



COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

New Massachusetts Retainage Law In Effect For Private Construction Contracts On November 6, 2014

BY MARY T. FEENEY • NOVEMBER 6, 2014

Mary T. Feeny – The new “Retainage Act” (G.L. c. 149, Section 29F) is in effect for private construction contracts entered into on or after November 6, 2014 for projects where the prime contract with the owner has an original price of \$3,000,000 or greater, excluding contracts for residential projects of not more than 4 dwelling units. The Act applies to subcontracts of a lesser value if the prime contract has a value of \$3,000,000 or more.

Here are the key provisions of the Act: No more than 5% may be withheld from a progress payment as retainage to ensure performance. Retaining 10% until 50% completion and then reducing retainage to 0% does not comply with the Act. Substantial completion (defined in the Act) occurs when the contractor, not the architect, issues a notice of substantial completion to the owner. The Act imposes a rigid timeline for owner’s acceptance or rejection of substantial completion (and if not met the project is “deemed” substantially complete), when dispute resolution procedures must be started, when punchlists must be generated, when retainage must be paid. The owner’s rights to continue to hold retainage at the end of the project are limited to the specific circumstances in the Act – for missing or incomplete deliverables, for up to 150% of the cost of incomplete work, for the value of certain types of claims. The parties are not allowed to agree to different terms – those would be “void and unenforceable.” A copy of the Act is [here](#) and a more detailed summary is [here](#).

Owners and contractors must revise their forms for private construction projects in Massachusetts to comply with the mandatory terms of the Act. New contract terms should provide as much clarity as possible to the required procedures and obligations of the owner and contractor especially in the project completion and close-out process and to describe a process for dispute resolution. Please contact [Mary T. Feeny](#) for more information.