

# CASPA AND COVID-19 – WITHHOLDING PAYMENTS FOR CONTRACTING WORK

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The Pennsylvania Contractor and Subcontractor Payment Act 73 P.S. § 501, et seq. (“CASPA”) was enacted to protect the right to payment of contractors and subcontractors who perform improvements on real property. CASPA provides for interest, penalties, attorneys’ fees, and costs if a contractor is not timely paid. CASPA applies to all private construction projects except for residential buildings of six units or less that are under construction simultaneously or where the owner performs work on his or her own real property. “Improvements” under CASPA includes construction to any part of a building or structure, as well as any alteration of real property.

Although CASPA was originally enacted in 1994, recent changes were made to CASPA in October of 2018 that were meant to strengthen protections for downstream entities. Among those protections is an owner’s right to withhold payment if proper notice is given to a contractor. If an owner desires to withhold a payment due to a deficiency item, the owner must provide written notice of the amount to be withheld along with an explanation of the good faith basis for why the amount is being withheld. Such notice must be provided within 14 days of the date the owner receives the contractor’s invoice. 73 P.S. § 506. This notice requirement also applies to contractors withholding payment from subcontractors for their work. 73 P.S. § 511.

In light of the current challenges and uncertainty due to COVID-19, it is important to note that CASPA does not expressly provide for the tolling of payments, deadlines, or penalties as a result of complications or issues due to COVID-19. Therefore, the failure to provide proper and timely, written notice will waive the right to withhold any amount. Furthermore, improper notice results in an owner or entity being on the hook for paying the invoice in full and any penalties associated with CASPA. For those reasons, it is vital for parties entering into new contracts to include clear language regarding potential challenges pertaining to COVID-19. As for existing contracts, it is important to document challenges, be transparent with expectations, make accommodations when necessary, and closely follow CASPA’s requirements.

If you have any questions or would like additional information related to contracts and CASPA, please contact Ian Grecco for assistance.