



Ohio's Fairness in Construction Contracting Act

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OUR FIRST ORDER OF BUSINESS IS KNOWING YOURS

What Is Ohio's Fairness in Construction Contracting Act?

- Ohio statute that provides relief against unfair contract clauses
 - » Ohio Revised Code Section 4113.62.

What Was (and still is) The Problem?



The Fox Is Guarding The Hen House

Ohio's Legislature Did Something

Ohio's Fairness In Construction Contracting Act

- » Became Effective September 30, 1998.
 - Didn't apply to the Dugan & Meyers case.
- » Applies To **BOTH** Public and Private Projects.

Provides Relief Against Contract Clauses That:

- Waive Bond Rights
- Waive Pending Claims With Final Payment
- Prohibits Owner-Caused Delay Damages
- Could Prevent The Filing Of A Lien Or Bond Claim
- Make Out-of-State Law Apply
- Location of Dispute Resolution?

Bond Rights

- Simple, you cannot contractually waive them.

But You Can Lose Them

- Common Ways Lose To Your Payment Bond Rights
 - » On Public Projects
 - Failure to serve a Notice of Furnishing on the Prime Contractor when you do not have a contract with them.
 - \$30k exception
 - ODOT exception
 - Failure to make a timely bond claim.
 - Claim to be made within 90 days after Public Authority's acceptance.
 - Failure to file suit within 1 year after Public Authority's acceptance.

But You Can Lose Them

- On Private Projects
 - » Make your claim within 90 days after last performing.
 - » One year window to file suit.

Waive Pending Claims With Final Payment

- No longer enforceable
 - » *The acceptance of final payment shall constitute a waiver of all claims the Contractor has either asserted or may assert against the Owner/Contractor.*
- Now claims will survive
 - » No ransom in the form of final payment.
 - » Important to assert the claim prior to receiving final payment.

No Damage For Delay Clauses Are Unenforceable

- No Longer Enforceable
 - » *Owner/General Contractor shall have the right at any time to delay or suspend the work without incurring any liability. An extension of time shall be the sole and exclusive remedy.*

How Do You Interpret Delay?

- Broadly
 - » Delay means the same thing as disruption, acceleration, or interference.
 - Indirect costs such as out of sequence, trade stacking, loss of productivity are recoverable.
 - Contractor friendly.
- Narrowly
 - » Delay only means extension costs.
 - Only extended general conditions and home office overhead costs are recoverable.
 - Owner friendly.

Is The Whole Donut Recoverable?



Lien/Claims and Contingent Payment Terms

- Can you file a lien or bond claim when the money is not technically due?
 - Common scenario under a “pay-if-paid” clause.
- Yes
 - » Contingent payment terms do not prohibit the filing of a lien or bond claim.

True or False About Liens

In Ohio, you can contractually waive your lien rights.

- True

Mandate The Applicable State Law

- For Example:
 - » *This Contract shall be governed by the laws of the State of Alaska.*
- No longer enforceable when the Project is located in Ohio.

Location of Dispute Resolution

- In the past clauses like these were not enforceable.
 - » *Any action or suit arising under this Contract shall be brought in the jurisdiction of the Contractor's principal office.*
- Now, it might not apply to arbitration.
 - » Going forward, specify the location of the dispute resolution will be the Project's location.

What Is On the Horizon?

- Possible retainage reform
- Possible legislation in response to Dugan & Meyers