

The Kansas Fairness in Private Construction Contract Act

(Contributed by Christopher F. Burger – 10/2005)

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The Kansas Fairness in Private Construction Contract Act is a legislative attempt to equalize the bargaining power between participants in non-residential, private construction projects. It declares that a host of “typical” construction provisions on non-residential, private construction projects entered into after the publication of the Act in the statute book are void and unenforceable mandating the insertion of other provisions. The Act also declares that other provisions must be found in all contracts, and that the provisions of the Act cannot be waived or varied.

Prompt payment is the primary subject of the Act. The Act seeks to ensure the prompt payment of each “timely, properly completed, undisputed” request for payment. Owners must pay general contractors within thirty (30) days of receipt of such a request, or be subject to penalties of an eighteen percent (18%) non-waivable interest penalty and the contractor’s statutory right to stop work without repercussion. Within seven (7) days of receipt from the owner, the general contractor must pay funds to its subcontractors, or be subject to the same penalties. The seven day payment window is applicable to each separate tier of subcontractor. If the payments are not made, and after an additional seven day notice is provided, the contractor may stop work. When work is resumed, the Act requires the contract time to be extended and the contract sum increased by the reasonable costs for demobilization, delay and remobilization.

The Act also addresses a variety of other subjects, each of which are equally important. For example, the Act declares that a contract provision which makes payment to a subcontractor “contingent or conditioned” upon receipt of a payment from

any other private party does not serve as a defense to a claim to enforce a mechanic’s lien or a bond to secure payment of claims. Further, lien rights cannot be waived, subrogation is affected, retainage is limited to no more than ten percent, venue is designated as the county in which the real estate exists, contracts cannot “waive, release or extinguish the rights to resolve disputes through litigation in court or substantive or procedural rights in connection with such litigation” (although ADR is permitted), and attorney fees must be awarded to the prevailing party in any action to enforce the rights outlined in the Act.

The Act is full of good intentions which may be overrun by unanticipated consequences. Please read it carefully and call with your questions and concerns.

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