

1 AN ACT relating to contracts for the improvement of real estate.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 371.160 is amended to read as follows:

- 4 (1) If, in any contract in the amount of ***two million***~~[five hundred thousand]~~ dollars
5 ***(\$2,000,000)***~~[\$500,000]~~ or more involving the improvement of real estate, a
6 certain amount or percentage of the contract is held back by the owner, that retained
7 amount shall be deposited in a separate escrow account with a bank or trust
8 company authorized to do business in the Commonwealth of Kentucky.
- 9 (2) As of the time of the deposit of the retained funds, they shall become the sole and
10 separate property of the contractor to whom they are owed.
- 11 (3) The escrow agent shall promptly invest all escrowed principal in obligations
12 selected by the escrow agent in its discretion.
- 13 (4) Upon satisfactory completion of the contract, to be evidenced by a written release
14 by the owner, all funds accumulated in the escrow account, together with any
15 interest thereon, shall be paid immediately to the contractor to whom it is owed.
- 16 (5) The escrow agent shall be compensated for its services in an amount agreed to by
17 the owner, contractor, and escrow agent. The compensation shall be a commercially
18 reasonable fee commensurate with fees being charged for handling of escrow
19 accounts of similar size and duration. The compensation shall be paid from the
20 escrow account.
- 21 (6) In the event the owner fails or refuses to execute the release provided for in
22 subsection (4) of this section, then the contractor shall have a cause of action
23 against the owner in a court of proper jurisdiction.
- 24 (7) This section shall not apply to contracts with the Commonwealth, any ***city***, county,
25 charter county ***government***, urban-county government, ***unified local government***,
26 or ***consolidated local government***~~[municipality]~~, ~~[or]~~ any other political
27 subdivision, agency, or instrumentality of the Commonwealth, or school boards.

1 ➔Section 2. KRS 371.405 is amended to read as follows:

- 2 (1) All payments on construction contracts entered into after June 26, 2007, shall be
3 made pursuant to the terms of the contract and as required in this section and KRS
4 371.410.
- 5 (2) The following provisions in a contract for construction shall be against the public
6 policy of this Commonwealth and shall be void and unenforceable:
- 7 (a) A provision that purports to waive, release, or extinguish the right to resolve
8 disputes through litigation in court or substantive or procedural rights in
9 connection with such litigation, except that a contract may require binding
10 arbitration as a substitute for litigation or require nonbinding alternative
11 dispute resolution as a prerequisite to litigation;
- 12 (b) A provision that purports to waive, release, or extinguish rights provided by
13 KRS Chapter 376, with the exception of partial waivers of lien rights provided
14 by the contractor or subcontractor for progress payments;~~[or]~~
- 15 (c) *A provision that purports to waive, release, or extinguish any of the*
16 *requirements of Section 1 of this Act; or*
- 17 *(d)* A provision that purports to waive, release, or extinguish the right of a
18 contractor or subcontractor to recover costs, additional time, or damages, or
19 obtain an equitable adjustment of the contract, for delays in performing the
20 contract that are, in whole or part, within the control of the contracting entity.
21 Unusually bad weather that cannot be reasonably anticipated, fire, or other act
22 of God shall not automatically entitle the contractor to additional
23 compensation under this paragraph.
- 24 (3) Subsection (2)~~(d)~~~~(e)~~ of this section shall not render null, void, and unenforceable a
25 contract provision that:
- 26 (a) Permits a contractor or subcontractor to recover that portion of delay costs
27 caused by acts or omissions of the contracting entity;

- 1 (b) Requires notice of any delay by the party affected by the delay;
- 2 (c) Provides for reasonable liquidated damages;
- 3 (d) Provides for arbitration or any other procedure designed to resolve contract
4 disputes; or
- 5 (e) Specifies which costs are recoverable by a contractor or subcontractor for
6 delay.
- 7 (4) If a provision of a construction contract is found to be null and unenforceable, that
8 provision shall not affect other provisions of the contract that are in compliance
9 with this section and, to this end, the provisions of the contract are severable.
- 10 (5) Except as provided in subsection (7) of this section, all contracts for construction
11 shall provide that payment of amounts due a contractor from a contracting entity,
12 except retainage, shall be made within thirty (30) business days after the contracting
13 entity receives a timely, properly completed, undisputed request for payment.
- 14 (6) Except as provided in subsection (7) of this section, if the contracting entity fails to
15 pay a contractor within thirty (30) business days following receipt of a timely,
16 properly completed, undisputed request for payment, the contracting entity shall
17 pay interest to the contractor beginning on the thirty-first business day after receipt
18 of the request for payment, computed at the rate of twelve percent (12%) per annum
19 on the unpaid amount. Twenty-five (25) business days following the submission of
20 a timely, properly completed, undisputed request for payment, the contractor shall
21 notify the contracting entity by certified mail if payment has not been received. The
22 notice shall also include the date on which interest shall begin to accrue.
- 23 (7) For purposes of subsections (5) and (6) of this section, a postsecondary institution
24 and a board of education shall have forty-five (45) business days to make the
25 payment required by those subsections. For purposes of payments by a board of
26 education, the Department of Education shall have ten (10) business days, including
27 the day the undisputed request for payment is received, to complete the final

1 approval and application for payment and return it to the board of education. The
2 ten (10) business days shall be included in the forty-five (45) business days. If the
3 contracting entity fails to pay a contractor within forty-five (45) business days after
4 receipt of the timely, properly completed, undisputed request for payment, the
5 contracting entity shall, beginning on the forty-sixth day after receipt of the request,
6 pay interest to the contractor computed at the rate of twelve percent (12%) per
7 annum on the unpaid amount.

8 (8) A contractor shall pay its subcontractors any undisputed amounts due within fifteen
9 (15) business days of receipt of payment from the contracting entity, including
10 payment of retainage if retainage is released by the contracting entity, if the
11 subcontractor has provided a timely, properly completed, and undisputed request
12 for payment to the contractor.

13 (9) If a contractor fails to pay a subcontractor any undisputed amounts due within
14 fifteen (15) business days of receipt of payment from the contracting entity, the
15 contractor shall pay interest to the subcontractor beginning on the sixteenth
16 business day after receipt of payment by the contractor, computed at the rate of
17 twelve percent (12%) per annum on the unpaid amount.

18 (10) Subsections (8) and (9) of this section shall apply to all payments from
19 subcontractors to their subcontractors.