

16-1904. Retainage; release and withholding thereof; alternate security; failure to pay. (a) Retainage shall not exceed 5% of the value of the contract or subcontract unless the owner or contractor determines that a higher rate of retainage is required to ensure performance of the contract. Retainage, however, shall not exceed 10% of the value of the contract or subcontract.

(b) If the contractor or subcontractor has failed to meet the terms of the contract, is not performing according to schedule, shows poor workmanship or other issues, the owner may increase retainage up to 10%.

(c) An owner may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a contractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.

(d) A contractor may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as part of the regular payment cycle.

(e) A subcontractor may withhold not more than 150% of the value of incomplete work that is the responsibility of another subcontractor, provided that the incomplete work is due to the fault of such other subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.

(f) Prior to commencement of work, a contractor or subcontractor may request an alternate security in lieu of retainage.

(g) If a contractor or subcontractor requests the use of an alternate security, as defined in subsection (a) of K.S.A. 16-1902, and amendments thereto, in lieu of retainage, the owner or contractor who would otherwise withhold the retainage shall have the right to determine which type of alternate security, as defined in subsection (a) of K.S.A. 16-1902, and amendments thereto, shall be accepted.

(h) An owner, contractor or subcontractor must release all remaining retainage on any undisputed payment due on a construction project within 30 days after substantial completion of the project as part of the regular payment cycle; however, if any contractor or subcontractor is still performing work on the project, an owner may withhold that portion of the retainage attributable to such work until 30 days after such work is completed.

(i) If an owner, contractor or subcontractor fails to pay retainage, if any, pursuant to the terms of a contract for public construction or as required by this act, the owner, contractor or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at a rate of 18% per annum.

(j) Nothing in this section shall prevent early release of retainage if it is determined by the owner, the contractor and the project architect or engineer, that a subcontractor has completed performance satisfactorily and that the subcontractor can be released prior to substantial completion of the entire project without risk or additional cost to the owner or contractor. Once so determined, the contractor shall request such adjustment in retainage, if any, from the owner as necessary to enable the contractor to pay the subcontractor in full, and the owner shall, as part of the next contractual payment cycle, release the subcontractor's retainage to the contractor, who shall, as part of the next contractual payment cycle, release such retainage as is due to the subcontractor.

History: L. 2007, ch. 163, § 4; L. 2010, ch. 128, § 4; July 1.