

Liquidated Damage Provisions – A Good Idea or an Unenforceable Penalty?

A post by **Joshua M. Pellant** of **Faegre Baker Daniels** discusses the use of a provision for a stipulated or “liquidated” damage amount in the event of specified contract breaches in construction contracts.

“These provisions can be an effective tool to recover losses that otherwise may go uncompensated because they cannot be proven or because the damages are not recoverable under an ordinary contract,” he explains. “However, courts generally will not enforce a liquidated damage provision that is seen as a ‘penalty’ unrelated to any anticipated or actual loss. The question, then, is whether a particular contract provision will be interpreted as an enforceable liquidated damages provision or an unenforceable contractual penalty.”

He discusses general enforceability standards and how much is too much (or not enough).

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