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CASPA Gets Some Teeth: Summary of House Bill No. 566

On June 12, Governor Wolf signed into law House Bill No. 566 (<http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2017&sInd=0&body=H&type=B&bn=0566>), significantly enhancing the right of contractors and subcontractors under the Contractor and Subcontractor Payment Act (CASPA), 73 P.S. §501 et seq. This law applies to private commercial construction contracts and residential projects with more than six units, but does not apply to government contracts.

CASPA was originally enacted in 1994 and has historically provided consequences for the failure of owners to pay contractors and contractors to pay subcontractors. Among other things, it allows for mandatory attorneys' fees to the substantially prevailing party in any litigation, and allows for a maximum interest rate of up to 24 percent on any unpaid amounts.

The most recent amendments to CASPA significantly enhance its provisions. Among other changes, these amendments provide the following:

- The protections provided by CASPA cannot be waived in the underlying construction contract;
- If payment is not received by a contractor, the contractor has the right to suspend performance of work without penalty until payment is received in accordance with the terms of the underlying construction contract;
- Owners now have 14 days (instead of seven days) to explain any payment withholdings for alleged deficiency items;
- The failure to provide written explanation for a deficiency item withholding now results in a waiver of the basis to withhold payment and necessitates payment to the contractor in full for the pending invoice;
- A contractor must also be paid for all uncontested work that is not the subject of a written explanation; and
- Upon substantial completion, a contractor and/or subcontractor may post a maintenance bond equal to 120 percent of any retainage being held in order to “facilitate the release of retainage.”

One of the consistent critiques of the prior version of CASPA was that there was no consequence for failing to adhere to the statutory requirement that owners and contractors provide written notice of deficiency items for which money was being withheld. These amendments now plug that gap. Failing to provide written explanation for a deficiency item results in a statutory waiver of any complaint relating to that deficiency item.

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