

ALLIANCE OF CONSTRUCTION TRADES

NEW CONSTRUCTION LAW – A.R.S. § 32-1129

Provisions:

- Allows an owner to make progress payments on construction contracts of less than 60 days.
- Requires an owner to make progress payments to a contractor on all other construction contracts. Progress payments must be made on the basis of a duly certified and approved billing or estimate of the work performed and the materials supplied during the preceding 30 day billing cycle or such other billing cycle as stated in the contract.
- Stipulates that an owner has 14 days to approve and certify a billing or estimate and any billing or estimate shall be deemed approved and certified 14 days after the owner receives it unless during that 14 days the owner issues a written statement detailing those items not approved or certified. The bill allows an owner to withhold an amount that is sufficient to pay for the direct expenses the owner reasonably expects to incur to correct any of the non-approved items.
- Requires progress payments to be made seven days after a billing or estimate is approved and certified by the owner.
- Stipulates that if a billing or estimate is to be submitted in other than a 30 day billing cycle, the construction contract and each page of the plans must identify the other billing cycle in a clear and conspicuous manner as prescribed by statute or the plans must identify that the owner will provide a written description of the different billing cycle upon request.
- Allows a progress payment to be made later than seven days after a billing or estimate is approved if 1) the contract specifically provides for a later payment and the number of days after certification and approval are specified, and 2) a legend as prescribed by statute is included in clear and conspicuous type on each page of the plans.
- Allows an owner to extend the certification and approval provision if 1) the contract provides for extended certification and approval, and the number of additional days for certification and approval is specified, and 2) a legend as prescribed by statute is included in clear and conspicuous type on each page of the plans.
- Requires an owner to make final payments to a contractor at least seven days after the owner has approved and certified all work under the contract.
- Stipulates that if the project requires a federal agency's final approval the owner shall make the payment in full within seven days of the final approval by the federal agency.
- Stipulates that a construction contract cannot alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely progress payments.
- Authorizes interest payments of 1 1/2 % per cent per month or fraction of a month on any unpaid balance or at a higher rate as the parties agree.
- Requires the owner, upon written request of the subcontractor, to notify the subcontractor within five days after each periodic progress payment has been made to the contractor and after the final payment has been made to the contractor.
- Empowers the successful party, in a civil action or arbitration that is brought to collect payment or interest, to be awarded reasonable costs and attorney's fees.

- Allows an owner and contractor who are a single entity to pay its subcontractors or material suppliers within 14 days of approving any billing or estimate unless another billing cycle is provided according to statute.
- Amends current law to allow seven days for progress or final payment to subcontractors or material suppliers if they have performed according to the provisions of their contract and strikes the current provision of law that allows for any other payment agreement.
- Authorizes interest at the rate of 11/2 per cent per month or fraction of a month for delayed payments by a contractor to a subcontractor beginning on the eighth day.
- Allows a contractor to suspend performance or terminate a contract for failure by the owner to make timely payments if the contractor provides written notice to the owner seven days before the contractors intended suspension or termination unless a shorter notice is required in the contract.
- Allows a subcontractor to suspend performance or terminate a contract if the owner fails to make timely payments The subcontractor must provide written notice to the contractor three days before the subcontractor intends to suspend work or terminate the contract unless a shorter notice is prescribed in the contract.
- Allows a subcontractor to suspend performance or terminate a subcontract if the owner makes timely payments but the contractor fails to pay the subcontractor. The subcontractor must provide written notice to the owner and contractor seven days before the subcontractor intends to suspend work or terminate the contract unless a shorter notice is prescribed in the contract.
- Allows a subcontractor to suspend work or terminate a subcontract if the owner fails to certify part of a billing or estimate if the non-certification is due to something that is not the fault of the subcontractor The subcontractor must give seven days notice to the owner and contractor before the subcontractor suspends work or terminates the contract unless a shorter notice is prescribed in the contract.
- Stipulates that any contractor or subcontractor that suspends work is not required to supply any further labor, services or materials until they have been paid.
- States that the following are against the state's public policy and are void and unenforceable: 1) any provision, covenant, clause or understanding that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution arising from this contract to be conducted in another state and 2) any provision, covenant, clause or understanding that prohibits the suspension of work or the termination of the contract if prompt payments are not made.
- Contains an applicability clause, which states that this law applies to construction contracts where the owner distributes plans after the effective date of this act and to parties that sign a construction contract after January 1 2001.

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