

Minnesota subs get prompt-pay protection

August 20, 2009 Dolan Media Newswire

For Minnesota's residential subcontractors, "the check is in the mail" is no longer an empty promise.

Residential subs do not enjoy such guarantees in Wisconsin, which does not set deadlines for payments from general contractors. "The idea of what Minnesota is doing is very appealing to the subcontractors," said Jeff Beiriger, executive director of the American Subcontractors Association of Wisconsin.

A newly amended Minnesota state law as of August 1, 2009, requires subs and suppliers on residential jobs to be paid within 10 days. The clock starts after the paying party - usually the general - gets paid for "undisputed services provided by the party requesting payment." Minnesota law already offered prompt-payment protections to commercial subcontractors and suppliers. But the original law excluded those working on dwellings with fewer than 13 units per structure.

The law adds 1.5 percent interest per month on "any undisputed amount not paid on time." Subs that successfully sue to get their money can make generals pay attorney fees and other court costs.

A similar Wisconsin law, particularly one threatening court fines if generals don't pay, would help cure subs' cash-flow woes, Beiriger said. Subs that want to make payroll do not have time to wait for a court case to be settled, he said.

Yet Michael Schmaltz, executive director of the American Subcontractors Association's Minnesota chapter, said getting paid is "the No. 1 issue" for subcontractors. "What we are looking for is basic fairness, a level playing field," said Schmaltz, whose group represents residential and commercial subs and suppliers. "When it comes to credit collections, there are a number of tools that people will use, and this just adds another tool to that list."

But cash flow also is a problem for generals, said J. Scott Mathie, government affairs director for the Metropolitan Builders Association in Wisconsin. A Wisconsin law limiting builders' flexibility could push strained companies out of business.

The original Minnesota law that protected commercial subs dates to 1997. Many residential companies at the time were "doing a lot of business on reputation and handshakes," often extending credit to builders until the houses sold, said Remi Stone, a lobbyist for the Minnesota Association of Residential Subcontractors and Suppliers. That business model no longer worked as the industry evolved and larger, more corporate homebuilders entered the local market.

The change in law, Stone said, was just "good, commonsense legislation."

But Minnesota subs might still face problems. Construction attorney C.J. Schoenwetter, a partner with the Minneapolis firm Bowman and Brooke, warned that despite the law's extension, "there are still roadblocks or barriers that might be raised as defenses that prevent this from being an overwhelming win." One of the hurdles: It's really a pay-when-paid issue, because the law doesn't require the contractor who owes the money to write a check until 10 days after he himself is paid by the owner or another contractor higher up in the project chain. Moreover, the law states the payment is for "undisputed services." Those two words provide an opening for payment delays.

It is for that type of reason, Beiriger said, that a construction lien is better than relying on prompt-payment laws. Construction liens give companies a share of a building's value when they don't get paid, he said. But many lenders and generals, before paying subs, force the subs to waive their rights to file liens, he said. "You've got to have both," Beiriger said. "They have to maintain their interest in the building until they get payment, and you have to speed up payment."

Getting paid is always an issue, but it's an especially big concern when the economy is in the dumps and money is tight, said Greg Uphoff, accounting and auditing principal of HG&K, a Minnetonka, Minn.-based accounting and business-advisory firm. "Where delays in the past were fine, now you have to make payroll," he said. "There's no cash in the checking account. You have to get paid."

Bob Deiley, owner of B&B Carpet One Floor & Home in Ramsey, Minn., said it's not uncommon for a flooring contractor such as himself to put \$20,000 to \$30,000 worth of work into a new home. In some cases, he said, subs and suppliers have been forced to "carry" builders, holding onto the promise that they would get paid as soon as the builder develops a few more properties and gets some more sales. "A lot of subcontractors kind of got into the banking business," Deiley said. "And then, when the big housing slump occurred, it put a lot of people in a bad situation." Deiley said the amended Minnesota law is good for everyone. "It is something that came from the slowdown," he said, "but it will make the whole industry much better in the long run."