



BULLETIN



CCB BULLETIN – RETAINAGE

The Construction Contractors Board (CCB) has received questions about Oregon House Bill 2415, which was enacted in 2019 and became effective on January 1, 2020. The bill made changes to retainage requirements in both public and private contracts. This bulletin addresses retainage requirements for private contracts. (NOTE: For information related to retainage in public contracts see ORS 279C.570, the newly adopted DOJ model rules, and the rules adopted by the individual contracting agencies).

RETAINAGE IN PRIVATE CONTRACTS

In Oregon, retainage requirements, related to private contracts, are addressed in ORS 701.420.

The CCB does not play an active policy or enforcement role in private contracts containing retainage provisions. Such matters are to be addressed by the contracting parties in compliance with the statute.

This bulletin is provided as an informational resource and should not be construed as legal advice.

Owners, contractors and subcontractors are therefore encouraged to work with their individual legal counsel to ensure that they remain in compliance with the statutory changes and the provisions of their individually negotiated contracts.

- Retainage refers to amounts due under a contract that are withheld by the hiring party (owner, contractor or subcontractor) until the contracted work is completed.
- Any hiring party that elects to retain amounts due under a contract must do so in compliance with ORS 701.420.

PRIVATE CONTRACTS - RETAINAGE Q AND A

Q: To whom do retainage requirements apply?

A: Any 'hiring party' (owner, contractor or subcontractor) that retains amounts due under a contract.

Q: Is any party to a contract required to withhold retainage?

A: No. However, any hiring party that chooses to withhold amounts due under a contract as retainage, must do so in compliance with ORS 701.420. The provisions of ORS 701.420 include the capping of amounts retained at 5%, payment of interest as required by the statute, and compliance with the timelines for payment established in the statute.

Q: Is there a limit to the amount that may be withheld as retainage?

A: Yes. The amount withheld as retainage may not exceed 5% of the contract price of the work completed.

Q: Must amounts retained be deposited in a special account?

A: Not unless the contract price exceeds \$500,000. In 2019 the legislature adopted new requirements (House Bill 2415) that went into effect on January 1, 2020. If the contract price is \$500,000 or less, there is no requirement that amounts retained be deposited in a particular account or that the account accrue interest. If the contract price exceeds \$500,000, the hiring party that is retaining the amounts due must place amounts withheld as retainage in an interest-bearing escrow account.

Q: Does the statute address the interest rate that must be paid on amounts withheld as retainage?

Yes, the interest rate that must be paid on amounts withheld as retainage on private contracts is capped at 1% per month.

Q: Does the statute address the timing of when interest begins to accrue?

A: Yes, though the requirements differ slightly depending on the contract price. Once the party performing work considers the work complete and has sent the contracting party notice of completion, the one percent interest required under the statute begins to accrue as indicated below unless the contracting party does not accept the work or notifies the party performing the work of work yet to be completed. One percent interest on amounts withheld as retainage accrues as follows:

- **For Contracts \$500,000 or less:** Interest begins to accrue 30 days after the end of the 15 day notification period and runs until amounts withheld are paid to the party performing the work.
- **For contracts that exceed \$500,000:** Interest begins to accrue from the date the payment request is approved by the contractor retaining the funds and runs until the date the amounts withheld are paid to the party performing work.

Q: May a security or other measure be used in lieu of retainage?

A: The statute for private contracts (ORS 701.420) does not explicitly address the use of a bond or other security. However, use of performance bonds is a widely accepted practice in the State of Oregon and provision for their use is set forth in ORS 701.430. If such tools are utilized in lieu of cash retainage, all parties are, once again, advised to work with their individual legal counsel to establish clear expectations about the use of such bonds in their individual contracts.

Q: Does the \$500,000 statutory threshold for placing retained amounts in an interest-bearing escrow account apply to the total contract price or to individual subcontracts? What about contracts that begin below \$500,000 but ultimately exceed the amount through change orders or other additions?

mnhA: ORS 701.420 does not explicitly address this issue. All parties are advised to work with their individual legal counsel to establish clear expectations when negotiating and entering into contracts.