

STATE	RULE(S)	STATUTE(S)	CASE(S) AND CLAUSES ADDRESSED
Alabama	<p>Pay-if-Paid:</p> <p>Enforceable.</p>		<p><i>James E. Watts & Sons Contractors v. Nabors</i>, 484 So. 2d 373 (Al. Civ. App. 1985).</p> <p>- Court enforces agreement whereby payment of the contractor by the owner was a condition precedent to payment of the subcontractor.</p> <p><i>Lemoine Co. of Alabama, L.L.C. v. HLH Contractors, Inc.</i>, 62 So.3d 1020 (Ala. 2010).</p> <p>- Court enforces agreement whereby payment of the contractor by the owner was a condition precedent to payment of the subcontractor.</p>
Alabama	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Fed. Ins. Co. v. I. Kruger, Inc.</i>, 829 So. 2d 732 (Ala. 2002).</p> <p>- Clause stating final payment "shall be made" after owner's payment to contractor does not create a condition precedent to payment; instead, it merely establishes the timing of payment.</p> <p><i>Lemoine Co. of Alabama, L.L.C. v. HLH Contractors, Inc.</i>, 62 So.3d 1020 (Ala. 2010).</p> <p>-Pay-when-Paid clause established timing of payment.</p>
Alabama	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p><i>E.C. Ernst, Inc. v. Manhattan Constr. Co. of Tex.</i>, 551 F.2d 1026 (5th Cir. 1977) (applying Alabama law).</p> <p>- "No damage for delay" clauses are enforceable, with the exception of delays: "(1) not contemplated by the parties under the provision, (2) amounting to an abandonment of the contract, (3) caused by bad faith, or (4) amounting to active interference."</p> <p><i>RaCon, Inc., v. Tuscaloosa County</i>, 953 So.2d 321 (Ala. 2006)</p>

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			<p>-Court enforced a no damages for delay provision when Contractor was delayed as a result of delay in relocating a gas pipeline.</p> <p>-NDFD provision enumerated causes of delay which would not give right to damages. One of these enumerated causes was the relocating of utilities (therefore court held that such delays had been contemplated by the parties)</p>
Alaska	Pay-if-Paid:		NOTE: No Alaska state or federal court has considered the validity of “pay-if-paid” clauses.
	Pay-when-Paid: Enforceable.		<i>Industrial Indem. Co. v. Wick Constr. Co.</i> , 680 P.2d 1100 (Alaska 1984). -Contract clause stating that “[f]inal payment shall be made [to the subcontractor] within five days after CONTRACTOR has received his final or complete payment involving SUBCONTRACTOR’S portion of work” interpreted to be a “contingent payment” clause, under which subcontractor was not entitled to payment until contractor was paid.
	No Damage for Delay: Enforceable as applied to highway construction contracts.	ALASKA DEP’T OF TRANSP. AND PUB. FACILITIES STANDARD SPECIFICATIONS § 108-1.06(3). - “Suspension of work by the engineer or delays in the completion of the work shall not constitute grounds for any claims by the contractor for damages or extra compensation, unless otherwise provided for in the contract” - Section applies only to highway construction contracts.	NOTE: No Alaska state or federal court has considered the validity of “no damage for delay” clauses outside of the highway construction context.
Arizona	Pay-if-Paid: Enforceable if unambiguous and with a few exceptions.		<i>L. Harvey Concrete, Inc. v. Agro Constr. & Supply Co.</i> , 939 P.2d 811 (Ariz. Ct. App. 1997). - “Pay-if-paid” clauses enforceable, except where non-payment is the result of “gross mistake, fraud or error amounting to a failure to exercise honest

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			<p>judgment.”</p> <p><i>Pioneer Roofing Co. v. Mardian Constr.Co.</i>, 733 P.2d 811 (Ariz. Ct. App. 1997).</p> <p>-Clause which stated payment of sub was “conditioned upon” payment of general by owner was not found to be a clause making payment of the general a condition precedent for payment of the sub, since the clause did not indicate with specificity the fund out of which the subcontractor was to be paid.</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Pioneer Roofing Co. v. Mardian Constr. Co.</i>, 733 P.2d 811 (Ariz. Ct. App. 1997).</p> <p>- Ambiguously worded “pay-if-paid” or “pay-when-paid” clauses will be treated as merely requiring subcontractors be paid within a reasonable time.</p>
	<p>No Damage for Delay:</p>		<p>NOTE: No Arizona state or federal court has considered the validity of “no damage for delay” clauses.</p>
<p>Arkansas</p>	<p>Pay-if-Paid:</p> <p>Enforceable if clear and unambiguous.</p>		<p><i>Trinity Universal Ins. Co. v. Robinson</i>, 902 S.W.2d 760 (Ark. 1995).</p> <p>- “Pay-if-paid” clauses enforceable as establishing a condition precedent to payment where the “subcontract clearly and expressly so provides”</p>
	<p>Pay-when-Paid:</p>		<p>NOTE: No Arkansas state or federal court has considered the validity of “pay-when-paid” clauses.</p>
	<p>No Damage for Delay:</p> <p>Enforceable.</p>		<p><i>Little Rock Wastewater Util. v. Larry Moyer Trucking, Inc.</i>, 902 S.W.2d 760 (Ark. 1995).</p> <p>- While “no damage for delay” clauses are “not void as against public policy and will be enforced so long as the basic requirements for a valid contract are met, the courts accord such clauses a strict construction.”</p>
<p>California</p>	<p>Pay-if-Paid:</p> <p>Unenforceable.</p>	<p>CAL. CIV. CODE § 8122</p> <p>- The predecessor of this statute was interpreted to</p>	<p><i>William R. Clarke Corp. v. Safeco Ins. Co.</i>, 938 P.2d 372 (Cal. 1997).</p>

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		prohibit the enforcement of “pay-if-paid” clauses..	- “Pay-if-paid” clauses are against public policy as an effectual waiver of a subcontractor’s constitutionally protected right to assert a mechanics’ lien.
	Pay-when-Paid:		NOTE: No California state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay: Unenforceable as applied to public works contracts, though with a few exceptions. Enforceable as applied to private contracts with a few exceptions.	CAL. PUB. CONT. CODE § 7102 - “No damage for delay” clauses unenforceable in public works contracts where the delay is “unreasonable under the circumstances involved, and not within the contemplation of the parties.”	<i>K&F Constr. v. L.A. City Unified Sch. Dist.</i> , 176 Cal. Rptr. 842 (Cal. Dist. App. 1981). - “No damage for delay” clauses enforceable in private contracts where expressly and unambiguously stated. <i>McGuire & Hester v. City and County of S.F.</i> , 247 P.2d 934 (Cal. App. 1952). - Court declines to enforce a “no damage for delay” clause that prevented recovery for delays caused by “any reason,” when delay was caused by city’s failure to perform its contractual duty and procure proper right-of-way before contractor began work.
Colorado	Pay-if-Paid: Enforceable if clear and unambiguous		<i>Main Elec. Ltd. v. Printz Servs. Corp.</i> , 980 P.2d 522 (Colo. 1999). - “Pay-if-paid” clauses enforceable if clear and expressive in their intent to shift risk of owner’s non-payment from contractor to subcontractor. - The language “provided that” is insufficiently clear.
	Pay-when-Paid: Enforceable		<i>Main Elec. Ltd. v. Printz Servs. Corp.</i> , 980 P.2d 522 (Colo. 1999). - Unclear “pay-if-paid” clauses should be treated as “pay-when-paid” clauses and merely operate as unconditional promises to pay subcontractor within a reasonable time.
	No Damage for Delay: Unenforceable as applied to public contracts.	COLO. REV. STAT. § 24-91-103.5. - “Any clause in a public works contract that purports to waive, release, or extinguish the rights of a contractor to	<i>W.C. James, Inc. v. Phillips Petroleum Co.</i> , 347 F. Supp. 381 (D. Colo. 1972). - “No damage for delay” clauses enforceable in

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	Enforceable as applied to private contracts with a few exceptions.	recover costs or damages . . . for delays in performing such contract, if such delay is caused in whole, or in part, by acts or omissions within the control of the contracting public entity or persons acting on behalf thereof, is against public policy and is void and unenforceable.”	private contracts, so long as they are “voluntarily, intelligently and knowingly made” and not the result of willful or negligent acts or omissions. <i>Tricon Kent Co. v. Lafarge N. Am., Inc.</i> , 186 P.3d 155 (Colo. Ct. App. 2008). - “No damage for delay” clauses are to be strictly construed against those who seek their benefit.
Connecticut	Pay-if-Paid: Enforceable if clear and unambiguous.		<i>Titan Mech. Contractors, Inc. v. Klewin Bldg. Co.</i> , 44 Conn. L. Rptr. 429 (Conn. Super. 2007). - Courts require a high-degree of specificity before enforcing a “pay-if-paid” clause as establishing a “condition precedent” to payment. <i>Lindade Constr., Inc v. Cont’l Cas. Co.</i> , 2009 WL 765501 (Conn. Super. 2009) - “Pay-if-paid” clauses require that subcontractor assume risk of the owner’s insolvency.
	Pay-when-Paid: Enforceable.		<i>DeCarlo & Doll, Inc. v. Dilozir</i> , 698 A.2d 318 (Conn. Ct. App. 1997). - “Pay-when-paid” clause stating “subject to payment with all outstanding payments to be paid in full at time of financing” merely establishes the timing of payment.
	No Damage for Delay: Enforceable with a few exceptions.		<i>White Oak Corp. v. Dep’t of Transp.</i> , 585 A.2d 1199 (Conn. 1991). - “No damage for delay” clauses are enforceable, with the exception of: “(1) delays caused by the contractee's bad faith or its willful, malicious, or grossly negligent conduct, (2) unanticipated delays, (3) delays so unreasonable that they constitute an intentional abandonment of the contract by the contractee, and (4) delays resulting from the

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			contractee's breach of a fundamental obligation of the contract.”
Delaware	Pay-if-Paid: Unenforceable by statute as applied to private contracts.	DEL. CODE ANN. tit. 6 § 3507(e). - “Pay-if-paid” clauses in private construction contracts which purport to shift the risk of non-payment of the owner are “contrary to the public policy of [the State of Delaware] and shall be void and unenforceable.”	NOTE: No Delaware state or federal court has considered the validity of “pay-if-paid” clauses as applied to public contracts.
	Pay-when-Paid: Previously enforceable.		<i>Volair Contractors, Inc. v. Coastal Mech., Inc.</i> , 1986 WL 13982 (Del. Super. 1986). - “Pay-when-paid” clauses are enforceable and merely require payment after a reasonable time following completion of work. - NOTE: <i>Volair Contractors</i> was decided prior to the passage of DEL. CODE ANN. tit. 6 § 3507(e). NOTE: No Delaware state or federal court has considered the validity of “pay-when-paid” clauses as applied to private contracts following the passage of DEL. CODE ANN. tit. 6 § 3507(e).
	No Damage for Delay: Enforceable with a few exceptions.		<i>F.D. Rich Co. v. Wilmington Hous. Auth.</i> , 392 F.2d 841 (3d Cir. 1968) (applying Delaware law). - “No damage for delay” clauses are enforceable, but strictly construed against those seeking their benefit. <i>Anthony P. Miller, Inc. v. Wilmington Hous. Auth.</i> , 165 F. Supp. 275 (D. Del. 1958). - “No damage for delay” clauses unenforceable where delay is caused by owner’s negligence, recklessness, or willful misconduct.
District of Columbia	Pay-if-Paid: Likely enforceable.		<i>Urban Masonry Corp. v. N&N Contractors, Inc.</i> , 676 A.2d 26 (D.C. 1996). - Court enforced contract containing an unambiguous “pay-if-paid” clause, when the condition precedent

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			(payment from owner to contractor) was satisfied. - Court's discussion of "pay-if-paid" clause hints at their enforceability.
	Pay-when-Paid:		NOTE: No District of Columbia court has considered the validity of "pay-when-paid" clauses.
	No Damage for Delay: Enforceable with a few exceptions.		<i>Blake Constr. Co., Inc. v. C.J. Coakley Co.</i> , 431 A.2d 569 (D.C. 1980). - "No damage for delay" clauses enforceable, except where the delay is one "(1) not contemplated by the parties under the (no damage for delay) provision, (2) amounting to an abandonment of the contract, (3) caused by bad faith, or (4) amounting to active interference." - Failure of contractor to properly sequence work and to supervise another subcontractor who damaged the work amounted to "active interference."
Florida	Pay-if-Paid: Enforceable if clear and unambiguous.		<i>DEC Elec., Inc. v. Raphael Constr. Corp.</i> , 558 So. 2d 427 (Fla. 1990). - "If a provision is clear and unambiguous, it is interpreted as setting a condition precedent to the general contractor's obligation to pay." <i>Int'l Eng. Sevices v. Scherer Constr. & Eng. Of Central Florida, LLC</i> , 74 So. 3d 531 (Fla. Ct. App. 2011) -Pay-if-paid clause in subcontract, when read with provisions of prime contract that was incorporated into subcontract, was ambiguous and would therefore be interpreted to require the prime contractor to pay the subcontractor within a reasonable period of time.
	Pay-when-Paid: Enforceable.		<i>DEC Elec., Inc. v. Raphael Constr. Corp.</i> , 558 So. 2d 427 (Fla. 1990). - "If a provision is ambiguous, it is interpreted as fixing a reasonable time for the general contractor to

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	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p>pay.”</p> <p><i>Triple R Paving, Inc. v. Broward County</i>, 774 So. 2d 50 (Fla. Ct. App. 2000).</p> <p>- “No damage for delay” clauses are enforceable, “except in the case of fraud, bad faith, or active interference by the owner”</p> <p><i>Newberry Square Dev. Corp. v. S. Landmark, Inc.</i>, 578 So. 2d 750 (Fla. Ct. App. 1991).</p> <p>- “No damage for delay” clauses are enforceable, except in cases of fraud, concealment, active interference, “‘knowing delay[s]’ which [are] sufficiently egregious, or upon the willful concealment of foreseeable circumstances which impact timely performance.”</p>
Georgia	<p>Pay-if-Paid:</p> <p>Enforceable if clear.</p>		<p><i>St. Paul Fire & Marine Ins. Co. v. Ga. Interstate Elec. Co.</i>, 370 S.E.2d 829 (Ga. App. 1988).</p> <p>- A “pay-if-paid” clause “may make payment by the owner a condition precedent to a subcontractor's right to payment if ‘the contract between the general contractor and the subcontractor should contain an express condition clearly showing that to be the intention of the parties.’”</p>
	<p>Pay-when-Paid:</p>		<p>NOTE: No Georgia state or federal court has considered the validity of “pay-when-paid” clauses.</p>
	<p>No Damage for Delay:</p> <p>Enforceable.</p>		<p><i>L & B Constr. Co. v. Ragan Enters., Inc.</i>, 482 S.E.2d 279 (Ga. 1997).</p> <p>- Court enforced general contract’s “no damage for delay” clause which was incorporated into subcontract as a result of subcontract’s “flow down clause.”</p>
Hawaii	<p>Pay-if-Paid:</p> <p>Statute appears to</p>	<p>HAW. REV. STAT. § 444-25.</p> <p>“If payment is contingent upon receipt of funds held in</p>	<p>NOTE: No Hawaii state or federal court has considered whether HAW. REV. STAT. § 444-25 operates as blanket approval of “pay-if-paid” clauses.</p>

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	contemplate the enforcement of “pay-if-paid” clauses <i>if clear</i> .	escrow or trust, the contractor shall clearly state this fact in the contractor's solicitation of bids.”	
	Pay-when-Paid:		NOTE: No Hawaii state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No Hawaii state or federal court has considered the validity of “no damage for delay” clauses.
Idaho	Pay-if-Paid: Enforceable if intent is clear.		<i>Hoff Cos., Inc. v. Danner</i> , 822 P.2d 558 (Idaho App. 1991). - “Pay-if-paid” clauses establish an enforceable condition precedent when intent of parties is clear.
	Pay-when-Paid: Enforced as a condition precedent.		<i>Hoff Cos., Inc. v. Danner</i> , 822 P.2d 558 (Idaho App. 1991). - Where “pay-when-paid” clause establishes time for payment as conditional upon owner’s payment to contractor, the clause is enforced as a condition precedent.
	No Damage for Delay: Enforceable with a few exceptions.		<i>Grant Constr. Co. v. Burns</i> , 443 P.2d 1005 (Idaho 1968). - “No damage for delay” clauses are enforceable, except where the delay “results from causes not within the contemplation of the parties or . . . is caused by active or direct interference by the contractee”
Illinois	Pay-if-Paid: Unenforceable as applied to mechanics’ liens.	770 ILL. COMP. STAT. 60/21(e). - “Any provision in a contract, agreement, or understanding, when payment from a contractor to a subcontractor or supplier is conditioned upon receipt of the payment from any other party including a private or public owner, shall not be a defense by the party responsible for payment to a claim brought under [the Mechanics’ Lien Act].”	<i>Brown & Kerr Inc. v. St. Paul Fire and Marine Ins. Co.</i> , 940 F. Supp. 1245 (N.D. Ill. 1996); <i>Premier Elec. Constr. Co. v. Am. Nat’l Bank of Chi.</i> , 658 N.E.2d 877 (Ill. App. 1995). - “Pay-if-paid” clauses are seemingly valid in cases <i>not</i> brought under the Mechanic’s Lien Act.
	Pay-when-Paid:		<i>Brown & Kerr Inc. v. St. Paul Fire and Marine Ins.</i>

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	Enforceable.		<p><i>Co.</i>, 940 F. Supp. 1245 (N.D. Ill. 1996).</p> <p>- “Pay-when-paid” clauses “[create] a timing provision requiring the contractor to pay the subcontractor within a reasonable time.”</p>
	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p><i>J & B Steel Contractors, Inc. v. C. Iber & Sons, Inc.</i>, 642 N.E.2d 1215 (Ill. 1994).</p> <p>- “No damage for delay” clauses are enforceable, except in the case of unforeseen delays not within the contemplation of the parties, not naturally arising from performance of the work, or stemming from tortuous, wrongful, or willful misconduct.</p> <p><i>L.K. Comstock & Co., Inc. v. Morse/UBM Joint Venture</i>, 505 N.E.2d 1253 (Ill. App. 1987).</p> <p>- “No damage for delay” clauses are enforceable, except in cases where “the contractee is not acting in good faith, the delay is unreasonable in duration, . . . or the delay is attributable to inexcusable ignorance or incompetence”</p>
Indiana	<p>Pay-if-Paid:</p> <p>Unenforceable as applied to mechanics’ liens, otherwise generally enforceable under Indiana law as applied by federal courts.</p>	<p>IND. CODE § 32-28-3-18(c).</p> <p>- “An obligor's receipt of payment from a third person may not be a condition precedent to limit or be a defense to the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.”</p>	<p><i>BMD Contractors, Inc. v. Fid. & Deposit Co. of Maryland</i>, 679 F.3d 643 (7th Cir. 2012), as amended (July 13, 2012).</p> <p>-Subcontract stating that “[i]t is expressly agreed that owner’s acceptance of subcontractor’s work and payment to the contractor for the subcontractor’s work are conditions precedent to the subcontractor’s right to payments by the contractor” was enforceable pay-if-paid clause under Indiana law, despite the lack of express “risk-shifting” language.</p>
	Pay-when-Paid:		<i>Midland Eng’g Co. v. John A. Hall Constr. Co.</i> , 398

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	Enforceable.		F. Supp. 981 (N.D. Ind. 1975). - “Pay-when-paid” clauses establish a reasonable time for payment rather than a condition precedent to payment.
	No Damage for Delay: Enforceable.		<i>Indiana Dept. Of Transp. v. Shelly & Sands, Inc.</i> , 756 N.E.2d 1063 (Ind. App. 2001). - Court enforces “no damage for delay” clause which exculpates government for damages stemming from delays in utility relocation.
Iowa	Pay-if-Paid: Enforceable.		<i>Grady v. S. E. Gustafson Constr. Co.</i> , 103 N.W.2d 737 (Iowa 1960). - “Pay-if-paid” clauses condition payment to subcontractor upon the contractor’s receipt of payment.
	Pay-when-Paid: Enforceable.		<i>Grady v. S. E. Gustafson Constr. Co.</i> , 103 N.W.2d 737 (Iowa 1960). - “Pay-when-paid” clauses establish reasonable time for payment.
	No Damage for Delay: Enforceable with a few exceptions.		<i>Dickinson Co., Inc. v. Iowa State Dept. of Transp.</i> , 300 N.W.2d 112 (Iowa 1981). - “No damage for delay” clauses are enforceable, except in cases where the delay “(1) was of a kind not contemplated by the parties, (2) amounted to an abandonment of the contract, (3) was caused by bad faith on the part of the contracting authority, or (4) was caused by active interference by such party.”
Kansas	Pay-if-Paid: Unenforceable as applied to mechanics’ liens or bonds in private contracts, otherwise generally enforceable under Kansas law as applied by	KAN. STAT. ANN. § 16-1803(c). - “Any provision in a contract for private construction providing that a payment from a contractor or subcontractor to a subcontractor is contingent or conditioned upon receipt of a payment from any other private party, including a private owner, is no defense to	<i>Faith Technologies, Inc. v. Fidelity & Deposit Company of Maryland</i> , No. 10-2375-MLB, 2011 WL 251451 (D. Kan. Jan. 26, 2011), <i>motion for reconsideration denied</i> , 2011 WL 3793970 (D. Kan. Aug. 25, 2011). -Statute making pay-if-paid clauses unenforceable as

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	federal courts.	a claim to enforce a mechanic's lien or bond to secure payment”	applied to mechanics’ liens or bonds did not prevent party from raising clause as defense to breach of contract claim.
	Pay-when-Paid: Enforceable.		<i>Shelley Elec., Inc. v. U. S. Fidelity & Guar. Co.</i> , 1992 WL 319654 (D. Kan. 1992). - “Pay-when-paid” clauses merely establish a reasonable time for payment to a subcontractor.
	No Damage for Delay: Unenforceable by statute, at least with respect to public contracts.	KAN. STAT. ANN. § 16-1907 - “Any provision in a contract that purports to waive the rights of a party to the contract to collect damages for delays caused by another party to the contract shall be void, unenforceable and against public policy.” While this language, in isolation, may appear to apply to all contracts, this statute is part of the Kansas Fairness in Public Construction Contract Act. Under the act, the term “contract” means a public contract. <i>See</i> KAN. STAT. ANN. § 16-1902.	
Kentucky	Pay-if-Paid: Enforceable if intent is clear.		<i>A. L. Pickens Co., Inc. v. Youngstown Sheet & Tube Co.</i> , 650 F.2d 118 (6th Cir. 1981) (applying Kentucky law). - “[A]bsent clear intent that [“pay-if-paid” clause] operate as condition precedent, courts hold that it fixes time of payment.”
	Pay-when-Paid: Enforceable.		<i>A. L. Pickens Co., Inc. v. Youngstown Sheet & Tube Co.</i> , 650 F.2d 118 (6th Cir. 1981) (applying Kentucky law). - “[A]bsent clear intent that [“pay-if-paid” clause] operate as condition precedent, courts hold that it <i>fixes time of payment</i> ” (emphasis added).
	No Damage for Delay: Enforceable with one exception.		<i>R & R, Inc. of Louisville v. Com.</i> , 2005 WL 626391 (Ky. App. 2005). - “No damage for delay” clauses, “though harsh, are

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			<p>generally enforced.”</p> <p><i>Humphreys v. J. B. Michael & Co.</i>, 341 S.W.2d 229 (Ky. 1960), <i>overruled on other grounds</i>, <i>Foley Constr. V. Ward</i>, 375 S.W.2d 392 (Ky. 1963).</p> <p>- “No damage for delay” clauses not enforced in cases of active interference.</p> <p><i>Dynalectric Co. v. Whittenberg Constr. Co.</i>, No. 5:06-CV-00208-JHM, 2010 WL 4062787 (W.D. Ky. 2010).</p> <p>- No damage for delay clauses, while enforceable, are strictly construed.</p>
Louisiana	<p>Pay-if-Paid:</p> <p>Enforceable if specific and explicit.</p>		<p><i>Imagine Constr., Inc. v. Centex Landis Constr. Co., Inc.</i>, 707 So. 2d 500 (La. App. 1998).</p> <p>- Specific and explicit “condition precedent” language will establish a valid and enforceable “pay-if-paid” clause.</p> <p><i>Coastal Development Group, L.L.C. v. Int’l Equip. Distributors, Inc.</i>, No. 2010 CA 1202, 2011 WL 766608 (La. Ct. App. Feb. 11, 2011).</p> <p>- Pay-if-paid provision enforced when words of the subcontract were clear and explicit.</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>S. States Masonry, Inc. v. J.A. Jones Constr. Co.</i>, 507 So. 2d 198 (La. 1987).</p> <p>- “Pay-when-paid” clauses “merely [dictate] when the contractor's payment should occur.”</p>
	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p><i>Pellerin Constr., Inc. v. Witco Corp.</i>, 169 F. Supp. 2d 568 (E.D. La. 2001).</p> <p>- “No damage for delay” clause is “enforceable in the absence of evidence of intentional or gross fault.”</p>

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Maine	Pay-if-Paid:		NOTE: No Maine state or federal court has considered the validity of “pay-if-paid” clauses.
	Pay-when-Paid:		NOTE: No Maine state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay: Enforceable.		<p><i>Yonkers Contracting Co. v. Maine Turnpike Auth.</i>, 208 F. Supp. 517 (D. Me. 1962).</p> <p>- Court upheld “no damages for delay” clause which stated that “[i]f . . . the Project be delayed, the Contractor shall have no right to nor shall he make any claim whatsoever for damages or additional compensation by reason of the delay, but he may be granted an extension of time”</p>
Maryland	Pay-if-Paid: Unenforceable as applied to mechanics’ liens or bond claims, otherwise generally enforceable if unambiguous.	<p>MD. CODE, REAL PROPERTY, § 9-113(b):</p> <p>“A provision in an executory contract between a contractor and a subcontractor that is related to construction, alteration, or repair of a building, structure, or improvement and that conditions payment to the subcontractor on receipt by the contractor of payment from the owner or any other third party may not abrogate or waive the right of the subcontractor to:</p> <p>(1) Claim a mechanics’ lien; or</p> <p>(2) Sue on a contractor’s bond.”</p> <p>MD. CODE, STATE FINANCE AND PROCUREMENT, § 17-108(d)(2):</p> <p>“A provision in an executory contract between a supplier and a contractor or subcontractor that is related to a construction contract and that conditions payment to the supplier on receipt of payment by the person from a public body or other third party, may not abrogate or waive the right of the supplier to sue on payment security under this subtitle.”</p>	<p><i>Gilbane Bldg. Co. v. Brisk Waterproofing Co., Inc.</i>, 585 A.2d 248 (Md. App. 1991).</p> <p>- “Pay-if-paid” clauses employing unambiguous language successfully establish a condition precedent to payment and “shift the risk of payment failure by the owner to the subcontractor.”</p>
	Pay-when-Paid:		<i>Gilbane Bldg. Co. v. Brisk Waterproofing Co., Inc.</i> ,

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	Enforceable.		585 A.2d 248 (Md. App. 1991). - Ambiguous language has the effect of creating a “pay-when-paid” clause.
	No Damage for Delay: Enforceable with a few exceptions.		<i>State Highway Admin. v. Greiner Eng'g Scis., Inc.</i> , 577 A.2d 363 (Md. App. 1990). - “No damage for delay” clauses are enforceable, except in cases of intentional wrongdoing, gross negligence, fraud, or misrepresentation. - The court declined to recognize a delay “not contemplated by the parties” exception.
Massachusetts	Pay-if-Paid: Unenforceable unless certain conditions are met.	MASS. GEN. LAW 149 § 29E: “(e) A provision in a contract for construction which makes payment to a person performing the construction conditioned upon receipt of payment from a third person that is not a party to the contract shall be void and unenforceable, except: (1) to the extent of amounts not received from the third person because the person performing the construction failed to perform under its contract and failed to cure the non-performance within the time required by the contract after receipt of written notice as provided in the contract or, in the case of contract lacking a cure and notice provision, failed to cure the non-performance within 14 days after receipt of written notice of the failure to perform; or (2) to the extent of amounts not received from the third person because the third person is insolvent or becomes insolvent within 90 days after the date of submission of the requisition for which payment is sought; provided, however, that the person seeking to enforce the payment condition (i) filed a notice of contract under chapter 254 and in the case of a person having no direct contractual relationship with the original contractor, also sent a	Note: there do not appear to be any reported Massachusetts state or federal court decisions discussing MASS. GEN. LAW 149 § 29E. <i>See generally, A. J. Wolfe Co. v. Baltimore Contractors, Inc.</i> , 244 N.E.2d 717 (Mass. 1969). - “Pay-if-paid” clauses that purport to make “payment to the subcontractor . . . directly contingent upon the receipt by the general contractor of payment from the owner” must be clear.

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		<p>notice of identification within the time required under said chapter 254, prior to the person’s submission of the first application for payment after commencement of performance at the project site and did not dissolve the lien created by the filing of such notice of contract; and (ii) within the time periods allowed by said chapter 254 files a statement of amount due and commenced or commences a civil action to enforce the lien; and (iii) pursues all reasonable legal remedies to obtain payment from the person with whom the person had a direct contract unless and until there is a reasonable likelihood the action shall not result in obtaining payment.”</p> <p>The enforceability exceptions do not apply to mechanics’ liens. <i>Id.</i> The statute defines “contract for construction” as “a contract for which a lien may be established under sections 2 or 4 of chapter 254 on a project for which the person whose contract with the project owner has an original contract price of \$3,000,000 or more; provided, however, this shall not include projects containing or designed to contain at least 1 but not more than 4 dwelling units.”</p>	
	<p>Pay-when-Paid: Enforceable.</p>	<p><i>See above.</i></p>	<p><i>A. J. Wolfe Co. v. Baltimore Contractors, Inc.</i>, 244 N.E.2d 717 (Mass. 1969).</p> <p>- Absent clear “paid-if-paid” language, a clause “should be viewed only as postponing payment by the general contractor for a reasonable time after requisition . . . so as to afford the general contractor an opportunity to obtain funds from the owner.”</p>
	<p>No Damage for Delay: Enforceable with a few exceptions.</p>		<p><i>Findlen v. Winchendon Hous. Auth.</i>, 553 N.E.2d 554 (Mass. App. 1990).</p> <p>- “No damage for delay” clauses are enforceable, unless “arbitrary and capricious conduct on the part of the awarding authority produces the delay and the authority declines even to extend the time for contract completion.”</p>

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			<p><i>State Line Contractors, Inc. v. Com.</i>, 249 N.E.2d 619 (Mass. 1969).</p> <p>- An owner's failure to provide a contractor with construction site access is another exception to the enforceability of "no damage for delay" clauses.</p>
Michigan	<p>Pay-if-Paid:</p> <p>Enforceable.</p>		<p><i>Berkel & Co. Contractors v. Christman Co.</i>, 533 N.W.2d 838 (Mich. App. 1995).</p> <p>- "Condition precedent" language shall be interpreted as a valid "pay-if-paid" clause, rather than limiting payment to any "reasonable time."</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Berkel & Co. Contractors v. Christman Co.</i>, 533 N.W.2d 838 (Mich. App. 1995).</p> <p>- Court implies that contract language may occasionally be interpreted to afford a contractor "reasonable time" to pay the subcontractor.</p>
	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p><i>Phoenix Contractors, Inc. v. General Motors Corp.</i>, 355 N.W.2d 673 (Mich. App. 1984).</p> <p>- "No damage for delay" clauses are enforceable with the exception of "situations where the delay (1) was of a kind not contemplated by the parties; (2) amounted to an abandonment of the contract; (3) was caused by bad faith on the part of the contracting authority; or (4) was caused by the active interference of the other contracting party."</p> <p><i>John E. Green Plumbing and Heating Co., Inc. v. Turner Const. Co.</i>, 742 F.2d 965 (6th Cir. 1984) (applying Michigan law).</p> <p>- An owner's negligent interference is sufficient to invoke the active interference exception.</p>
Minnesota	<p>Pay-if-Paid:</p>		<p><i>Ryan Contracting, Inc. v. Brandt</i>, 1997 WL 526303 (Minn. App. 1997).</p>

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	Enforceable if unequivocal and unambiguous.		- The Minnesota Court of Appeals “has adopted the rule of law that a court will not construe a subcontract to require payment to the general contractor as ‘a condition precedent to payment to the subcontractor, absent unequivocal, unambiguous language to that effect.’”
	Pay-when-Paid: Enforceable.		<i>Mrozik Constr., Inc. v. Lovering Assocs., Inc.</i> , 461 N.W.2d 49 (Minn. App. 1990). - Ambiguous language will be interpreted to “mean merely that the timing of payment to the subcontractor must not be delayed after the general contractor receives funds from the owner.”
	No Damage for Delay: Unenforceable as applied to public works contracts.	MINN. STAT. § 15.411. - “Any clause in a public works contract that waives, releases, or extinguishes the rights of a contractor to seek recovery for costs or damages, or seek an equitable adjustment, for delays . . . in performing the contract is void and unenforceable if the delay . . . is caused by acts of the contracting public entity”	NOTE: No Minnesota state or federal court has considered the validity of “no damage for delay” clauses outside of the public context.
Mississippi	Pay-if-Paid: Enforceable if clear and unambiguous.		<i>Lafayette Steel Erectors, Inc. v. Roy Anderson Corp.</i> , 71 F. Supp. 2d 582 (S.D.Miss. 1997). - “Pay-if-paid” clauses must clearly and unambiguously intend to “[shift] the risk of payment by the owner to the subcontractor.”
	Pay-when-Paid: Enforceable.		<i>Lafayette Steel Erectors, Inc. v. Roy Anderson Corp.</i> , 71 F. Supp. 2d 582 (S.D.Miss. 1997). - “Pay-when-paid” clauses “[afford] the contractor . . . only a reasonable time in which to pay the subcontractor”
	No Damage for Delay: Enforceable, but strictly construed and with		<i>Mississippi Transp. Com'n v. SCI, Inc.</i> , 717 So. 2d 332 (Miss. 1998). - “No damage for delay” clauses “are enforceable,

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	exceptions.		<p>though they are construed strictly against those who seek their benefit.”</p> <p><i>Mississippi Transp. Com'n v. Ronald Adams Contractor, Inc.</i>, 753 So. 2d 1077 (Miss. 2000).</p> <p>- Notwithstanding a “no damage for delay” clause, “damages may be recovered for any delay that: (1) was not intended or contemplated by the parties to be within the purview of the provision; (2) resulted from fraud, misrepresentation, or bad faith on the part of one seeking the benefit of the provision; (3) has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract; or (4) is not within the specifically enumerated delays to which the clause applies.”</p>
Missouri	<p>Pay-if-Paid:</p> <p>Enforceable.</p>		<p><i>MECO Sys., Inc. v. Dancing Bear Entm't, Inc.</i>, 42 S.W.3d 794 (Mo. App. 2001).</p> <p>- “Pay-if-paid” clauses which are clear and unambiguous will be enforced and “interpreted as setting a condition precedent to the general contractor's obligation to pay.”</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>MECO Sys., Inc. v. Dancing Bear Entm't, Inc.</i>, 42 S.W.3d 794 (Mo. App. 2001).</p> <p>- Ambiguous “pay-if-paid” clauses will be “interpreted as fixing a reasonable time for the general contractor to pay.”</p>
	<p>No Damage for Delay:</p> <p>Unenforceable as applied to public works contracts.</p>	<p>MO. REV. STAT. § 34.058.</p> <p>- “Any clause in a public works contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages . . . for delays in performing such contract, if such delay is caused in whole, or in part, by acts or omissions within the control of the contracting public entity . . . , is against public policy</p>	<p>NOTE: No Minnesota state or federal court has considered the validity of “no damage for delay” clauses outside of the public context.</p>

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		and is void and unenforceable.”	
Montana	Pay-if-Paid: Likely unenforceable, at least as applied to mechanics’ liens and bond claims.	MONT. CODE ANN. § 28-2-723. - “A construction contract may not contain clauses requiring a contractor, subcontractor, or material supplier to waive the right to a construction lien or a right to a claim against a payment bond before the contractor, subcontractor, or material supplier has been paid”	NOTE: No Montana state or federal court has considered whether MONT. CODE ANN. § 28-2-723 operates as a blanket prohibition of “pay-if-paid” or “pay-when-paid” clauses.
	Pay-when-Paid:		NOTE: No Montana state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No Montana state or federal court has considered the validity of “no damage for delay” clauses.
Nebraska	Pay-if-Paid:		NOTE: No Nebraska state or federal court has considered the validity of “pay-if-paid” clauses.
	Pay-when-Paid: Enforceable.		<i>D.K. Meyer Corp. v. Bevco, Inc.</i> , 292 N.W.2d 773 (Neb. 1980). - “Pay-when-paid” clauses “merely [provide]the contractor with a reasonable time within which to obtain payment from the owner.”
	No Damage for Delay: Enforceable with a few exceptions.		<i>Roberts Constr. Co. v. State</i> , 111 N.W.2d 767 (Neb. 1961). - Court held that a contractor suffering delay damages “has a right of recovery in the absence of a ‘no-damage clause.’” <i>Kiewit Constr. Co. v. Capital Elec. Constr. Co., Inc.</i> , 2005 WL 2563042 (D. Neb. 2005). - “No damage for delay” clauses are enforceable with the exception of delays caused by “the owner’s arbitrary or unreasonable conduct, and absent concealment, misrepresentation, fraud, bad faith, and malicious intent.”

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Nevada	Pay-if-Paid: Unenforceable.		<i>Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.</i> , 197 P.3d 1032 (Nev. 2008). - “Pay-if-paid” clauses are unenforceable insofar as they violate “public policy favor[ing] secur[e] payment for labor and material contractors” and the preservation of lien interests.
	Pay-when-Paid:		NOTE: No Nevada state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay: Enforceable with a few exceptions.	NEV. REV. STAT. § 338.485: “A condition, stipulation or provision in a contract or other agreement that: . . . (c) Requires a contractor to waive, release or extinguish a claim or right for damages or an extension of time that the contractor may otherwise possess or acquire as a result of a delay that is: (1) So unreasonable in length as to amount to an abandonment of the public work; (2) Caused by fraud, misrepresentation, concealment or other bad faith by the public body; (3) Caused by active interference by the public body; or (4) Caused by a decision by the public body to significantly add to the scope or duration of the public work; or . . . is against public policy and is void and unenforceable.” Note: this provision applies to public contracts.	<i>J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.</i> , 89 P.3d 1009 (Nev. 2004). - “No damage for delay” clauses are enforceable with the exception of: (1) delays caused by fraud, misrepresentation, concealment or other bad faith, (2) delays so unreasonable in length as to amount to project abandonment, and (3) delays caused by the other party’s active interference.
New Hampshire	Pay-if-Paid:		NOTE: No New Hampshire state or federal court has considered the validity of “pay-if-paid” clauses.
	Pay-when-Paid:		NOTE: No New Hampshire state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No New Hampshire state or federal court has considered the validity of “no damage for delay” clauses.

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New Jersey	Pay-if-Paid: Enforceable.		<i>Fixture Specialists, Inc. v. Global Constr., LLC.</i> , 2009 WL 904031 (D. N.J. 2009). - “Pay-if-paid” clauses enforceable so long as they clearly and unambiguously intend to shift to the subcontractor the risk of owner’s nonpayment.
New Jersey	Pay-when-Paid: Enforceable.		<i>Avon Bros., Inc. v. Tom Martin Constr. Co., Inc.</i> , 2000 WL 34241102 (N.J. Super. App. Div. 2000). - “Pay-when-paid” clauses “merely [permit] reasonable postponement of the general contractor’s payment obligation” and therefore refer only “to the time of payment to the subcontractor and not the subcontractor’s right to payment.” <i>Seal Tite Corp. v. Ehret, Inc.</i> , 589 F. Supp. 701 (D. N.J. 1984). - “Pay-when-paid“ clauses are “designed to postpone payment for a reasonable period of time after the work was completed, during which the general contractor [will] be afforded the opportunity of procuring from the owner the funds necessary to pay the subcontractor.”
New Jersey	No Damage for Delay: Unenforceable as applied to public contracts.	N.J. REV. STAT. § 2A:58B-3. - A “no damage for delay” clause in a contract to which a public entity is a party which purports to “limit a contractor’s remedy for delayed performance caused by the public entity’s negligence, bad faith, active interference, or other tortious conduct to an extension of time for performance under the contract, is against public policy and is void and unenforceable.”	NOTE: No New Jersey state or federal court has considered the validity of “no damage for delay” clauses outside of the public context.
New Mexico	Pay-if-Paid: Enforceable.		<i>MidAmerica Constr. Mgmt., Inc. v. MasTec N. Am., Inc.</i> , 436 F.3d 1257 (10th Cir. 2006) (applying New Mexico law). - Court held that the New Mexico Supreme Court

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			would -- if presented with a “pay-if-paid” clause -- likely enforce a condition precedent to payment
	Pay-when-Paid:		NOTE: No New Mexico state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No New Mexico state or federal court has considered the validity of “no damage for delay” clauses.
New York	<p>Pay-if-Paid:</p> <p>Unenforceable by statute, at least with respect to contracts relating to projects on which liens may be asserted.</p>	<p>N.Y. LIEN LAW § 34.</p> <p>- “[A]ny contract, agreement or understanding whereby the right to file or enforce any lien created under article two is waived, shall be void as against public policy and wholly unenforceable.”</p>	<p><i>West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.</i>, 661 N.E.2d 967 (N.Y. 1995).</p> <p>- Court held that a “[pay-if-paid] clause which forces the subcontractor to assume the risk that the owner will fail to pay the general contractor is void and unenforceable as contrary to public policy set forth” in N.Y. LIEN LAW § 34.</p> <p><i>But see Cives Corp. v. Hunt Constr. Group, Inc.</i>, 937 N.Y.S.2d 426 (N.Y. App. Div. 2012).</p> <p>- This court upheld the validity of a pay-if-paid clause when the owner was the Oneida Indian nation, stating that the reasoning of <i>West-Fair</i> did not apply to a project on which lien rights could not be asserted.</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.</i>, 661 N.E.2d 967 (N.Y. 1995).</p> <p>- In contract to a “pay-if-paid” clause, “a pay-when-paid clause which merely fixes a time for payment does not indefinitely suspend a subcontractor's right to payment upon the failure of an owner to pay the general contractor, and does not violate public policy as stated” in N.Y. LIEN LAW § 34.</p>
	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p><i>Novak & Co., Inc. v. Dormitory Auth. of State of N.Y.</i>, 172 A.D.2d 653 (N.Y. App. Div. 1991).</p> <p>- “[N]o-damage-for-delay clauses . . . are enforceable unless the claimed delays were not contemplated by the parties at the time they entered into the contract or</p>

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			the delay damages were the result of the contractee's intentional wrongdoing, gross negligence or willful misconduct."
North Carolina	Pay-if-Paid: Unenforceable by statute.	N.C. GEN. STAT. § 22C-2. - "Performance by a subcontractor in accordance with the clauses of its contract shall entitle it to payment from the party with whom it contracts." - "Payment by the owner to a contractor is not a condition precedent for payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent for payment to any other subcontractor, and an agreement to the contrary is unenforceable."	<i>Am. Nat'l Elec. Corp. v. Poythress Commercial Contractors, Inc.</i> , 604 S.E.2d 315 (N.C. App. 2004). - N.C. GEN. STAT. § 22C-2 operates as a blanket prohibition of "condition precedent" clauses.
	Pay-when-Paid:		NOTE: No North Carolina state or federal court has considered the validity of "pay-when-paid" clauses.
	No Damage for Delay: Unenforceable as applied to delays caused by owner in a public contract.	N.C. GEN. STAT. § 143-134.3. - "No contractual language forbidding or limiting compensable damages for delays caused solely by the owner or its agent may be enforced in any construction contract let by any board or governing body of the State, or of any institution of State government, or of any county, city, town, or other political subdivision thereof." - "[T]he phrase "owner or its agent" does not include prime contractors or their subcontractors."	<i>Southern Seeding Service, Inc. v. W.C. English, Inc.</i> , 719 S.E.2d 211 (2011). - Without expressly addressing the enforceability of no damages for delay clauses generally, this court held that a contractor was not foreclosed from seeking an equitable adjustment for delay by no damages for delay clause when equitable adjustment clause included adjustments if "work be delayed" and did not specifically foreclose damages.
North Dakota	Pay-if-Paid:		NOTE: No North Dakota state or federal court has considered the validity of "pay-if-paid" clauses.
	Pay-when-Paid:		NOTE: No North Dakota state or federal court has considered the validity of "pay-when-paid" clauses.
	No Damage for Delay: Enforceable		<i>Markwed Excavating, Inc. v. City of Mandan</i> , 791 N.W.2d 22 (N.D. 2010). - Broad no damage for delay clause was enforced, despite contractor's contention that delay was unforeseen and was caused by owner's negligent misrepresentations.

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Ohio	<p>Pay-if-Paid:</p> <p>Unenforceable by statute as applied to mechanics' liens. Otherwise, enforceable if clearly worded as creating a condition precedent.</p>	<p>OHIO REV. CODE § 4113.62(E).</p> <p>- "No construction contract, agreement, or understanding that makes payment from a contractor to a subcontractor . . . contingent or conditioned upon receipt of payment from any other person shall prohibit a person" from protecting their mechanics' lien rights.</p>	<p><i>Evans, Mechwart, Hambleton & Titon, Inc. v. Triad Architects, Ltd.</i>, 965 N.E.2d 1007 (Ohio Ct. App. 2011)</p> <p>- Recognizing the effect of clearly worded pay-if-paid clauses, but finding that clause at issue did not create a condition precedent to payment.</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Chapman Excavating Co., Inc. v. Fortney & Weygandt, Inc.</i>, 2004 WL 1631118 (Ohio App. 2004).</p> <p>- "Pay-when-paid" clauses are valid and "[do] not set a condition precedent to the general contractor's duty to pay the subcontractor, but rather [constitute] an absolute promise to pay, fixing payment by the owner as a reasonable time for when payment to the subcontractor is to be made."</p>
	<p>No Damage for Delay:</p> <p>Unenforceable by statute.</p>	<p>OHIO REV. CODE §§ 4113.62(C)(1) and (2).</p> <p>- "Any clause of a construction [contract or subcontract], agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction contract when the cause of the delay is a proximate result of the [owner or contractor's] act or failure to act, or that waives any other remedy for a construction contract when the cause of the delay is a proximate result of the [owner or contractor's] act or failure to act, is void and unenforceable as against public policy."</p>	
Oklahoma	<p>Pay-if-Paid:</p> <p>Enforceable if plain and unambiguous.</p>		<p><i>Byler v. Great Am. Ins. Co.</i>, 395 F.2d 273 (10th Cir. 1968) (applying Oklahoma law).</p> <p>- "Pay-if-paid" clauses are valid and enforceable so long as the clauses' language is plain and unambiguous.</p>

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	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Byler v. Great Am. Ins. Co.</i>, 395 F.2d 273 (10th Cir. 1968) (applying Oklahoma law).</p> <p>- “Pay-when-paid” clauses “postpone payment for a reasonable period of time after the work [is] completed, during which the general contractor [is] afforded the opportunity of procuring from the owner the funds necessary to pay the subcontractor.”</p>
	<p>No Damage for Delay:</p> <p>Enforceable with one exception.</p>		<p><i>U.S. ex rel. M.L. Young Constr. Corp. v. The Austin Co.</i>, 2005 WL 2396597 (W.D. Okla. 2005).</p> <p>- “No damage for delay” clauses are enforceable, except in cases where the “party seeking to enforce such clause has engaged in inequitable conduct.”</p>
Oregon	<p>Pay-if-Paid:</p> <p>Enforceable if clear and unambiguous.</p>		<p><i>Mignot v. Parkhill</i>, 391 P.2d 755 (Or. 1964).</p> <p>- “Pay-if-paid” clauses are valid and enforceable where “clear and unambiguous language . . . expressing the intention that the happening of a contingency over which the [subcontractor] has no control shall be a condition precedent to payment . . . [is] found in the contract.”</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Mignot v. Parkhill</i>, 391 P.2d 755 (Or. 1964).</p> <p>- “Pay-when-paid” clauses merely require that payment be made within a “reasonable time.”</p>
	<p>No Damage for Delay:</p>		<p>NOTE: No Oregon state or federal court has considered the validity of “no damage for delay” clauses.</p>
Pennsylvania	<p>Pay-if-Paid:</p> <p>Enforceable.</p>		<p><i>LBL Skysystems (USA), Inc. v. APG-America, Inc.</i>, 2005 WL 2140240 (E.D. Pa.. 2005).</p> <p>- “Pay-if-paid [clauses] are not void under Pennsylvania law.”</p> <p><i>Quinn Constr. Inc. v. Skanska USA Bldg., Inc.</i>, 730 F. Supp. 2d 401 (E.D. Penn. 2010)</p>

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	<p>Pay-when-Paid: Enforceable.</p>		<p>- “In Pennsylvania, pay-if-paid clauses are generally enforceable to bar a subcontractor’s claims against a general contractor for payment, if the general contractor was never paid by the owner.”</p> <p><i>Sloan & Co. v. Liberty Mut. Ins. Co.</i>, 653 F.3d 175 (3d Cir. 2011).</p> <p>- This court stated that when the provision contains “express language of condition,” it will be interpreted as a pay-if-paid clause. “When certainty is lacking, however, Pennsylvania courts tend to interpret payment provisions as pay-when-paid clauses.” This court reversed the lower courts holding that the provision at issue merely established payment timing, finding that the provision was worded clearly enough to be considered a pay-if-paid clause.</p>
	<p>No Damage for Delay: Enforceable with a few exceptions.</p>		<p><i>James Corp. v. N. Allegheny Sch. Dist.</i>, 938 A.2d 474 (Pa. Commw. 2007).</p> <p>- “No damages for delay” clauses are generally enforceable, except in cases where: “(1) there is an affirmative or positive interference by the owner with the contractor's work, or (2) there is a failure on the part of the owner to act on some essential manner necessary to the prosecution of the work.”</p>
Rhode Island	<p>Pay-if-Paid:</p>		<p>NOTE: No Rhode Island state or federal court has considered the validity of “pay-if-paid” clauses.</p>
	<p>Pay-when-Paid:</p>		<p>NOTE: No Rhode Island state or federal court has considered the validity of “pay-when-paid” clauses.</p>
	<p>No Damage for Delay: Enforceable with a few exceptions.</p>		<p><i>Psaty & Fuhrman v. Housing Auth. of City of Providence</i>, 68 A.2d 32 (R.I. 1949).</p> <p>- “No damage for delay” clauses are to be enforced absent evidence of “bad faith or other tortious conduct.”</p>
South Carolina	<p>Pay-if-Paid: Unenforceable by statute.</p>	<p>S.C. CODE § 29-6-230. - “[P]erformance by a construction subcontractor in</p>	<p>NOTE: No South Carolina state or federal court has considered the validity of “pay-if-paid” clauses.</p>

STATE	RULE(S)	STATUTE(S)	CASE(S) AND CLAUSES ADDRESSED
		accordance with the clauses of its contract entitles the subcontractor to payment from the party with whom it contracts. The payment by the owner to the contractor or the payment by the contractor to another subcontractor or supplier is not, in either case, a condition precedent for payment to the construction subcontractor.”	
	Pay-when-Paid: Enforceable.		<i>Elk & Jacobs Drywall v. Town Contractors, Inc.</i> , 229 S.E.2d 260 (S.C. 1976). - “Pay-when-paid” do not create a condition precedent, but rather “only [postpone] payment by [the contractor] for a reasonable time so as to afford [the contractor] an opportunity to obtain funds from the owner.”
	No Damage for Delay: Enforceable with a few exceptions.		<i>Williams Elec. Co., Inc. v. Metric Constructors, Inc.</i> , 480 S.E.2d 447 (S.C. 1997). - “No damage for delay” clauses are generally valid and enforceable, except in cases of: “fraud, misrepresentation, or other bad faith; active interference; delay which amounts to an abandonment of the contract; and gross negligence.” - The South Carolina Supreme Court “decline[d] to adopt an exception for ‘delays not contemplated by the parties.’”
South Dakota	Pay-if-Paid:		NOTE: No South Dakota state or federal court has considered the validity of “pay-if-paid” clauses.
	Pay-when-Paid:		NOTE: No South Dakota state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No South Dakota state or federal court has considered the validity of “no damage for delay” clauses.
Tennessee	Pay-if-Paid: Enforceable if established through clear language.		<i>Koch v. Constr. Tech., Inc.</i> , 924 S.W.2d 68 (Tenn. 1996). - “[C]ondition precedents . . . will not be upheld unless there is clear language to support them.”

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	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Koch v. Constr. Tech., Inc.</i>, 924 S.W.2d 68 (Tenn. 1996).</p> <p>- “Pay-when-paid” clauses serve to “[affect] the timing of payments that the general contractor is required to make to the subcontractor, regardless of whether the owner performs or not.”</p>
	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p><i>Thomas & Assocs., Inc. v. Metro. Gov’t of Nashville</i>, 2003 WL 21302974 (Tenn. Ct. App. 2003).</p> <p>- “No damage for delay” clauses are normally valid and enforceable, except in cases where the delay: “(1) was of a kind not contemplated by the parties, (2) amounted to an abandonment of the contract, (3) was caused by bad faith, or (4) was caused by active interference.”</p>
<p>Texas</p>	<p>Pay-if-Paid:</p> <p>Enforceable if unequivocal and express agreement exists.</p>		<p><i>Gulf Constr. Co., Inc. v. Self</i>, 676 S.W.2d 624 (Tex. App. 1984).</p> <p>- “[T]he risk of non-payment by an owner on a construction contract rests on the contractor who contracts with such owner rather than on a subcontractor who has no privity of contract with the owner” and “is not shifted from the contractor to the subcontractor unless there is a clear, unequivocal and expressed agreement between the parties to do so.”</p> <p><i>FaulknerUSA, LP v. Alaron Supply Co., Inc.</i>, 322 S.W.3d 357 (Tex. Ct. App. 2010).</p> <p>- Enforcing pay-if-paid provision that was clearly worded as creating a condition precedent.</p>
	<p>Pay-when-Paid:</p> <p>Enforceable.</p>		<p><i>Sheldon L. Pollack Corp. v. Falcon Indust., Inc.</i>, 794 S.W.2d 380 (Tex. App. 1990).</p> <p>- “Pay-when-paid” clauses constitute “covenant[s] which modif[y] the time and manner of payment, and</p>

STATE	RULE(S)	STATUTE(S)	CASE(S) AND CLAUSES ADDRESSED
	<p>No Damage for Delay:</p> <p>Enforceable with a few exceptions.</p>		<p>not . . . condition[s] of liability.”</p> <p><i>City of Houston v. R. F. Ball Constr. Co., Inc.</i>, 570 S.W.2d 75 (Tex. App. 1978).</p> <ul style="list-style-type: none"> - Court recognizes “delay which was not intended or contemplated by the parties to be within the purview of the clause” as an exception to a “no damages for delay” clause. - “The other generally recognized exceptions are: (1) Delay resulting from fraud, misrepresentation, or other bad faith on the part of one seeking the benefit of the clause; (2) Delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract; (3) Delay not within the specifically enumerated delays to which the “no damages” clause applies.” <p><i>See also Green Intern., Inc. v. Solis</i>, 951 S.W.2d 384 (Tex. 1997).</p> <ul style="list-style-type: none"> - Holding that no damages for delay clause need not be conspicuous to be enforced. - Reciting exceptions noted above and, without deciding whether such exceptions did in fact preclude enforcement of no damages for delay clause, finding that the facts did not support any of the exceptions.
Utah	<p>Pay-if-Paid:</p> <p>Unenforceable by statute as applied to preconstruction or construction liens.</p>	<p>UTAH CODE § 13-8-4(3)(a).</p> <ul style="list-style-type: none"> - “The existence of a contingent payment contract is not a defense to a claim to enforce a preconstruction or construction lien filed under Title 38, Chapter 1, Mechanics' Liens.” - UTAH CODE § 13-8-4(3)(a) “does not apply to contracts for private construction work for the building, improvement, repair, or remodeling of residential property consisting of four units or less.” 	
	<p>Pay-when-Paid:</p>		<p><i>In re Davidson Lumber Sales, Inc.</i>, 66 F.3d 1560 (10th Cir. 1995) (applying Utah law).</p>

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	Enforceable.		- “[P]ay-when-paid clauses do not operate as conditions precedent under which the duty to pay is contingent upon receipt of funds from a third party. (citation removed). To the contrary, these clauses are viewed as only postponing payment for a reasonable time and merely establishing a convenient time for payment.”
	No Damage for Delay: Enforceable with a few exceptions.		<i>W. Eng’rs, Inc. v. State By and Through Rd. Comm’n</i> , 437 P.2d 216 (Utah 1968). - “No damage for delay” clauses are to be enforced except in instances of: “(1) A delay that is the result of fraud or active interference on the part of one seeking the benefit of the clause; (2) A delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract; (3) A delay not within the specifically enumerated delays to which the no damage clause is to apply; (4) A delay which in light of the relationship of the parties and objectives and attendant circumstances was not intended or contemplated by the parties to be within the purview of the ‘no damages’ clause.”
Vermont	Pay-if-Paid: Potentially unenforceable.	VT. STAT. ANN. tit. 9, § 4003(c) “Notwithstanding any contrary agreement, when a subcontractor has performed in accordance with the provisions of its contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and materials based on work completed or service provided under the subcontract, seven days after receipt of each progress or final payment or seven days after receipt of the subcontractor's invoice, whichever is later.”	NOTE: No Vermont state or federal court has considered the validity of “pay-if-paid” clauses, though Vermont’s Prompt Pay statute (see left) may be read to preclude the validity of such clauses.
	Pay-when-Paid:		NOTE: No Vermont state or federal court has considered the validity of “pay-when-paid” clauses.

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	No Damage for Delay:		NOTE: No Vermont state or federal court has considered the validity of “no damage for delay” clauses.
Virginia	Pay-if-Paid: Enforceable if clearly and unambiguously stated or established by parol evidence.		<i>Galloway Corp. v. S.B. Ballard Constr. Co.</i> , 464 S.E.2d 349 (Va. 1995). - “In the absence of a clear and unambiguous statement of the parties' intent as to the meaning of the time of payment clause in a construction subcontract, [a “pay-if-paid”] defense is available to a general contractor only if it can establish by parol evidence that the parties mutually intended the contract to create such a defense.”
	Pay-when-Paid: Enforceable.		<i>Galloway Corp. v. S.B. Ballard Constr. Co.</i> , 464 S.E.2d 349 (Va. 1995). - Absent an unambiguous intent to establish a “pay if paid” clause, a contractor may be granted only a “reasonable delay in making payment and is not permitted to indefinitely withhold the payment.”
	No Damage for Delay: Unenforceable in contracts for public construction projects.	VA. CODE § 2.2-4335(A). - “No damage for delay” clauses are void and unenforceable in public construction projects as against public policy. - May not contractually waive right to damages arising out of unreasonable delay to the “ extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control.”	<i>Blake Constr. Co., Inc./Poole & Kent v. Upper Occoquan Sewage Auth.</i> , 587 S.E.2d 711 (Va. 2003). - Court recognizes no exceptions to Virginia’s statutory prohibition on “no damage for delay” clauses other than those set forth in VA. CODE § 2.2-4335(B). NOTE: No Virginia state or federal court has considered the validity of “no damage for delay” clauses outside of the public context.
Washington	Pay-if-Paid:		<i>W. States Paving Co. v. Pease & Sons, Inc.</i> , 132 Wash. App. 1034 (2006). - Washington Court of Appeals declined to address the validity of “pay-if-paid” clauses.
	Pay-when-Paid:		<i>Amelco Elec. v. Donald M. Drake Co.</i> , 583 P.2d 648 (Wash. App. 1978).

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	Enforceable.		- Provision which stated that contractor would be “liable to Subcontractor only for the reasonable value of Subcontractor’s work completed to the extent that Contractor has received payment for said work from Owner” was not pay-if-paid clause. Rather, this provision “postponed payment for a reasonable period of time after the work was completed.”
	No Damage for Delay: Unenforceable by statute.	WASH. REV. CODE § 4.24.360. - “No damage for delay” clauses are void and unenforceable as against public policy. - May not contractually waive right to damages “arising out of unreasonable delay in performance which delay is caused by the acts or omissions of the contractee or persons acting for the contractee.”	
West Virginia	Pay-if-Paid: Enforceable.		<i>Wellington Power Corp. v. CNA Sur. Corp.</i> , 614 S.E.2d 680 (W. Va. 2005). - Enforcement of “pay-if-paid” clauses is consistent with public policy and the freedom to contract. - “Pay-if-paid” clauses also prevent subcontractors from pursuing a contractor’s surety under a payment bond.
	Pay-when-Paid:		NOTE: No West Virginia state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No Georgia state or federal court has considered the validity of “no damage for delay” clauses.
Wisconsin	Pay-if-Paid: Unenforceable by statute.	WISC. STAT. § 779.135(3). - Prohibits clauses in contracts for the improvement of land which make “payment to a prime . . . a <i>condition precedent</i> to a prime contractor’s payment to a subcontractor, supplier, or service provider” (emphasis added).	NOTE: No Wisconsin state or federal court has interpreted Wisc. Stat. § 779.135(3).
	Pay-when-Paid:	WISC. STAT. § 779.135(3).	NOTE: No Wisconsin state or federal court has interpreted Wisc. Stat. § 779.135(3).

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	Enforceable by statute.	- Prohibition on “pay-if-paid” clauses does not serve to prohibit contract clauses that “may delay a payment to a subcontractor until the prime contractor receives payment”	
	No Damage for Delay: Enforceable with a few exceptions.		<i>John E. Gregory & Son, Inc. v. A. Guenther & Sons Co., Inc.</i> , 432 N.W.2d 584 (Wis. 1988). - General rule exists that “no damage for delay” clauses are to be enforced, except in cases of “fraud, bad faith, and unnecessary orders which were the result of inexcusable ignorance or incompetence.” - Delay “not contemplated by the parties” is not exception to general rule that “no damage for delay” Clauses are enforceable.
Wyoming	Pay-if-Paid:		NOTE: No Wyoming state or federal court has considered the validity of “pay-if-paid” clauses.
	Pay-when-Paid:		NOTE: No Wyoming state or federal court has considered the validity of “pay-when-paid” clauses.
	No Damage for Delay:		NOTE: No Wyoming state or federal court has considered the validity of “no damage for delay” clauses.