

Chapter 382

(House Bill 1231)

AN ACT concerning

Real Property – Construction Contracts – Retention Proceeds

FOR the purpose of establishing that a certain remedy for the payment of an undisputed amount owed under a construction contract applies to certain retention proceeds; reducing a certain minimum contract amount for purposes of the applicability of certain provisions of law relating to retention proceeds; requiring certain undisputed retention proceeds retained by an owner to be paid within a certain period of time after the date of substantial completion; and generally relating to retention proceeds for construction contracts.

BY repealing and reenacting, with amendments,
 Article – Real Property
 Section 9–303 and 9–304
 Annotated Code of Maryland
 (2015 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Real Property

9–303.

(A) IN THIS SECTION, “UNDISPUTED AMOUNTS” INCLUDES ANY RETENTION PROCEEDS THAT EXCEED THE AMOUNT AUTHORIZED TO BE RETAINED UNDER § 9–304 OF THIS SUBTITLE.

[(a)] (B) In addition to any other remedy provided under any other provision of law, a court of competent jurisdiction, for good cause shown may:

(1) Award any equitable relief for prompt payment of undisputed amounts that it considers necessary, including the enjoining of further violations; and

(2) In any action, award to the prevailing party:

(i) Interest from the date the court determines that the amount owed was due; and

(ii) Any reasonable costs incurred.

[(b)] (C) If a court determines that an owner, contractor, or subcontractor has acted in bad faith by failing to pay any undisputed amounts owed as required under § 9–302 of this subtitle, the court may award to the prevailing party reasonable attorney’s fees.

9–304.

(a) In this section, “retention proceeds” means money earned but retained under the terms of a contract or subcontract:

(1) By an owner to guarantee performance of the contract by a contractor;

(2) By a contractor to guarantee performance of a subcontract by a subcontractor; or

(3) By a subcontractor to guarantee performance of a subcontract by another subcontractor.

(b) This section does not apply to:

(1) A contract in an amount less than ~~[\$250,000]~~ **\$100,000**; or

(2) A contract or subcontract for a project funded wholly or in part by or through the Department of Housing and Community Development.

(c) Except as provided in this section:

(1) If a contractor has furnished 100% security to guarantee the performance of a contract and 100% security to guarantee payment for labor and materials, including leased equipment:

(i) The retention proceeds under the terms of a contract may not exceed 5% of the contract price; and

(ii) The retention proceeds of any payment due under the terms of a contract from an owner to a contractor may not exceed 5% of the payment;

(2) The retention proceeds of any payment due under the terms of a contract from a contractor to a subcontractor may not exceed the percentage of retention proceeds from the owner to the contractor; and

(3) The retention proceeds of any payment due under the terms of a contract from a subcontractor to another subcontractor may not exceed the percentage of retention proceeds from the contractor to the subcontractor.

(d) This section may not be construed to prohibit the withholding of any amount due:

(1) From the owner to the contractor if the owner reasonably determines that the contractor's performance under the contract provides reasonable grounds for withholding the additional amount;

(2) From the contractor to any subcontractor if the contractor reasonably determines that the subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount; or

(3) From a subcontractor to another subcontractor if the subcontractor determines that the other subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

(E) ~~RETENTION~~ UNDISPUTED RETENTION PROCEEDS RETAINED BY AN OWNER UNDER THIS SECTION SHALL BE PAID WITHIN 90 DAYS AFTER THE DATE OF SUBSTANTIAL COMPLETION, AS DEFINED BY THE APPLICABLE CONTRACT OR SUBCONTRACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 30, 2019.