

AMERICAN SUBCONTRACTORS ASSOCIATION “RIGHT TO STOP WORK”

- WELCOME AND OBJECTIVES OF THE PRESENTATION
- OVERVIEW: IMPORTANCE OF PROTECTING CONTRACTORS AND SUBCONTRACTORS FROM NONPAYMENT
 - Legislative efforts in Maryland
 - States with Right to Stop Work law
 - Maryland lacks a Right to Stop Work law
 - Essential contract clauses to include

STATISTICS ON NONPAYMENT ISSUES IN CONSTRUCTION: FINANCIAL STRAIN, PROJECT DELAYS, LEGAL BATTLES

- According to the ASA 2015-member needs assessment, 79% of those surveyed considered the inability to stop work as either a very serious or somewhat serious issue.
- 51% of subcontractors report experiencing delayed payments on most projects.
- 81% of construction businesses deal with late payments at some point during a project lifecycle.
- 30% of invoices are paid over 30 days late.
- 14% of all construction projects face a payment dispute, and only 43% of subcontractors say they always receive full payment.
- The construction industry loses an estimated \$64 billion annually due to slow payments and disputes.
- 1 in 5 contractors report that nonpayment has put their business at risk of failure.
- Due to payment delays, contractors spend an estimated \$5 billion per year on interest and fees to cover cash flow gaps.
- 57% of subcontractors have had to take out loans or use credit lines to cover financial shortfalls caused by late payments.
- The average legal dispute over nonpayment lasts 14 months and costs \$30,000.
- Mechanics liens are a common tool for recovering funds, but only 40% of filed liens result in full payment.

LEGAL PROTECTIONS – RIGHT TO STOP WORK LAWS

- “RIGHT TO STOP WORK” LAWS, Defined

Stop Work laws give contractors and subcontractors the *legal right* to suspend work if payments are delayed beyond a specified timeframe. These laws protect businesses from financial harm by ensuring they do not have to continue working without compensation.

LEGAL PROTECTIONS – RIGHT TO STOP WORK LAWS, CONT'D

BENEFITS OF SUCH LAWS FOR CONTRACTORS AND SUBCONTRACTORS

1. Have a right to halt work if payments are delayed beyond a reasonable period.
2. Get paid within a defined timeframe to maintain business operations.
3. Have a legal pathway to enforce their payment rights without excessive legal costs.
4. Avoid financial instability, allowing them to pay employees and suppliers on time.
5. Ensures leverage against nonpaying clients.
6. Protects financial stability and business operations: Prevents subcontractors from draining their own resources to cover unpaid work, reducing cash flow risks and potential business failures

LEGAL PROTECTIONS – RIGHT TO STOP WORK LAWS

CHALLENGES AND OPPOSITION TO THE LEGISLATION

- Business and contractor groups like the Associated Builders and Contractors (ABC) Maryland.
- The primary concerns include:
 - **Widespread impact**
 - **Costly penalties**
 - **Unnecessary termination of subcontractors**
 - **Jurisdictional concerns**
- These opponents argue that such provisions could unfairly disrupt small businesses, create unnecessary risks, and potentially lead to loss of jobs, especially for those not responsible for the violations.

STATUS OF RIGHT TO STOP WORK LAWS IN MARYLAND

- HB212, aims to address issues related to building performance standards, including energy usage, but it does not focus directly on the right to stop work. Meanwhile, Governor Moore's 2025 legislative agenda emphasizes the Energize Maryland Act, which touches on sustainable building practices, including energy efficiency in construction.
- Proposed bills such as HB 505 and SB 434 might influence the broader construction sector by promoting more efficient building practices or energy sources, although no direct right to stop work legislation is readily available in these drafts.
- Maryland's proposed right-to-stop-work legislation, notably under Attorney General Anthony G. Brown's 2025 priorities, focuses on enhancing protections for workers, especially concerning wage theft and unsafe working conditions.
 - Key provisions include the establishment of a Worker Protection Unit within the Attorney General's office, which would enforce fair labor practices and address issues like wage theft.

HOW SUBCONTRACTORS CAN SUPPORT THESE EFFORTS

1. Contacting legislators
2. Joining advocacy groups (Maryland Building Industry Association (“MBIA”), American Subcontractors Association (“ASA”))
3. Public Testimony

COMPARISON OF LAWS IN OTHER STATES

State	Prompt Payment Laws	Right to Suspend Work
California	Payment deadlines established.	Direct contractors may provide a stop work notice.
Texas	Payment deadlines established.	Right to suspend work for non-payment.
New York	Payment deadlines established.	Right to suspend work for non-payment.
Florida	Payment deadlines established.	Right to suspend work for non-payment.
Maryland	No payment deadlines established.	No right to suspend work for non-payment.

CONTRACTUAL PROTECTIONS IN THE ABSENCE OF LEGISLATION

ESSENTIAL CONTRACT CLAUSES TO INCLUDE:

- “STOP WORK FOR NONPAYMENT” CLAUSE
- PAYMENT TIMELINE AND PENALTIES
- DISPUTE RESOLUTION MECHANISMS

CASE STUDIES AND LEGAL PRECEDENTS

1. California - *Orchard Supply Hardware v. Home Depot* (2007)

Overview: In this case, Orchard Supply Hardware (OSH) was a subcontractor for a large construction project contracted by Home Depot. OSH filed a stop-work order, citing concerns over unpaid invoices and delayed payments.

Outcome: The court ruled in favor of OSH, recognizing the enforceability of contract clauses that allowed subcontractors to halt work due to non-payment. The case demonstrated the power of well-drafted contract clauses, especially those that ensure payment protections and the right to stop work if payments are not made on time.

CASE STUDIES AND LEGAL PRECEDENTS, CONT'D

2. Texas - *Vaughn v. B.L. Harbert International LLC* (2016)

Overview: A subcontractor, Vaughn, working on a construction project with B.L. Harbert, stopped work after safety concerns were raised on the site. Vaughn had specific contractual clauses that permitted halting work due to safety violations and non-payment.

Outcome: The Texas courts sided with the subcontractor, acknowledging that Vaughn had a legal right to stop work under the terms of the contract and in compliance with OSHA standards. This case highlighted how contractual provisions, alongside safety regulations, can provide legal protection and leverage for subcontractors.

CASE STUDIES AND LEGAL PRECEDENTS, CONT'D

3. Florida - *Ferguson Enterprises v. Pinder* (2018)

Overview: Ferguson Enterprises, a supplier and contractor, had a dispute with subcontractor Pinder over non-payment and unsafe working conditions. Pinder invoked a contract clause that allowed for work stoppage in the event of unsafe conditions and overdue payments.

Outcome: The court upheld Pinder's right to stop work, enforcing the contract clause that gave workers the ability to suspend operations until payment issues were resolved. The ruling emphasized the effectiveness of well-defined contractual safeguards for payment and safety concerns, setting a precedent for future cases in Florida.

LEGAL CHALLENGES FACED IN ENFORCING STOP WORK RIGHTS

1. Retaliation Claims by Contractors

2. Ambiguity in Contract Terms

3. Difficulty in Proving Unsafe Conditions or Non-Payment:

HOW SUBCONTRACTORS BENEFIT FROM LEGAL PROTECTIONS OR CONTRACT CLAUSES

- 1. Securing Payment for Completed Work**
- 2. Improved Safety and Reduced Liability**
- 3. Stronger Contract Enforcement and Leverage**

PRACTICAL STEPS FOR SUBCONTRACTORS

- Engage with lawmakers and industry groups.
- Work with legal professionals to draft protective clauses.

BEST PRACTICES FOR HANDLING NONPAYMENT SITUATIONS

- 1. Negotiate Clear Payment Terms in the Contract**
- 2. Use Mechanisms Like Lien Rights or Payment Bonds**
- 3. Maintain Open and Regular Communication**