Acceptance of a late payment releases a claim for interest. GA. CODE ANN. §13-11-7.

These statutory provisions do not apply to contracts on residential projects consisting of 12 or fewer residential units. GA. CODE ANN. §13-11-10. <http://www.legis.state.ga.us>

Hawaii

None. <http://www.capitol.hawaii.gov>

Idaho

An owner may withhold up to 5 percent retainage from a prime contractor. The same limitation applies to retainage withheld by a prime contractor from a subcontractor. IDAHO CODE § 29-115(2). The 5 percent limitation does not apply to a contract for which the prime contractor (or subcontractor) has not provided a performance bond or a contract involving residential property with four or fewer units. *Id.* Within 35 days from the date on which the work is substantially complete, the retainage must be reduced to the lesser of 150 percent of the estimated value of the work yet to be completed or the retainage then withheld by the owner. IDAHO CODE § 29-115(3). The owner must release all retainage within 35 days of final completion, except that the owner may retain 150 percent of the estimated value of disputed amounts. *Id.* The prime contractor must pay retainage to its subcontractors, or to those specific subcontractors for which the retainage was designated, within 10 days from the time the prime contractor receives a payment of retainage from the owner. IDAHO CODE § 29-115(4). In the event of a *bona fide* dispute between the prime contractor and a subcontractor, the prime contractor may retain 150 percent of the estimated value of the disputed amount. IDAHO CODE § 29-115(5). These limitations cannot be waived by agreement. IDAHO CODE § 29-115(6). <http://www.legislature.idaho.gov>

Illinois

An owner of a private project of fewer than 13 dwelling units in a single building must make payment of approved amounts no more than 15 calendar days after the approval. Prime contractors must pass along payments owed to subcontractors payments within 15 calendar days after receipt of payment from the owner. 815 Ill. Comp. STAT. § 603/10. Interest accrues on overdue payments at the rate of 10% per annum. 815 Ill. Comp. STAT. § 603/15. <http://www.ilga.gov>

Indiana

None. <http://www.state.in.us/legislative>

Iowa

None. <http://www.legis.state.ia.us>

Kansas

The maximum rate of retainage is 5 percent unless either the owner or prime contractor determines that a higher rate of retainage is required to ensure performance or there has been a failure of performance. Even if such a determination is made, the maximum rate permissible is 10 percent. An owner must release retainage on undisputed amounts within 30 days after substantial completion, except that if work is continuing, the owner may withhold up to 150 percent of the value of that portion of the retainage attributable to the ongoing work until after that work is complete. Punch list work must be paid within 45 days of completion of that work, but within the regular payment cycle. KAN. STAT. ANN. § 16-1804. Overdue undisputed amounts accrue interest at the rate of 18 percent per annum for all tiers. KAN. STAT. ANN. §§16-1803(e), (g), (h), 16-1804(j). Alternate security may be requested before commencement of work. KAN. STAT. ANN. §§16-1804(g). Early release of retainage is permitted. KAN. STAT. ANN. §§16-1804(k). <http://www.kslegislature.org>

Kentucky

Until 50 percent of the contract is complete, the maximum rate of retainage is 10 percent. When more than 50 percent of the project is complete, the rate of retainage must reduce to 5 percent. KY. REV. STAT. ANN. §§ 371.410(1). When the work is substantially complete, the prime contractor may withhold 200 percent of the estimated cost of the balance of any prime contractor's or subcontractor's contractually obligated, yet incomplete work. KY. REV. STAT. ANN. §§ 371.410(2). *See also* KY. REV. STAT. ANN. §§ 176.090 et. seq. <http://www.lrc.state.ky.us>

Louisiana

Retainage amounts withheld under the terms of a construction contract must be deposited into an interest-bearing escrow account until such funds are due in accordance with the terms of the contract. The escrow agent is to be selected by agreement. The escrow agent is required to release undisputed funds with interest after completion of the work and within three business days after a release signed by both the owner and prime contractor. In the event of a dispute, the escrow agent is to release disputed amounts, with interest, within three business days of receipt of a final court order, arbitration award or settlement. These requirements apply to contracts of \$50,000 or more, except for contracts for the construction or improvement of single- or two-family residences, or certain types of industrial facilities enumerated in the statute. LA. REV. STAT. ANN. § 9:4815. <http://www.legis.state.la.us>

Maine

A prime contractor may withhold retainage from subcontractors and suppliers even if the owner does not hold retainage from the prime contractor. A prime contractor must pay subcontractors and suppliers their retainage within seven days after receipt of retainage from the owner. ME. REV. STAT. ANN. tit. 10, § 1116. <http://janus.state.me.us>

Maryland

Retainage is limited to 5 percent on contracts for which a prime contractor or subcontractor has furnished 100 percent payment and performance security. The percentage of retainage held by a prime contractor cannot exceed the rate retained by the owner from the prime contractor under the prime contract. These limitations do not prohibit the withholding of additional amounts if the one withholding the funds reasonably determines that the other party's performance provides reasonable grounds for withholding additional amounts. These requirements do not apply to contracts (a) for single family residences, (b) under \$250,000, (c) funded wholly or in part by or through the Maryland Department of Housing and Community Development, (d) for home improvement contracts by Maryland-licensed home improvement contractors, or (e) covered by the Custom Home Protection Act. MD. REAL PROP. CODE ANN. §§ 9-304, 9-305. <http://mlis.state.md.us>

Massachusetts

None. <http://www.mass.gov/legis>

Michigan

None. <http://www.legislature.mi.gov>

Minnesota

Unless a contract provides otherwise, an owner may withhold no more than 5 percent of any progress payment. MINN. STAT. § 337.10(4)(b). The owner may reduce retainage and may eliminate retainage on any monthly progress payment "if, in the owner's opinion, the work is progressing satisfactorily." *Id.* The retainage subdivisions do not apply to contracts for specific professional services defined in MINN. STAT. §§ 326.02-326.15, *i.e.*, architects, engineers, surveyors, landscape architects, geoscientists and interior designers. MINN. STAT. § 337.10(4)(c). Overdue payments accrue interest at the rate of 1.5 percent per month. If a law suit is required in order to collect interest, the court must award attorneys' fees and expenses. MINN. STAT. § 337.10(3). <http://www.leg.state.mn.us>

Mississippi

None. <http://billstatus.ls.state.ms.us/>

Missouri

The owner must hold all retainage in trust for the benefit of the prime contractor and the prime contractor's subcontractors of all tiers who are not in default, in proportion to their respective interests. MO. REV. STAT. § 436.303. Retainage is capped at 10 percent. MO. REV. STAT. § 436.303. A prime contractor and subcontractors of all tiers may eliminate cash retainage by substituting security in the form of a retainage bond, a letter of credit or a certificate of deposit. MO. REV. STAT. § 436.312. A prime contractor may not withhold any retainage from a subcontractor in excess of the retainage the owner withholds from the prime contractor unless the subcontractor's work is not in accordance with the terms of the subcontract, in which case, subject to the terms of the subcontract, the contractor may retain additional sums to ensure the subcontractor's satisfactory performance of the subcontract. MO. REV. STAT. § 436.315.

The prime contractor may selectively release retainage to a subcontractor prior to substantial completion of the entire project if the prime contractor (and presumably also the owner) determines there is no risk to the owner involving the subcontractor's work. MO. REV. STAT. § 436.321. Within 30 days of the project reaching substantial completion, the owner must pay the prime contractor all retainage or substitute security, less an amount equal to 150 percent of the value of the punch list. MO. REV. STAT. § 436.324. Substantial completion is defined as "the occurrence of the earlier of the architect or engineer issuing a certificate of substantial completion in accordance with the terms of the contract documents or the owner accepting the performance of the full contract." § 436.327.

A court may award interest up to 1.5 percent per month, plus attorneys' fees, for withholding retainage in violation of the statute. MO. REV. STAT. § 436.333. These provisions do not apply to residential construction of four or fewer units. § 436.336. <http://www.moga.mo.gov/statutes/C436.htm>

Montana

An owner may not withhold more than 5 percent as retainage. MONT. CODE, ANN. § 28-2-2110(1). A prime contractor cannot withhold a higher percentage from a subcontractor than the owner has withheld from the prime contractor. MONT. CODE, ANN. § 28-2-2110(2). Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the construction contract, as, for example, in a schedule of values. MONT. CODE, ANN. § 28-2-2110(3). <http://www.leg.mt.gov>

Nebraska

None. <http://www.unicam.state.ne.us>

Nevada

A construction contract between an owner and prime contractor may provide for retainage of up to 10 percent. Additional amounts may be retained for (a) the value of work not performed (for which payment is sought), (b) costs and expenses reasonably necessary to correct or repair deficient work for which payment is sought, but the latter additional withholding is limited to amounts that exceed half the regular retainage amount, and (c) amounts for which the owner is liable under certain other state statutes for unpaid taxes and benefits. The two latter categories of withholding are conditioned on the owner having given detailed written notice of intent to do so before the payment due date. NEV. REV. STAT. ANN. § 624.609. The same rules apply as between a prime contractor and subcontractors, NEV. REV. STAT. ANN. § 624.624, and each subcontractor must forward to lower tier subcontractors the notices it receives from the prime contractor, an upper-tier subcontractor or the owner. NEV. REV. STAT. ANN. § 624.622. <http://leg.state.nv.us>

New Hampshire

None. <http://www.gencourt.state.nh.us>

New Jersey

No limit is set on the percentage of retainage. Under N.J.S.A. 2A:30A-2.b, the prime contractor is required to pay subcontractors within 10 calendar days of receipt of a payment of retainage from the owner (the same as for each periodic or final payment). The rate of interest for late payments is specified by statute as "at a rate equal to the prime rate plus 1 percent." Prime rate is defined as "the base rate on corporate loans at large United States money center commercial banks." (This provision does not apply to certain federally-funded transportation projects.)

The amount paid to a subcontractor must be the full amount the prime contractor receives for the work of the subcontractor based on the work completed or the services rendered under the contract. However, the prime contractor's obligation to make such payments to subcontractors only applies "if the subcontractor ... is performing to the satisfaction of the prime contractor" Other conditions to this payment obligation are that the subcontractor's "work has been accepted by the owner, the owner's authorized approving agent, or the prime contractor ... and the parties have not otherwise agreed in writing." <http://www.njleg.state.nj.us>

New Mexico

Retainage on earned amounts is prohibited for the majority of private and public construction contracts. N.M. STAT. ANN. § 57-28-5. These restrictions on retainage do not apply to construction of residential property containing four or fewer residential units. N.M. STAT. ANN. § 57-28-3. <http://legis.state.nm.us/lcs>

New York

By mutual agreement of the parties, an owner may retain a "reasonable amount" of the contract sum as retainage. N.Y. GEN. BUS. LAW ART. 35-E § 756-c. A prime contractor may withhold a reasonable amount from a subcontractor so long as the amount does not exceed the percentage retained by the owner. *Id.* A prime contractor or subcontractor may not withhold monies from payments due to a subcontractor or supplier to cover liquidated damages. N.Y. GEN. BUS. LAW ART. 35-E § 756-a(3)(b)(iii). A contract clause that provides otherwise is void and unenforceable. N.Y. GEN. BUS. LAW ART. 35-E § 757(4).

The owner must release all retainage no later than 30 days after final approval of the work under the contract. *Id.* A prime contractor must release a proportionate amount to subcontractors seven days after receipt from the owner. Late payments accrue interest at a rate of 1 percent per month. *Id.* These provisions apply only if the prime contract is for \$150,000 or more, and, if so, to subcontracts under them. <http://public.leginfo.state.ny.us>

North Carolina

The rate at which a prime contractor withholds retainage from subcontractors may not exceed the rate at which the owner withholds retainage from the prime contractor. N.C.G.S. § 22C-4. <http://www.ncga.state.nc.us>

North Dakota

Contracts may provide for retainage of up to 10 percent of the amount of each contract "estimate" (a term used in the statute but not defined) until the work is 50 percent complete. Thereafter, no further retainage can be withheld. If retainage funds are invested, interest earned on funds goes to the contractor. N.D. CENT. CODE § 43-07-23. <http://www.legis.nd.gov>

Ohio

A prime contractor or subcontractor may withhold retainage as permitted under the contract and may withhold such additional amounts as may be necessary to resolve disputes. OHIO REV. CODE ANN. §§ 4113.61(A)(1), 4113.61(A)(2)(b). A prime contractor or a subcontractor must distribute retainage within the shorter of (a) 10 days after receipt of payment of retainage from the owner or prime contractor, respectively, or (b) the period specified in the

contract, provided that all work has been satisfactorily performed. OHIO REV. CODE ANN. §§ 4113.61(A)(3), 4113.61(A)(4).

Payments withheld in excess of those permitted accrue interest at the rate of 18 percent *per annum*, plus interest the subcontractor may owe to lower tier subcontractors. OHIO REV. CODE ANN. §§ 4113.61(A)(1), 4113.61(A)(4). Attorneys' fees and court costs may, if equitable, be awarded to the prevailing party in the event of a violation of the statute. OHIO REV. CODE ANN. § 4113.61(B)(1).

These requirements do not apply to construction or improvement of single-, two- or three-family detached dwelling houses. OHIO REV. CODE ANN. § 4113.61(C). <http://www.legislature.state.oh.us>

Oklahoma

None. <http://www.okhouse.gov>

Oregon

If a prime contractor or subcontractor has furnished a payment and performance bond, retainage held by the owner, prime contractor and subcontractor cannot exceed 5 percent of the contract or subcontract price of the work completed. OR. REV. STAT. § 701.420(1). If a bond is not furnished, then the owner, prime contractor or subcontractor may withhold retainage at a rate established in the contract or subcontract. When a prime contractor pays a subcontractor in full, including amounts held as retainage, the owner must pay the prime contractor, from the prime contractor's retainage, the amount of retainage that the prime contractor paid the subcontractor. OR. REV. STAT. § 701.420(3).

An owner, prime contractor or subcontractor must release all retained funds within 30 days of completion and acceptance of the work. Overdue retainage accrues interest at the rate of 1 percent per month. OR. REV. STAT. § 701.420(2).

A prime contractor or subcontractor may avoid retainage by posting performance and payment bonds approved by the owner or prime contractor entitled to hold retainage. The bonds must be delivered before commencement of construction. OR. REV. STAT. § 701.430. <http://www.leg.state.or.us>

Pennsylvania

Pennsylvania does not establish a maximum rate of retainage. If a prime construction contract provides for retainage, the owner must pay all retained funds to the prime contractor within 30 days of final completion and acceptance of the work. 73 PA. CONS. STAT. § 509(a). A prime contractor may withhold retainage from a subcontractor even if the owner does not withhold retainage from the prime contractor. 73 PA. CONS. STAT. § 509(b). It is unclear from the wording of the statute whether a prime contractor may *only* withhold retainage from a subcontractor if the owner is not withholding retainage from the prime contractor.

A prime contractor must release all retainage to subcontractors within 30 days of final acceptance of the work. *Id.* Subcontractors must pay all retainage due to lower tier subcontractors within 14 days of receipt of retainage from the prime contractor. 73 PA. CONS. STAT. § 509(c).

Late retainage payments accrue interest from the date retainage was due. 73 PA. CONS. STAT. § 509(d). In addition, one who violates the statutory payment terms may incur a penalty equal to 1 percent per month of the amount wrongfully withheld plus reasonable attorney fees. 73 PA. CONS. STAT. § 512. <http://www.legis.state.pa.us>

Rhode Island

None. <http://www.rilin.state.ri.us>

South Carolina

S.C. CODE § 29-6-40 states "Nothing in this chapter prevents the owner, the prime contractor, or a subcontractor from withholding application and certification for payment because of the following: unsatisfactory job progress, defective construction not remedied, disputed work, third party claims filed or reasonable evidence that claim will be filed, failure of prime contractor or subcontractor to make timely payments for labor, equipment, and materials, damage to owner, prime contractor, or another subcontractor, reasonable evidence that contract or subcontract cannot be completed for the unpaid balance of the contract or subcontract sum, or a reasonable amount for retainage." Thus, by implication, retainage must be reasonable. <http://www.scstatehouse.net>

South Dakota

None. <http://legis.state.sd.us>

Tennessee

The maximum rate of retainage is 5 percent. TENN. CODE ANN. §66-34-103(a). Any retainage must be deposited in a separate, interest-bearing account with a third party. TENN. CODE ANN. § 66-34-104(a). A party failing to make such deposit when required is subject to a surcharge of \$300 per day. TENN. CODE ANN. § 66-34-104(c). Once deposited, the funds become the property of the prime contractor or subcontractor to whom they are owed, subject to the rights of the depositing party in the event of default. TENN. CODE ANN. § 66-34-104(b). A prime contractor and subcontractors for whose benefit an owner has established an escrow account are not required to deposit additional retainage into an escrow account. TENN. CODE ANN. § 66-34-103(d).

The owner must release and pay retainage to the prime contractor within 90 days of completion of the work or substantial completion of a project, whichever occurs first. A prime contractor must pay retainage to subcontractors and suppliers within 10 days of receipt of retainage from the owner. TENN. CODE ANN. § 66-34-103(b). Escrowed funds, together with interest, must be paid "immediately" upon "satisfactory completion of the contract," as evidenced by a written release signed by the person owing the retainage. TENN. CODE ANN. § 66-34-104(d).

The escrow provisions of TENN. CODE ANN. § 66-34-104 apply to private projects for which the prime contract is \$500,000 or more (as well as to all public contracts), TENN. CODE ANN. § 66-34-104(h), and cannot be waived by agreement. TENN. CODE ANN. § 66-34-104(i). Failure to deposit escrow funds as required within seven days of receipt of a written notice of such failure becomes a Class A misdemeanor punishable by a daily fine. TENN. CODE ANN. § 66-34-104(j). Violations of the percentage cap and payment requirements are also a Class A misdemeanor, subject to a fine of \$3,000 per day. TENN. CODE ANN. § 66-34-103(e).

A prime contractor and subcontractors may substitute securities in lieu of retainage or provide a line of credit. TENN. CODE ANN. § 12-4-108(c), (d). <http://www.legislature.state.tn.us>

Texas

For work that qualifies for a mechanic's lien claim, the owner must retain 10 percent of either the contract price or the value of the work to be completed. TEX. PROP. CODE ANN. § 53.101. <http://www.capitol.state.tx.us>

Utah

The maximum rate of retainage withheld from any payment by any tier is 5 percent of the payment and the total retainage held cannot exceed 5 percent of the total construction price. UTAH CODE ANN. § 13-8-5(3)(a)-(b). If the percentage held by the owner is, or is reduced during construction to, under 5 percent, the percentage withheld between the prime contractor and the subcontractor, or between subcontractors, shall be the same as the owner's retention percentage. UTAH CODE ANN. § 13-8-5(3)(c). Notwithstanding these limits, additional retainage may be withheld in an amount necessary to cure a breach or default and up to twice the value of

incomplete or deficient work. UTAH CODE ANN. § 13-8-5(8)(a). An owner must explain such additional withholding in writing within 45 days of the withholding. UTAH CODE ANN. § 13-8-5(8)(b).

Any withheld money must be retained in an interest-bearing account. The interest accrued is for the benefit of the prime contractor and subcontractors and shall be paid after the project is accepted by the owner. UTAH CODE ANN. § 13-8-5(4).

The owner must release retainage to the prime contractor within 45 days from the latest of the following: (a) the date the owner receives the prime contractor's billing statement, provided they include lien waivers; (b) the date that a certificate of occupancy or final acceptance is issued to the prime contractor who originally obtained the building permit, the owner or the architect; (c) the date that the building inspector permits partial or complete occupancy without issuing a certificate of occupancy; or (d) the date the prime contractor accepts the final pay quantities. UTAH CODE ANN. § 13-8-5(5). In the case of partial occupancy, retainage must be released timely in proportion to the value of the part occupied. UTAH CODE ANN. § 13-8-5(6).

A prime contractor or subcontractor must release retainage withheld from lower tiers within 10 days after its receipt of retainage from the owner or higher tier. A party paying retainage may designate all or a portion of the paid retainage for release to particular subcontractors. Absent such a designation, it must be paid proportionally. UTAH CODE ANN. § 13-8-5(9).

Violations of these statutory provisions subject the violator to liability for attorneys' fees and other allowable costs. In addition, one who knowingly violates these provisions is subject to a charge of 2 percent per month on the improperly withheld amount, in addition to ordinary interest. UTAH CODE ANN. § 13-8-5(10).

These rules apply to nonresidential commercial and industrial construction projects. For mixed-use projects, they apply *pro rata* to the nonresidential square footage of the project. UTAH CODE ANN. § 13-8-5(1)(a). Construction lenders are exempt. UTAH CODE ANN. § 13-8-5(2)(b). Contractual provisions purporting to waive the applicable provisions are not enforceable. UTAH CODE ANN. § 13-8-5(11). <http://www.le.state.ut.us>

Vermont

An owner must release the retainage to the prime contractor within 30 days after completion of the work and complete acceptance. A prime contractor may withhold retainage from its subcontractors even if the owner does not withhold retainage from the prime contractor. VT. STAT. ANN. tit. 9, § 4005. <http://www.leg.state.vt.us>

Virginia

None. <http://legis.state.va.us>

Washington

None. <http://www.leg.wa.gov/legislature>

West Virginia

None. <http://www.legis.state.wv.us>

Wisconsin

None. <http://www.legis.state.wi.us>

Wyoming

None. <http://legisweb.state.wy.us>

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