

Contingent Payment Clauses in the 50 States 2020

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Introduction

A **contingent payment clause** is a contractual provision that makes payment contingent upon the happening of some event. In construction subcontracts, the typical contingent payment clause makes the subcontractor's payment contingent upon the payment of the contractor by the owner.

Contingent payment clauses take on one of two forms in subcontract agreements. Some clauses link the *timing* of the subcontractor's payment to the time when payment is made by the owner. These are called "pay-when-paid" clauses. Other clauses specify that the owner must pay the contractor *in order* for the subcontractor to *ever* receive payment. These provisions that shift entitlement to payment are called "pay-if-paid" clauses. Even though most states distinguish between the two types of clauses, a few jurisdictions find that the provisions have the same exact legal effect.

For more than 30 years, most state courts have held that contractors cannot indefinitely withhold payment from subcontractors based upon a "pay-when-paid" clause. Instead, "pay-when-paid" clauses require a contractor to pay its subcontractors within a "reasonable time" of the completion of satisfactory work.

In contrast, "pay-if-paid" clauses often allow contractors to permanently withhold payment from their subcontractors where the owner has failed to pay the contractor. Because of the harshness of such a provision, most states only enforce "pay-if-paid" clauses if the contract unambiguously expresses that the parties intended for the subcontractor to only be paid if the contractor is paid.

As states have moved toward protecting the rights of subcontractors, some state courts have decided not to enforce "pay-if-paid" provisions. In addition, a growing number of states have enacted laws that declare such contractual provisions void and against public policy.

This manual attempts to summarize the basic stance of each of the 50 states with respect these two types of contingent payment clauses. The following information is displayed for all states that have applicable law on this issue:

- Whether a "pay-if-paid" clause will be enforced in that state if it is unambiguously drafted.
- Whether the state distinguishes between "pay-if-paid" and "pay-when-paid" provisions.
- Whether "pay-when-paid" clauses allow a contractor in the state to only delay payment to its subcontractors for a reasonable time.
- Key statutes and cases that describe the states' positions on contingent payment clauses.

This publication is designed as a summary of the basic principles of state law, but is not a comprehensive legal treatment of the law in the states. *This publication does not contain legal advice.* Because individual circumstances may vary widely, and because state laws are constantly changing, readers should consult their local attorneys for specific advice.

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Alabama (No change)	✓		✓	Ala. Code 8-29-2: All contracts between parties must specify a date of payment.	Pay-when-paid clause in the subcontract did not create a condition precedent to payment, but that it was merely a timing mechanism for payment. The parties did not "clearly indicat[e] that the subcontractor assumed the risk of nonpayment." <i>Fed. Ins. Co. v. I. Kruger, Inc.</i> , 829 So. 2d 732, 741 (Ala. 2002).
Alaska	✓		✓	Alaska Stat. § 36.90.210: A General contractor must pay a subcontractor within eight days of being paid.	The pay-when-paid clause is enforced as creating a valid condition precedent to payment for the subcontract. <i>Industrial Indem. Co. v. Wick Constr. Co.</i> , 680 P.2d 1100 (Alaska 1984).
Arizona (No Change)	✓		✓		"In order to create a condition precedent [to the subcontractor's payment], there must be contractual language demonstrating the parties' unequivocal intent" that the subcontractor will only be paid if the contractor is paid. <i>L. Harvey Concrete v. Agro Constr. & Supply Co.</i> , 189 Ariz. 178, 181 (Ariz. Ct. App. 1997).

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Arkansas (no change)	✓	✓		Ark. Code Ann. § 22-9-205: Recognizes the enforceability of a "pay-when-paid" provision in a public contract. It does not address whether a "pay-when-paid" clause would create a condition precedent to the subcontractor's payment.	A condition that sets out events to happen before payment may be construed to link the existence of the debt to fulfillment of the conditions. <i>Brown v. Maryland Casualty Co.</i> , 246 Ark. 1074, 1082 (Ark. 1969). Clause that required payment "immediately on the completion of the work" established a valid condition precedent to payment. <i>Manuel v. Campbell</i> , 3 Ark. 324 (1841).
California (No change)	If meets form required under Cal Civ Code §§ 8122-8138.		✓	Cal Civ Code §§ 8122-8138: Statute preventing a waiver of lien rights has been interpreted to also prohibit "pay-if-paid" provisions for the indirect effect on lien rights, "unless and until the claimant executes and delivers a waiver and release under this article."	California courts will not enforce "pay-if-paid" clauses as they unlawfully inhibit subcontractor's mechanic's lien rights. <i>William R. Clark Corp. v. Safeco Ins. Co.</i> , 938 P.2d 372 (Cal. 1997).
Colorado (No change)	✓		✓		Pay-if-paid provisions must unequivocally express the party's intent to establish a condition precedent to payment in order to be enforceable. "To create a pay-if-paid clause in a construction contract, the relevant contract terms must unequivocally state that the subcontractor will be paid only if

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Connecticut					the prime contractor is first paid by the owner and that the subcontractor bears the risk of the owner’s non-payment. [A] pay-when-paid clause. . . is an unconditional promise by the general contractor to pay its subcontractor even if the owner becomes insolvent." <i>Main Elec., Ltd. v. Printz Servs. Corp.</i> , 980 P.2d 522 (Colo. 1999).
	✓	✓		Conn. Gen. Stat. § 49-41a(d): Contractor cannot withhold payment from a subcontractor because of a dispute with another contractor, subcontractor.	Contract language that specifies payment shall be made to the subcontractor at the time it is made to the contractor effectively establishes a valid condition precedent to payment. <i>Star Contracting Corp. v. Manway Constr. Co.</i> , 337 A.2d 669 (Conn. 1973).
			✓	Del. Code. Ann. tit. 6 § 3507 (e): Makes void any clause in a subcontract that makes payment by the owner a condition precedent to the subcontractor's payment. This statute does not apply to public contracts.	Chapter 35 only applies to the construction of buildings, and does not include all construction projects like highways. <i>VSI Sales, LLC v. Griffin Sign, Inc.</i> , 2014 U.S. Dist. LEXIS 57620.
	✓	✓		D.C. Code. § 27-134 provides that “conditions of payment to the subcontractor on receipt by the contractor from the owner may not abrogate or waive the	"Pay-when-paid" provision established a valid condition precedent. Subcontractor still prevailed in claim for damages as the court imposed a duty on contractor to attempt to recover

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Florida (no change)				right of the subcontractor to: (1) Claim a mechanic’s lien; or (2) Sue on a contractor’s bond.” Any contract provision that attempts to change the above rights is void as against public policy.	payment, and contractor had settled with owner without accounting for the subcontractor’s entitlement. <i>Urban Masonry Corp. v. N&N Contractors, Inc.</i> , 676 A.2d 26 (D.C. 1996).
	✓		✓		"Risk-shifting provisions are susceptible to only two possible interpretations. If a provision is clear and unambiguous, it is interpreted as setting a condition precedent to the general contractor's obligation to pay. If a provision is ambiguous, it is interpreted as fixing a reasonable time for the general contractor to pay. In purported risk-shifting provisions between a contractor and subcontractor, the burden of clear expression is on the general contractor." <i>DEC Electric, Inc. v. Raphael Constr. Corp.</i> , 558 So. 2d 427, 429 (Fla. 1990).
Georgia (No Change)	✓	✓			"Under Georgia law, a condition precedent to payment, such as a clause that says the subcontractor only receives its money when the prime contractor is itself paid, is not simply a timing mechanism.

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Hawaii (no change)					Rather, it will bar recovery by the subcontractor until the condition is met.” <i>United States ex rel. McKenney’s, Inc. v. Gov’t Tech. Servs., LLC</i> , 531 F.Supp. 2d 1375, 1378 (N.D. Ga. 2008) (citing <i>St. Paul Fire & Marine Ins. Co. v. Ga. Interstate Elec. Co.</i> , 187 Ga. App. 579 (Ga. Ct. App. 1988)).
	✓			HRS § 444-25: If payment is contingent upon receipt of funds, the contractor shall clearly state this fact in the contractor's solicitation of bids. This does not apply to public contracts.	There are no cases from courts regarding this statute, but the language of the statute appears to contemplate the enforcement of a contingent payment clause.
	✓	✓			Contract terms setting the timing of payment of subcontractor after the payment of the prime contractor create a valid condition precedent. <i>Hoff Cos. v. Danner</i> , 822 P.2d 558 (Idaho 1991).
	✓	✓		770 Ill. Comp. Stat. 60/21: "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	Pay-when-paid language may establish a condition precedent to payment if the intent of the parties was to create such a condition. <i>Premier Elec. Constr. Co. v. American Nat’l Bank of Chicago</i> , 658 N.E.2d 877 (Ill. Ap. Ct. 1995).

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Indiana				the party responsible for payment to a claim" if that party is other than the contractor.	
	✓		✓	Burns Ind. Code Ann. § 32-28-3-18(c): “An obligor's receipt of payment from a third person may not: (1) be a condition precedent to; (2) limit; or (3) 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.”	The Indiana courts have not squarely addressed pay-if-paid clauses, but most jurisdictions that have done so have interpreted condition-precedent language as sufficient to create a pay-if-paid clause. See, e.g., <i>Envirocorp Well Servs., Inc. v. Camp Dresser & McKee, Inc.</i> , No. IP99-1575-C-T/G, 2000 U.S. Dist. LEXIS 16088, 2000 WL 1617840, at *5 (S.D. Ind. Oct. 25, 2000) (explaining that “[c]ourts that have enforced [pay-if-paid] provisions do so when the provisions explicitly provide that payment to the contractor by the owner is a condition precedent to payment to the subcontractor by the contractor”). <i>BMD Contrs., Inc v. Fid. & Deposit Co. of Md.</i> , 679 F.3d 643, 2012 U.S. App. LEXIS 9558, 2012 WL 1660962 (7th Cir. Ind. 2012).
Iowa (No change)	✓		✓		Clause setting a time for payment after payment by the owner establishes a reasonable time for payment by the contractor to the

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Kansas (no change)					subcontractor. <i>Grady v. S.E. Gustafson Constr. Co.</i> , 103 N.W.2d 737 (Iowa 1960).
	✓		✓		Clause setting a time for payment after payment by the owner establishes a reasonable time for payment by the contractor to the subcontractor. <i>Shelley Electric, Inc. v. United States Fidelity & Guaranty Co.</i> , 1992 U.S. Dist. LEXIS 16978 (D. Kan. Oct. 16, 1992).
Kentucky (no change)	✓		✓		Clause setting a time for payment after payment by the owner establishes a reasonable time for payment by the contractor to the subcontractor. <i>A. L. Pickens Co. v. Youngstown Sheet & Tube Co.</i> , 650 F.2d 118, 120 (6th Cir. 1981).
Louisiana	✓		✓		Pay when paid clause sets a reasonable time for payment and does not set a condition precedent to payment of a subcontractor. <i>S. States Masonry, Inc v. J.A. Jones Constr. Co.</i> , 507 So. 2d 198 (La. 1987). Properly worded "pay-if-paid" clause will create a condition precedent to the subcontractor's

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Maine					payment. <i>Imagine Constr., Inc. v. Centex Landis Constr. Co., Inc.</i> , 707 So. 2d 500 (La. App. 1998).
	✓	✓		Payments will be made in accordance with the contract so long as the contractor accurately discloses the due date for receipt of payment. 10 M.R.S. § 1114.	No cases concerning contingent payment clauses.
Maryland	✓		✓	Md. REAL PROPERTY Code Ann. § 9-113: Contingent Payment clauses may not “abrogate or waive the right to (1) claim a mechanics’ lien; or (2) sue on a contractor’s bond.”	In order to shift the risk of owner non-payment to the subcontractor, the subcontract must have an express unambiguous provision shifting that risk. <i>Gilbane Bldg. Co. v. Brisk Waterproofing Co.</i> , 585 A.2d 248 (Md. 1991).
Massachusetts			✓	ALM GL ch. 149, § 29E: On private projects worth over \$3,000,000, unless work is defective, pay-if-pay clauses are unenforceable in all general and subcontracts, except where (a) the owner is insolvent and (b) the party who wishes to invoke pay-if-pay has filed a mechanic’s lien before submitting its first requisition and taken all steps necessary to maintain that lien.	The Prompt Pay Act only applies to private construction projects. <i>United States v. Const. & Telcom. Servs.</i> , 2013 U.S. DIST. LEXIS 108829 (2013 D. Mass).
Michigan	✓		✓		Language specifying that “receipt of such payments ...

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Minnesota (no changes)					being a condition precedent to payments to the subcontractor" enforced as a valid "pay-if-paid" clause. <i>Christman Co. v. Anthony S. Brown Dev. Co.</i> , 210 Mich. App. 416 (1995).
	✓		✓	Minn. Stat. § 337.10 (3): Provisions contained in, or executed in connection with, a building and construction contract requiring a contractor, subcontractor, or material supplier to waive the right to a mechanics lien or to a claim against a payment bond before the person has been paid for the labor or materials or both that the person furnished are void and unenforceable.	Conditions precedent are not favored in the law and a contract that does not explicitly create a condition precedent will be construed to merely establish a reasonable time for payment. <i>Mrozik Constr., Inc. v. Lovering Assoc., Inc.</i> , 461 N.W.2d 49 (Minn. Ct. App. 1990).
Mississippi	✓		✓		"Pay-When-Paid" clauses will be enforced and "grant the contractor a reasonable time" to pay the subcontractor." <i>Lafayette Steel Erectors, Inc. v. Roy Anderson Corp.</i> , 71 F.Supp. 2d 582 (S.D. Miss. 1997).
Missouri (no change)	✓		✓	Mo. Rev. Stat. § 431.183: A "Pay if Paid" clause is no defense to a mechanic's lien.	Even where the "pay if paid" clause is itself unambiguous, other seemingly contradictory clauses in a contract can cause

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Montana (no change)				A “Pay if Paid” clause may not provide protection to general contractors, as pre-payment waivers of lien rights are void as against public policy. Mo. Rev. Stat. § 429.005.	the "pay if paid" clause to merely establish a reasonable time for payment. <i>Meco Sys., Inc. v. Dancing Bear Entertainment</i> , 42 S.W.3d 794, 808 (Mo. Ct. App. 2001).
				Mont. Code Ann. § 28-2-2103 (2)(a): Within 7 days after a contractor receives payment from an owner, the contractor shall pay the subcontractor. Mont. Code Ann. § 28-2-723: "A construction contract may not contain provisions requiring a [party] to waive the right to a construction lien or ... payment bond before the [party] has been paid."	Montana courts have yet to address this issue, but the strongly written statutory language is similar to that in states, such as California, that have found "pay-if-paid" clauses unenforceable.
Nebraska (no change)	✓		✓		Clause that does not unambiguously create a condition precedent for payment merely establishes a reasonable time for the contractor to pay the subcontractor. <i>D. K. Meyer Corp. v. Bevco, Inc.</i> , 292 N.W.2d 773 (Neb. 1980).
Nevada			✓	The Nevada Supreme Court interprets Nev. Rev. Stat. Ann. §§ 624.624-624.626 as making void any contractual provision that conditions payment to a	“Lien waiver[s] and pay-if-paid provisions were unenforceable based upon Nevada’s public policy favoring the statutory right to a mechanic’s lien.”

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
New Hampshire				subcontractor upon the receipt of payment by the prime contractor.	<i>Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.</i> , 124 Nev. 1102 (Nev. 2008).
	✓		✓		Courts require specific language such as "if" or "on condition that" to find that a contract contains a condition precedent. <i>Holden Eng. and Surveying Inc. v. Pembroke Rd. Realty Trust</i> , 137 N.H. 393 (1993). Contractor cannot withhold payment from subcontractor where contractor fails to seek approval of subcontractor's work from architect. <i>D.M. Holden, Inc. v. Contractors' Crane Service, Inc.</i> 121 N.H. 831 (1981).
New Jersey (no change)	✓		✓		Clause setting time for payment to subcontractor after the contractor received payment merely establishes a reasonable time for payment from the contractor to the subcontractor. <i>Seal Title Corp. v. Ehret, Inc.</i> , 589 F.Supp. 701 (D. N.J. 1984).
New Mexico					New Mexico would likely support a condition precedent to payment. <i>MidAmerica Constr. Mgmt., Inc. v. MasTec N. Am., Inc.</i> , 436 F.3d 1257 (10th Cir.

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
New York					2006) (applying New Mexico law)
			✓	<p>NY General Obligations Law §5-322.1: “Pay-if-Paid” clauses are void as against the state’s public policy protecting lien rights. <i>West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.</i>, 661 N.E.2d 967, 971 (1995).</p> <p>“Pay-if-Paid” clauses are void as against the state’s public policy protecting lien rights. <i>West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.</i>, 661 N.E.2d 967 971 (1995).</p> <p>NY Lien Law § 34: Any contractual provision waiving a subcontractor's right to a lien against a property is void. The Court of Appeals has interpreted these provisions to void all "pay if paid" clauses in subcontracts.</p> <p>NY General Business Law § 757: Any provision in an agreement in a private construction contract (except material supplier) that makes the contract subject to the laws of a state other than New York is void and unenforceable.</p>	<p>“Pay-if-Paid” clauses are void as against the state’s public policy protecting lien rights. <i>West-Fair Elec. Contractors v. Aetna Cas. & Sur. Co.</i>, 661 N.E.2d 967, 971 (1995).</p>
North Carolina (no change)		✓		N.C. Gen. Stat. § 22C-2: "Payment by the owner to a	"Pay-when-paid" clauses, like "pay-if-paid" clauses, are

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
North Dakota (no change)				contractor is not a condition precedent for payment to a subcontractor...and an agreement to the contrary is unenforceable." N.C. Gen. Stat. § 22C-3: "The contractor shall pay to his subcontractor...within seven days of receipt by the contractor...of each periodic or final payment."	unenforceable. <i>Am. Nat'l Elec. Corp. v. Poythress Commer. Contrs., Inc.</i> , 167 N.C. App. 97, 101 (N.C. Ct. App. 2004).
					North Dakota courts have yet to address contingent payment clauses.
	✓		✓	Ohio Rev. Code § 4113.62(E): "Pay if paid" contract provisions will not prevent the subcontractor from filing a mechanic's lien.	"Pay-when-paid" clause of a contract establishes a reasonable time for payment but does not set a condition precedent for payment to a subcontractor. <i>Chapman Excavating Co. v. Fortney & Weygandt, Inc.</i> , 2004 Ohio 3867 (2004) (following the rationale from <i>Thom. J. Dyer Co. v. Bishop International Engineering Co.</i> , 303 F.2d 655 (6th Cir. 1962)). "[T]he use of the term 'condition precedent' in the payment provision of a contract between a general contractor and a

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
					subcontractor” is essentially magic language that on its own “clearly and unequivocally shows the intent of those parties to transfer risk of the project owner’s nonpayment from the general contractor to the subcontractor.” <i>Transtar Electric, Inc. v. A.E.M. Electric Services Corp.</i> , Slip Opinion No. 2014-Ohio-3095, at syllabus #2.
Oklahoma (No change)	✓		✓	Okla. Stat. tit. 61 § 224: "If a subcontractor ... has performed ... the prime contractor shall make payment to the subcontractor ... no later than ten (10) calendar days after the prime contractor receives its corresponding payment for the work performed."	Clause setting the time for payment of a subcontractor after the contractor has received payment does not create a condition precedent to payment. It merely establishes a reasonable time for payment from the contractor to the subcontractor. <i>Byler v. Great American Ins. Co.</i> , 395 F.2d 273 (10th Cir. 1968) (applying Oklahoma law).
Oregon (no change)	✓		✓	Or. Rev. Stat. § 701.630: “the original contractor shall pay the subcontractor for that work no later than seven days after the original contractor receives the payment.”	Any intention to shift the risk of a construction project from the contractor to the subcontractor must be evidenced by unambiguous language. Language that appears only to set a time for payment will not be construed to establish a condition precedent for

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Pennsylvania (no change)					payment. <i>Mignot v. Park Hill</i> , 391 P2d 755 (Oregon 1964).
	✓		✓	<p>Public Contracts: 62 Pa. Cons. Stat. § 3933(c): The subcontractor shall be paid “the full or proportional amount received for each subcontractor’s work and material ... 14 days after receipt of a progress payment.”</p> <p>Private Contracts: 73 P.S. § 507(c). Time for Payment: When they have performed in accordance with their contract(s) subcontractors (and sub-subs) shall be paid “the full or proportional amount received for each subcontractor’s work or materials... 14 days after receipt of each progress or final payment or 14 days after receipt of the subcontractor’s invoice, whichever is later.”</p>	If the intent of the parties is unambiguous, a “pay-if-paid” clause will establish a condition precedent to payment. <i>C.M. Eichenlaub Co. v. Fid. & Deposit Co.</i> , 437 A.2d 965 (Pa. Super. Ct. 1981).
Rhode Island (no change)					The Rhode Island Supreme Court has not ruled on this issue.
South Carolina (no change)			✓	S.C. Code Ann. § 29-6-230: Owner payment to the contractor cannot be a condition precedent to the subcontractor’s payment.	Clause setting the time for payment of a subcontractor after the contractor has received payment merely establishes a reasonable time

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
South Dakota (no change)					for payment from the contractor to the subcontractor. <i>Elk & Jacobs Drywall v. Town Contractors, Inc.</i> , 229 S.E.2d 260 (1976).
					South Dakota courts have yet to address contingent payment clauses.
	✓		✓		Clause setting the time for payment of a subcontractor after the contractor has received payment does not create a condition precedent to payment. It merely establishes a reasonable time for payment from the contractor to the subcontractor. <i>Koch v. Construction Tech.</i> , 924 S.W.2d 68 (Tenn. 1996).
Tennessee (no change)					
Texas (no change)	✓		✓	Texas Business & Commerce Code, § 56.001 <i>et seq.</i> Principally, and subject to exceptions based on the kind of construction contracts, a contingent payment clause: (1) will not invalidate mechanic’s lien rights; (2) is not enforceable if the owner’s nonpayment is due to the fault of the prime contractor or one of its other subs; and (3) is not enforceable	Clause reading "contractor will pay [for work for which] payment has been made by the owner] does not establish a condition precedent to payment. <i>Sheldon L. Pollack Corp. v. Falcon Industries, Inc.</i> , 794 S.W.2d 380, 383 (Tex. App. Corpus Christi 1990).

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Utah				if enforcement would be unconscionable.	
	✓		✓	Utah Code Ann. § 13-8-4 (3)(a): “The existence of a contingent payment contract is not a defense to a claim to enforce a preconstruction [service lien or mechanics’ lien filed] under Title 38,” Chapter 1, Mechanics’ Liens.	Pay-when-paid provisions do not create conditions precedent to the payment of subcontractors. <i>Zions First Nat’l Bank v. Christiansen Bros., Inc.</i> , 66 F.3d 1560 (10th Cir. 1995). See also <i>MidAmerican Constr. Mgt. Inc. v. MasTec N. Am. Inc.</i> , 436 F.3d 1257 (10th Cir. 2006) (Paid if paid likely enforced if clear language indicating intent to create condition precedent – applying Oklahoma, Texas, and New Mexico but not Utah law).
Vermont			✓	Vt. Stat. tit. 9 § 4003: “Notwithstanding any contrary agreement, when a subcontractor has performed in accordance with the provisions of its contract, a contractor shall pay to the subcontractor...the full or proportional amount...seven days after receipt of each progress or final payment or seven days after receipt of the subcontractor’s invoice, whichever is later.”	Vermont courts have not yet interpreted the prompt payment statute. It is unclear whether a “pay-if-paid” clause would be enforced in the state.
Virgin Islands (no change)				V.I. CODE ANN. tit. 28, §§ 251 - 270: Courts in the Virgin Islands have interpreted the construction lien law in that district to preclude	When a subcontract includes a clause that makes payment to the subcontractor contingent upon payment by the owner to

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Virginia (no change)				any contractual defense in actions to recover payment for completed work.	the contractor, that clause is void and against the public policy enumerated in Construction Lien Law. <i>Shearman & Assocs. v. Continental Cas. Co.</i> , 901 F.Supp. 199.
	✓		✓		In the absence of evidence of contrary intent, a "pay when paid" provision will be treated to only establish a reasonable time for payment from the contractor to the subcontractor, and not to create a condition precedent to payment. <i>James River Iron, Inc. v. Turner Constr. Co.</i> , 2004 Va. Cir. LEXIS 230 (Va. Cir. Ct. Sept. 30, 2004).
Washington (no change)	✓		✓		Contract specifying that the subcontractor would receive payment only to the extent that the Contract has received payment” did not create a condition precedent to the subcontractor’s payment. It simply established a reasonable time in which the subcontractor could be paid. <i>Amelco Elec. V. Donald M. Drake Co.</i> , 20 Wn. App. 899 (Wash. Ct. App. 1978).

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
West Virginia (no change)	✓				"Pay if paid" provisions in a subcontract will not only insulate the contractor from liability to the subcontractor if the contractor is not paid, but the provision will also protect the contractor's surety. <i>Wellington Power Corp. v. CNA Sur. Corp.</i> , 217 W. Va. 33, 41 (W. Va. 2005).
Wisconsin			✓	<p>Wis. Stat. § 779.135: “The following provisions in contracts for the improvement of land in this state are void:</p> <ul style="list-style-type: none"> (1) Provisions requiring any person entitled to a construction lien to waive his or her right to a construction lien ... before he or she has been paid for the labor. (2) Provisions making the contract subject to the laws of another state or requiring that any litigation, arbitration or other dispute resolution process on the contract occur in another state. (3) Provisions making a payment to a prime contractor ... a condition precedent to a prime contractor's payment to 	A "pay when paid" provision will not provide a defense to a contractor in a suit with a subcontractor once the contractor has been paid, at least in part. <i>Marino Constr. Co. v. Renner Architects</i> , 214 Wis. 2d 589 (Wis. Ct. App. 1997).

State	“Pay-if-Paid” Enforced if Explicit	“Pay-when-Paid” and “Pay-if-Paid” Treated the Same	“Pay-when-Paid” Suggests Time for Payment	Statutory Provisions	Case Law
Wyoming (no change)				a subcontractor. This subsection does not prohibit contract provisions that may delay a payment to a subcontractor until the prime contractor receives payment.”	
				Wyo. Stat. § 16-6-602: Except as provided by contract, nongovernmental contractors must be paid by any agency within 45 days of the receipt of the invoice.	Wyoming courts have not addressed whether contingent payment clauses are enforceable.