

CONSTRUCTION CONTRACTS - PROMPT

PAYMENT ACT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Commerce and Trade Code by enacting the Utah Prompt Payment Act.

The act requires progress payments on certain construction contracts. The act requires the owner to promptly dispute a billing or estimate with which the owner does not agree and

limits the amount that an owner can withhold from a progress payment. The act requires

prompt payment by the owner upon completion of the work. The act provides for interest

on late payments. The act gives subcontractors the right to notification of progress

payments. The act provides for the awarding of costs and attorneys' fees. The act requires

prompt payment by the contractor to subcontractors and suppliers. The act requires the

wavier of mechanics' lien rights by subcontractors and suppliers upon receipt of payment.

The act provides for the interruption of the work on a construction contract without penalty

in cases of an environmental hazard. The act provides for the interruption of work on a

construction contract or the termination of the contract in cases of nonpayment.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-55-501, as last amended by Chapters 233 and 317, Laws of Utah 2000

ENACTS:

13-33-101, Utah Code Annotated 1953

13-33-102, Utah Code Annotated 1953

13-33-201, Utah Code Annotated 1953

13-33-202, Utah Code Annotated 1953

13-33-203, Utah Code Annotated 1953

13-33-204, Utah Code Annotated 1953



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **13-33-101** is enacted to read:

30 **CHAPTER 33. UTAH PROMPT PAYMENT ACT**

31 **Part 1. General Provisions**

32 **13-33-101. Title.**

33 This chapter is known as the "Utah Prompt Payment Act."

34 Section 2. Section **13-33-102** is enacted to read:

35 **13-33-102. Definitions.**

36 As used in this chapter the terms "construction contract", "contractor", "owner", and
37 "subcontractor" have the same meaning as defined in Section 13-8-5.

38 Section 3. Section **13-33-201** is enacted to read:

39 **Part 2. Prompt Payment**

40 **13-33-201. Progress payments to contractor -- Payment upon completion of work --**
41 **Withholdings from payments -- Approval of billings -- Interest on late payments**
42 **--Notification to subcontractor of payments by owner -- Costs and attorneys' fees.**

43 (1) An owner shall make progress payments as provided in Subsection (2) to a contractor
44 on all construction contracts where the contract performance period exceeds 45 days.

45 (2) (a) Progress payments shall be made on the basis of a duly certified and approved
46 billing or estimate of the work performed and the materials supplied during the preceding 30-day
47 billing cycle, or an alternate billing cycle as stated in the construction contract.

48 (b) If billings or estimates are to be submitted in other than 30-day billing cycles, the
49 construction project bid documents shall specifically identify the alternate billing cycle in a clear
50 and conspicuous manner as prescribed in Subsection (3).

51 (c) Except as provided in Subsection (4), the owner shall make progress payments to the
52 contractor within seven days after the date the billing or estimate is certified and approved pursuant
53 to Subsection (5).

54 (3) (a) A construction contract may provide for a billing cycle other than a 30-day billing
55 cycle if:

56 (i) the construction project bid documents and the construction contract specifically set
57 forth the alternate billing cycle; and

58 (ii) the provisions of either Subsection (3)(b) or (3)(c) are satisfied.

59 (b) The following legend or substantially similar language setting forth the other billing
60 cycle appears in clear and conspicuous type on bid and construction documents:

61 "Notice of alternate billing cycle.

62 "This contract allows the owner to require the submission of billings or estimates in billing
63 cycles other than 30 days. Billings or estimates for this contract shall be submitted as follows:
64 [description of alternate billing cycle]."

65 (c) The following legend or substantially similar language setting forth the other billing
66 cycle appears in clear and conspicuous type on bid and construction documents:

67 "Notice of alternate billing cycle.

68 "This contract allows the owner to require the submission of billings or estimates in billing
69 cycles other than 30 days. A written description of the alternate billing cycle applicable to the
70 project is available from the owner or the owner's designated agent at [telephone number or
71 address, or both], and the owner or its designated agent shall provide this written description on
72 request."

73 (4) An owner may make progress payments later than seven days after the date the billing
74 or estimate is certified and approved if both:

75 (a) the construction contract in a clear and conspicuous manner specifically provides for
76 a later payment defined by a specified number of days after certification and approval; and

77 (b) the following legend or substantially similar language setting forth the specified
78 number of days appears in clear and conspicuous type on bid and construction documents:

79 "Notice of extended payment provision.

80 "This contract allows the owner to make payment within _____ days after certification and
81 approval of billings and estimates."

82 (5) (a) Except as provided in Subsection (7), a billing or estimate shall be considered to
83 be approved and certified 14 days after the owner receives the billing or estimate, unless before
84 that time the owner or the owner's agent prepares and issues a written statement detailing those
85 items in the billing or estimate that are not approved and certified.

86 (b) An owner may decline to approve and certify a billing or estimate or a portion of a
87 billing or estimate for:

88 (i) unsatisfactory job progress;

89 (ii) defective construction work or materials which have not been remedied;

- 90 (iii) disputed work or materials;
- 91 (iv) failure to comply with a material provision of the construction contract;
- 92 (v) third-party claims filed or reasonable evidence that a claim will be filed;
- 93 (vi) failure of the contractor or a subcontractor to make timely payments for labor,

94 equipment, or materials;

- 95 (vii) damage to the owner;

96 (viii) reasonable evidence that the construction contract cannot be completed for the
97 unpaid balance of the construction contract sum; or

- 98 (ix) a reasonable amount for retention.

99 (c) The owner is considered to have received the billing or estimate when the billing or
100 estimate is submitted to any person designated by the owner for the receipt of these submissions
101 or for review or approval of the billing or estimate.

102 (6) Except as provided in Section 13-8-5, an owner may withhold from a progress payment
103 only an amount that is sufficient to pay the direct expenses the owner reasonably expects to incur
104 to correct any items set forth in writing pursuant to Subsection (5).

105 (7) An owner may extend the period within which the billing or estimate is certified and
106 approved if both:

107 (a) the construction contract in a clear and conspicuous manner specifically provides for
108 an extended time period within which a billing or estimate shall be certified and approved, defined
109 by a specified number of days after the owner has received the billing or estimate; and

110 (b) the following legend or substantially similar language, setting forth the specified
111 number of days, appears in clear and conspicuous type on bid and construction documents:

112 "Notice of extended certification and approval period provision.

113 "This contract allows the owner to certify and approve billings and estimates within
114 days after the billings and estimates are received from the contractor."

115 (8) (a) When a contractor completes and an owner approves and certifies all work under
116 a construction contract, the owner shall make payment in full on the construction contract within
117 seven days.

118 (b) When a contractor completes and an owner approves and certifies all work under a
119 portion of a construction contract for which the construction contract states a separate price, the
120 owner shall make payment in full on that portion of the construction contract within seven days.

121 (c) On construction projects that require a federal agency's final approval or certification,
122 the owner shall make payment in full on the construction contract within seven days of the federal
123 agency's final approval or certification.

124 (9) Payment shall not be required pursuant to this section unless the contractor provides
125 the owner with a billing or estimate for the work performed or the material supplied in accordance
126 with the terms of the construction contract between the parties.

127 (10) A construction contract shall not alter the rights of any contractor, subcontractor, or
128 material supplier to receive prompt and timely progress payments as provided under this chapter.

129 (11) If an owner or a third party designated by an owner as the person responsible for
130 making progress payments on a construction contract does not make a timely payment pursuant
131 to this section, the owner shall pay the contractor interest at the rate of 1.5% per month or fraction
132 of a month on the unpaid balance, or at a higher rate as the parties to the construction contract
133 agree.

134 (12) On the written request of a subcontractor, the owner shall notify the subcontractor
135 within 5 days after the issuance of a progress payment to the contractor or final payment to the
136 contractor on the construction contract.

137 (13) In any action or arbitration brought to collect payments or interest pursuant to this
138 section, the successful party shall be awarded its costs and reasonable attorneys' fees.

139 (14) If the owner and contractor on a construction project are a single entity, that entity
140 shall pay its subcontractors and material suppliers within 14 days after the billing or estimate is
141 certified and approved unless the deadlines for approval and certification or for payment have been
142 modified pursuant to Subsection (4) or (7).

143 Section 4. Section **13-33-202** is enacted to read:

144 **13-33-202. Progress payments to subcontractor or supplier -- Waiver of liens**
145 **--Withholdings from a payment -- Interest on late payments -- Costs and attorneys' fees.**

146 (1) Notwithstanding any other provision of this section, performance by a contractor,
147 subcontractor, or material supplier in accordance with the provisions of a construction contract
148 entitles the contractor, subcontractor, or material supplier to payment from the party with whom
149 the contractor, subcontractor, or material supplier contracts.

150 (2) (a) If a subcontractor or material supplier has performed in accordance with the
151 provisions of a construction contract, the contractor shall pay to its subcontractors or material

152 suppliers and each subcontractor shall pay to its subcontractors or material suppliers, within seven
153 days of receipt by the contractor or subcontractor of each progress payment or final payment, the
154 full amount received for that subcontractor's work and materials supplied based on work completed
155 or materials supplied under the subcontract.

156 (b) Payment shall not be required pursuant to this Subsection (2) unless the subcontractor
157 or material supplier provides to the contractor or subcontractor a billing or invoice for the work
158 performed or material supplied in compliance with the terms of the contract between the parties.

159 (c) Each subcontractor or material supplier shall provide a waiver of any mechanic's or
160 materialman's lien conditioned upon payment for the work completed or material supplied. The
161 contractor or subcontractor may require that these conditional waivers of lien be notarized.

162 (3) Nothing in this section prevents the contractor or subcontractor, at the time of
163 application or certification to the owner or contractor, from withholding the application or
164 certification to the owner or contractor for payment to the subcontractor or material supplier for:

165 (a) unsatisfactory job progress;

166 (b) defective construction work or materials which have not been remedied;

167 (c) disputed work or materials;

168 (d) failure to comply with a material provision of the subcontract;

169 (e) third-party claims filed or reasonable evidence that a claim will be filed;

170 (f) failure of the subcontractor to make timely payments for labor, equipment, or materials;

171 (g) damage to the contractor or another subcontractor or material supplier;

172 (h) reasonable evidence that the subcontract cannot be completed for the unpaid balance
173 of the subcontract sum; or

174 (i) a reasonable amount for retention that does not exceed the actual percentage retained
175 by the owner.

176 (4) If a periodic or final payment to a subcontractor or material supplier is delayed by more
177 than seven days after receipt of periodic or final payment by the contractor or subcontractor, the
178 contractor or subcontractor shall pay its subcontractor or material supplier interest, except for
179 periods of time during which payment is withheld pursuant to Subsection (3), at the rate of 1.5%
180 per month or a fraction of a month on the unpaid balance or at a higher rate as the parties agree.

181 (5) In any action or arbitration brought to collect payments or interest pursuant to this
182 section, the successful party shall be awarded costs and reasonable attorneys' fees.

183 Section 5. Section **13-33-203** is enacted to read:

184 **13-33-203. Interruption of work for environmental hazard -- Termination of**
185 **contract.**

186 (1) A contractor may interrupt the performance of a construction contract without penalty
187 or liability for breach of contract if:

188 (a) any applicable law or rule requires the cessation of work; or

189 (b) (i) the contractor encounters any hazardous substance or hazardous material which is
190 required to be removed or contained by any applicable law or rule; and

191 (ii) (A) any applicable law or rule prohibits the contractor from proceeding to remove or
192 contain the hazardous material or hazardous substance unless the contractor is duly licensed and
193 the contractor is not so licensed; or

194 (B) the removal or containment of the hazardous material or hazardous substance cannot
195 be accomplished without a cessation of work.

196 (2) A contractor whose work is impaired, impeded, or prohibited under Subsection (1) may
197 interrupt performance of the construction contract as provided in this section only to the extent of
198 the area affected by the hazardous materials or hazardous substances removed or contained by the
199 owner or as otherwise required by applicable statute or rule.

200 (3) The owner may terminate the construction contract on payment to the contractor,
201 subcontractor, or other person whose work is delayed under Subsection (1) of the amount of any
202 services or materials supplied or expended which conform to the contract terms and specifications.

203 Section 6. Section **13-33-204** is enacted to read:

204 **13-33-204. Suspension or termination of work for nonpayment -- Notice -- Costs and**
205 **attorneys' fees.**

206 (1) (a) A contractor may suspend performance under a construction contract or terminate
207 a construction contract for failure by the owner to make timely payment of the amount certified
208 and approved pursuant to Subsection 13-33-201(5).

209 (b) A contractor shall provide written notice to the owner at least seven calendar days
210 before the contractor's intended suspension or termination unless a shorter notice period is
211 prescribed in the construction contract between the owner and contractor. A construction contract
212 may not extend the time period for a contractor to suspend performance or terminate a construction
213 contract under this Subsection (1).

214 (c) The suspension of performance or termination of a construction contract pursuant to
215 this Subsection (1) does not constitute a breach of contract by the contractor.

216 (2) (a) A subcontractor may suspend performance under a construction contract or
217 terminate a construction contract if the owner fails to make timely payment of amounts certified
218 and approved pursuant to Subsection 13-33-201(5) for the subcontractor's work and the contractor
219 fails to pay the subcontractor for the certified and approved work.

220 (b) A subcontractor shall provide written notice to the contractor and owner at least three
221 calendar days before the subcontractor's intended suspension or termination unless a shorter notice
222 period is prescribed in the construction contract between the contractor and subcontractor. A
223 construction contract may not extend the time period for a subcontractor to suspend performance
224 or terminate a construction contract under this Subsection (2).

225 (c) The suspension of performance or termination of a subcontract pursuant to this
226 Subsection (2) does not constitute a breach of contract by the subcontractor.

227 (3) (a) A subcontractor may suspend performance under a construction contract or
228 terminate a construction contract if the owner makes timely payment of amounts certified and
229 approved pursuant to Subsection 13-33-201(5) for the subcontractor's work but the contractor fails
230 to pay the subcontractor for the certified and approved work.

231 (b) A subcontractor shall provide written notice to the contractor and owner at least seven
232 calendar days before the subcontractor's intended suspension or termination unless a shorter notice
233 period is prescribed in the construction contract between the contractor and subcontractor. A
234 construction contract may not extend the time period for a subcontractor to suspend performance
235 or terminate a construction contract under this Subsection (3).

236 (c) The suspension of performance or termination of a subcontract pursuant to this
237 Subsection (3) does not constitute a breach of contract by the subcontractor.

238 (4) (a) A subcontractor may suspend performance under a construction contract or
239 terminate a construction contract if the owner declines to approve and certify portions of the
240 contractor's billing or estimate pursuant to Subsection 13-33-201(5) for that subcontractor's work
241 but the reasons for that failure by the owner to approve and certify are not the fault of or directly
242 related to the subcontractor's work.

243 (b) A subcontractor shall provide written notice to the contractor and owner at least seven
244 calendar days before the subcontractor's intended suspension or termination unless a shorter notice

245 period is prescribed in the construction contract between the contractor and subcontractor. A
246 construction contract may not extend the time period for a subcontractor to suspend performance
247 or terminate a construction contract under this Subsection (4).

248 (c) The suspension of performance or termination of a subcontract pursuant to this
249 Subsection (4) does not constitute a breach of contract by the subcontractor.

250 (5) A contractor or subcontractor that suspends performance as provided in this section
251 is not required to furnish further labor, materials, or services until the contractor or subcontractor
252 is paid the amount that was certified and approved, together with any costs incurred for
253 mobilization resulting from the shutdown or start-up of a project.

254 (6) In any action or arbitration brought pursuant to this section, the successful party shall
255 be awarded costs and reasonable attorneys' fees.

256 (7) Written notice required under this section shall be provided by:

257 (a) delivery of a written notice in person to the individual or a member of the entity or to
258 an officer of the corporation for which it was intended; or

259 (b) sending the written notice by any means that provides written, third-party verification
260 of delivery to the last business address known to the party giving notice.

261 Section 7. Section **58-55-501** is amended to read:

262 **58-55-501. Unlawful conduct.**

263 Unlawful conduct includes:

264 (1) engaging in a construction trade, acting as a contractor, an alarm business or company,
265 or an alarm company agent, or representing oneself to be engaged in a construction trade or to be
266 acting as a contractor in a construction trade requiring licensure, unless the person doing any of
267 these is appropriately licensed or exempted from licensure under this chapter;

268 (2) acting in a construction trade, as an alarm business or company, or as an alarm
269 company agent beyond the scope of the license held;

270 (3) hiring or employing in any manner an unlicensed person, other than an employee for
271 wages who is not required to be licensed under this chapter, to engage in a construction trade for
272 which licensure is required or to act as a contractor or subcontractor in a construction trade
273 requiring licensure;

274 (4) applying for or obtaining a building permit either for oneself or another when not
275 licensed or exempted from licensure as a contractor under this chapter;

- 276 (5) issuing a building permit to any person for whom there is no evidence of a current
277 license or exemption from licensure as a contractor under this chapter;
- 278 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other
279 person who is required to be licensed under this chapter but who is not licensed or is otherwise not
280 entitled to obtain or receive the benefit of the building permit;
- 281 (7) failing to obtain a building permit when required by law or rule;
- 282 (8) submitting a bid for any work for which a license is required under this chapter by a
283 person not licensed or exempted from licensure as a contractor under this chapter;
- 284 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with
285 an application to obtain or renew a license under this chapter;
- 286 (10) allowing one's license to be used by another except as provided by statute or rule;
- 287 (11) doing business under a name other than the name appearing on the license, except as
288 permitted by statute or rule;
- 289 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
290 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,
291 or residential electrician, failing to directly supervise an apprentice under one's supervision or
292 exceeding the number of apprentices one is allowed to have under his supervision;
- 293 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
294 funds in payment for a specific project from an owner or any other person, which funds are to pay
295 for work performed or materials and services furnished for that specific project, and after receiving
296 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and
297 payable to persons who performed work or furnished materials or services within a reasonable
298 period of time;
- 299 (14) employing as an alarm company an unlicensed individual as an alarm company agent,
300 except as permitted under the exemption from licensure provisions under Section 58-1-307;
- 301 (15) if licensed as an alarm company or alarm company agent, filing with the division
302 fingerprint cards for an applicant which are not those of the applicant, or are in any other way false
303 or fraudulent and intended to mislead the division in its consideration of the applicant for
304 licensure;
- 305 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
306 (a) the building or construction laws of this state or any political subdivision;

- 307 (b) the safety and labor laws applicable to a project;
- 308 (c) any provision of the health laws applicable to a project;
- 309 (d) the workers' compensation insurance laws of the state applicable to a project;
- 310 (e) the laws governing withholdings for employee state and federal income taxes,
- 311 unemployment taxes, FICA, or other required withholdings; or
- 312 (f) reporting, notification, and filing laws of this state or the federal government;
- 313 (17) aiding or abetting any person in evading the provisions of this chapter or rules
- 314 established under the authority of the division to govern this chapter; [~~or~~]
- 315 (18) engaging in the construction trade or as a contractor for the construction of residences
- 316 of up to two units when not currently registered or exempt from registration as a qualified
- 317 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[-];
- 318 or
- 319 (19) violating the provisions of Section 13-33-202.

Legislative Review Note
as of 2-13-01 9:21 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel