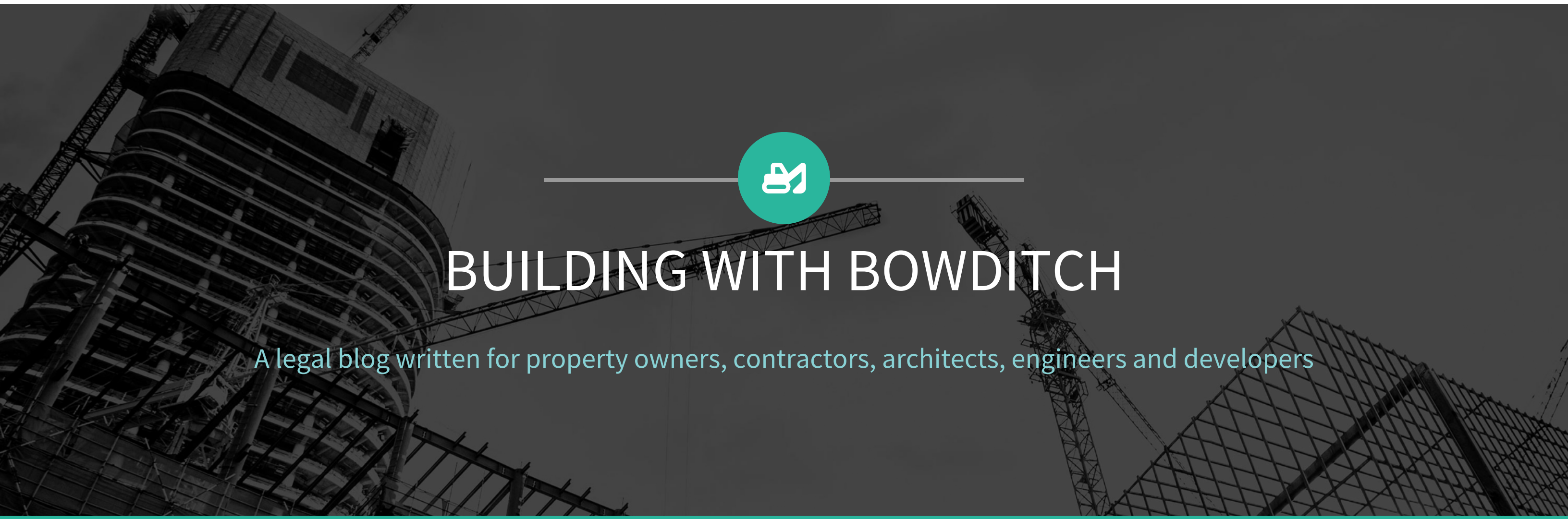

Miss the Deadline, Pay the Price? Liquidated Damages in Massachusetts

BY M. MATTHEW MADDEN, JR. • JULY 20, 2026

Liquidated damages can be a fair way to price delay or an expensive penalty dressed up as a contract clause.

In construction contracts, liquidated damages are usually stated as a daily amount owed if the contractor misses the substantial completion date without an excuse. The clause is designed to avoid a later fight over damages that may be difficult to calculate when the contract is signed.

Massachusetts generally enforces liquidated damages provisions when they are drafted and applied correctly. The core question is whether, at the time the contract was signed, actual damages were difficult to determine and the agreed amount was a reasonable forecast of expected damages. That rule appears in cases including *NPS, LLC v. Minihane*, 451 Mass. 417 (2008), and *Cummings Properties, LLC v. National Communications Corp.*, 449 Mass. 490 (2007).

Massachusetts also follows the “single look” approach. That means courts generally judge the clause based on the circumstances at contract formation, not with hindsight after the breach. The SJC reaffirmed that approach in *Cummings Properties, LLC v. Hines*, 492 Mass. 867 (2023).

That does not mean every liquidated damages clause will be enforced. A clause that is grossly disproportionate to anticipated damages may be treated as an unenforceable penalty. The SJC addressed that issue in *TAL Financial Corp. v. CSC Consulting, Inc.*, 446 Mass. 422 (2006).

There is also an important construction defense: owner caused delay. In *Peabody N.E., Inc. v. Town of Marshfield*, 426 Mass. 436 (1998), the SJC held that liquidated damages were inappropriate where both the contractor and the owner were to blame for delayed completion. The court relied on *Morgan v. Town of Burlington*, 316 Mass. 413 (1944), where the owner was responsible for delay caused by its architect.

Before signing or enforcing a liquidated damages provision, parties should ask whether the daily amount is tied to a reasonable estimate, whether excusable delays are clearly addressed, whether there is a cap, and what happens if the owner, designer or another contractor contributes to the delay.

Liquidated damages work best when they are reasonable, clear and fairly applied. They become vulnerable when they look like a penalty or when the party seeking them helped cause the delay.