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Construction Laws and Customs: District of Columbia

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A Q&A guide to construction projects in the District of Columbia. This Q&A addresses state law and custom relating to public and private construction projects, including prompt payment laws, retainage, project delivery systems, contract forms and commonly negotiated terms, warranties, and licensing requirements for construction professionals. It also addresses payment and performance bonds, including any applicable "Little Miller Act" statutes, construction statutes of limitation and repose, pleading requirements, and the enforceability of specific clauses, such as liquidated damages, limitations of liability, and no-damages-for-delay. Answers to questions can be compared across a number of jurisdictions (see Construction Laws and Customs: State Q&A Tool).

Prompt Payment Acts and Retainage

1. Does your state have any statutes governing the timing of payments to contractors or subcontractors on publicly owned or financed construction projects? If so, what do those statutes require regarding:

- Payments by owners to prime contractors?
- Payments by prime contractors to subcontractors?
- Penalties for failure to comply with requirements of the statute?
- A contractor's right to stop work for failure to receive payment?

District of Columbia Code Section 2-221.02 governs times for payments on publicly owned or financed projects.

Any District of Columbia (DC) agency that acquires property or services from a business concern must timely pay the business concern for the property or services rendered (D.C. Code § 2-221.02(a)(1)).

A business concern is:

- Any person engaged in a trade or business.
- A nonprofit entity operating as a contractor.

(D.C. Code § 2-221.01(1).)

Therefore, DC agencies must provide timely payments to any construction contractors, subcontractors, and suppliers providing services to the agency.

Payments by Owners

DC agencies must make required payments to a business concern either:

- By the date specified in the contract's terms.
- If the contract does not establish a specific date, no later than 30 calendar days (excluding legal holidays) after receiving a proper invoice for the amount due.

(D.C. Code § 2-221.02(a)(2)(A).)

Payment by Prime Contractors

Contracts with a DC agency must include a payment clause that requires the prime contractor, within seven days of receiving payment from the DC agency, to either:

- Pay a subcontractor its proportionate share of the total payment received.
- Provide written notice to the DC agency and the subcontractor:
  - that it is withholding all or part of the subcontractor's payment; and
  - include the reason for nonpayment.

(D.C. Code § 2-221.02(d)(1).)

Penalties for Failure to Comply

If a DC agency does not make timely payments, business concerns are entitled to an interest penalty on the unpaid amounts (D.C. Code § 2-221.02(a)(1)). The interest penalties:

- Are determined by mayoral regulation.
- Are at least 1%.
- Accrue starting on the day after the payment was due.
- End on the date the DC agency actually makes payment.

(D.C. Code § 2-221.02(b)(1).)

However, there is no interest penalty if the DC agency completes payment on or before the 15th day after the required payment date (D.C. Code § 2-221.02(b)(1)).

All businesses subcontracting any portion of their contractual obligations must have similar interest penalty provisions in their subcontracts (D.C. Code § 2-221.02(d)(3)).

Right to Stop Work

DC's prompt payment statutes do not specifically address a contractor's right to stop work for nonpayment.

For more information, see Prompt Payment Acts (Private Projects): State Comparison Chart and Prompt Payment Acts (Public Projects): State Comparison Chart.

2. Does your state have any statutes governing the timing of payments to contractors or subcontractors on privately owned construction projects? If so, what do those statutes require regarding:

- Payments by owners to prime contractors?
- Payments by prime contractors to subcontractors?
- Penalties for failure to comply with the requirements of the statute?
- A contractor's right to stop work for failure to receive payment?

The Private Contractor and Subcontractor Prompt Payment Act of 2013 (D.C. Code §§ 27A-101 to 27A-106) governs times for payment on privately owned or financed projects for the District of Columbia (DC).

Payments by Owners

If a construction contract does not specify the dates and times for payment to the contractor, the owner must pay the contractor within the earlier of 15 days after:

- The day the occupancy permit is granted.
- The day the owner or owner's agent takes possession.
- Receiving a contractor's payment request.

(D.C. Code § 27A-102(a).)

If a construction contract provides for specific dates or times for payment, the owner must pay the contractor the undisputed amounts owed within seven days of the specified date or time (D.C. Code § 27A-102(c)).

Payment by Prime Contractors

A contractor or subcontractor must pay its lower-tier subcontractor the undisputed amounts owed for the subcontractor's work or materials within seven days of receipt from the owner of any payment (D.C. Code § 27A-104(a)).

Penalties for Failure to Comply

Failure to pay a contractor or subcontractor within the prescribed time results in an interest penalty

of 1.5% per month or any part of a month applied to the undisputed amount unpaid. If a contractor or subcontractor prevails in a civil action to collect interest penalties, the contractor or subcontractor is also entitled to its costs, including reasonable attorneys' fees. (D.C. Code §§ 27A-103 and 27A-105.)

Right to Stop Work

DC's prompt payment statutes do not specifically address a contractor's right to stop work for nonpayment.

For more information, see Prompt Payment Acts (Private Projects): State Comparison Chart and Prompt Payment Acts (Public Projects): State Comparison Chart.

3. If your state does not have a prompt payment act, what is the custom and practice regarding:

- Timing of payments by owners to prime contractors?
- Timing of payment by prime contractors to subcontractors?
- Payment of interest on late payments?
- A contractor's right to stop work for failure to receive a payment?

The District of Columbia has prompt payment acts that set out the requirements for payments and interest on both public and private construction projects (see Questions 1 and 2).

4. If your state does not regulate the timing of payments to subcontractors, are there any statutory or common law restrictions on the flow down of payments to subcontractors, such as prohibiting "pay-if-paid" or "pay-when-paid" clauses?

The District of Columbia (DC) has prompt payment acts that regulate the timing of payments to subcontractors for public and private construction projects.

DC courts generally enforce pay-if-paid or pay-when-paid clauses in construction contracts. However, the general contractor may be prohibited from enforcing the pay-if-paid clause where it willfully prevents the condition precedent from occurring, for example, where it settles known subcontractor claims without the subcontractor's knowledge (see *Urban Masonry Corp. v. N&N Contractors, Inc.*, 676 A.2d. 26, 36 (D.C. 1996)).

Additionally, Maryland courts have enforced these clauses, and Maryland common law is persuasive in DC courts (see *Corporate Sys. Res. v. Wash. Metro. Area Transit Auth.*, 31 F. Supp. 3d 124, 139, n.14 (D.D.C. 2014)).

However, conditioning payment to the subcontractor on receipt by the contractor of payment from the owner may not waive the subcontractor's right to either:

- Claim a mechanic's lien.
- Sue on a contractor's bond.

(D.C. Code § 27A-104(b).)

Any pay-if-paid or pay-when-paid clause that conditions prompt payment on a waiver of mechanic's lien or bond rights is void as against public policy (D.C. Code § 27A-104(c)).

5. Does your state have a statute related to withholding retainage on a publicly owned or financed construction project? If so, does the statute:

- Regulate the amount of retainage that can be withheld from a contractor or subcontractor?
- Require a partial release of or reduction in retainage at any point during the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

District of Columbia Code Section 2-203.01 regulates retainage on publicly owned or financed construction projects.

Amount of Retainage

District of Columbia (DC) agencies must withhold a 10% retention on all payments made in connection with construction contracts as a guaranty that the contractor "strictly and faithfully" performs the contract terms (D.C. Code § 2-203.01).

Partial Release of Retainage

When the contract is 50% complete, the mayor has the sole discretion to either:

- Reduce the retention for further payments.
- Eliminate the requirement for retention.

(D.C. Code § 2-203.01.)

Final Release of Retainage

The balance of retention is paid on completion and acceptance of the work (D.C. Code § 2-203.01).

Penalties

The statute does not specifically address the obligation to pay interest on late retention payments. However, interest may accrue on unpaid retention under D.C. Code § 2-221.02(a)(1).

6. Does your state have a statute related to withholding retainage on a privately owned or financed construction project? If so, does the statute:

- Regulate the amount of retainage that can be withheld from a contractor or subcontractor?
- Require a partial release of or reduction in retainage at any point during the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

The District of Columbia has no statute governing retainage on privately owned or financed construction projects. The negotiated contract terms determine retention on private contracts.

7. If your state does not regulate retainage on privately owned construction projects, what is the custom and practice regarding:

- The amount of retainage withheld from each payment requisition? Does it differ for labor or material?
- Partial or early release of retainage upon achieving any project milestone or for early completion subcontractors?
- Requirements for the final release of retainage, including hold backs for incomplete work or disputed amounts?

Amount of Retainage

In the District of Columbia (DC), the prime contract generally governs the amount withheld as retention. The percentage withheld ranges from 5% to 10% and typically applies to both labor and materials.

Retention on a typical commercial construction project in DC does not usually exceed 10%.

Partial Retainage

In DC, retention is typically set at 10% and reduced to 5% once the contractor completes 50% of the work.

Final Retainage

Retention is typically paid out at either substantial completion or final completion of the work.

If retention is paid at the time of substantial completion, the parties typically agree to continue withholding an amount sufficient to ensure that the contractor completes all punch list items.

Project Delivery Systems and Contract Forms

8. What forms of project delivery systems are most commonly used in your state? Do they differ by the nature of the construction project?

There is no dominant project delivery system for private projects in the District of Columbia (DC). The delivery method depends on:

- The financing available to the owner.
- The owner's past experience and relative attitude towards risk.
- The availability of specific firms in the area.
- The time frame for completion of the project.

For public projects, the District of Columbia Code establishes eight permissible methods of construction delivery:

- Architectural and engineering services.
- Construction management.
- Construction management at-risk.
- Design-bid-build.

- Design-build.
- Design-build-finance-operate-maintain.
- Design-build-operate-maintain.
- Operations and maintenance.

(D.C. Code § 2-356.01(b); D.C. Mun. Regs. tit. 27, § 4714.3.)

For more information on project delivery systems, see Practice Note: Selecting the Right Private Project Delivery System.

The District of Columbia Code mandates specific procurement methods that vary with the project delivery system chosen, including:

- Competitive negotiations with select offerors for procurement of architectural or professional engineering services. Contracts for operations and maintenance may be procured using any acceptable method.
- Competitive sealed proposals to procure construction services for traditional design-bid-build and construction management contracts.
- Competitive sealed bidding when design and construction are consolidated into a design-build solicitation.

(D.C. Code § 2-356.02(b), (d).)

9. Does your state have any statutes specifically related to design-build or construction management? If so, do they apply to:

- Publicly owned or financed construction projects?
- Privately owned or financed construction projects?

The District of Columbia (DC) does not prohibit or regulate private design-build contracts.

However, any entity performing a design-build agreement must be duly licensed as a professional engineer, architect, or both, if the contract calls for these design services. Contractors must also be licensed to perform construction management services. For more information on licensing, see Questions 12, 13, and 14.

All publicly funded construction contracts must adhere to specified procurement methods (see Question 8). A two-phased selection procedure is typically used for public design-build contracts (D.C. Mun. Regs. tit. 27, § 4714.3(d)).

While DC ultimately engages a single entity to deliver the project, the procuring agency typically divides all work into two categories (preconstruction and construction). All contractor fees and major trade packages must be competitively bid up front (D.C. Mun. Regs. tit. 27, § 4714.3(d)).

Question Set:

10. Are industry standard forms of documents customarily used in private construction projects? If so:

- Do they vary by delivery system or type of project?
- Which forms are most widely used?

Depending on the dollar value, nature, and complexity of the project, parties in the District of Columbia (DC) may use an industry standard form of agreement that is modified to reflect the specific terms of the transaction or a manuscript agreement drafted specifically for that transaction.

Private parties to a construction contract may use standard forms for expediency, to limit negotiation, and review costs associated with a particular agreement.

Owners often use standard forms to establish the baseline terms and points for negotiation with the contractor. In the District of Columbia, the most frequently used standard construction forms include forms drafted by:

- The American Institute of Architects (AIA), including forms governing a project's design, construction, and bonding aspects and the various cost allocation methods, including fixed-price, cost-reimbursement, and guaranteed maximum price.
- The Associated Owners and Developers (AOD), including form construction contracts focusing on improving and preserving the interests of project owners.
- ConsensusDocs, including forms for general contracting, construction management, design-build, subcontracting, and program management.
- The Design-Build Institute of America (DBIA), including design-build contracts where all

responsibility for design and construction is consolidated in a single party.

- The Engineers Joint Contract Documents Committee (EJCDC), including form documents for constructed facilities involving professional engineering services, including road and bridge construction.

For more information on industry form agreements, see Practice Note, Standard Construction Industry Documents: Overview.

11. What terms are customarily most heavily negotiated in construction contracts? Do they vary by delivery system or type of project?

Risk allocation is the primary objective of any construction contract in the District of Columbia. The key component, price, largely depends on how other related contract terms assign the risk of any contingencies that may occur at a job site.

Construction contracts typically require insurance and bonds, and the project owner typically dictates the terms. However, the contractor's bottom line can be impacted by commonly negotiated provisions, for example:

- The contractor's scope of work, including representations made in plans, drawings, and specifications depicting the owner's vision for the job.
- The scope, duration, and nature of any express warranties given by the contractor to the owner.
- The scope of clauses entitling the contractor to an extension of time and the availability of additional compensation for owner-caused delays in project completion (for example, a no-damages-for-delay clause).
- The timing, form, and conditions precedent for receipt of progress payments, including retention.
- The timing and nature of notice requirements in circumstances where the owner directs changes to the work.
- Limits on the scope of damages available to the parties, including consequential damages.
- The scope of the contractor's duty to defend or indemnify the owner from claims for property damage or bodily injury.
- The minimum insurance requirements demanded by the owner, including whether the insurance program is an owner-controlled insurance program (OCIP) or contractor-controlled insurance program (CCIP).
- The parties' respective rights to suspend or terminate the agreement for enumerated causes or for convenience.
- The process, venue, and governing law for disputes between the owner and contractor, and the prevailing party's ability to recover attorneys' fees in disputes.

Licensing

12. Does your state license construction professionals? If so:

- Which construction professionals are licensed (general contractors, specialty contractors, construction managers, design professionals)?
- Which departments oversee the licensing and regulation of these construction professionals?

The District of Columbia (DC) requires the following construction-related professionals to be licensed to practice:

- Engineers (D.C. Code § 47-2853.131; see Engineers).
- Architects (D.C. Code § 47-2853.61; see Architects).
- General contractors and construction managers (D.C. Mun. Regs. tit. 17, § 3901; see General Contractors and Construction Managers).
- Land surveyors (D.C. Code § 47-2853.111; see Land Surveyors).

Other construction trades in DC that require a license or certification include:

- Asbestos workers (D.C. Code § 8-111.02).
- Electricians (D.C. Code § 47-2853.91).
- Plumbers and gasfitters (D.C. Code § 47-2853.121).
- Elevator contractors (D.C. Code § 47-2853.95(a)).
- Interior designers (D.C. Mun. Regs. tit. 17, § 3202.1).

Engineers

A professional engineer license is required for the profession of engineering, which includes any activity requiring the application of special knowledge of

mathematical, physical, and engineering sciences and the methods of engineering analysis and design in the performance of services and creative work (D.C. Code § 47-2853.131).

Engineering includes, in connection with any building, structure, utility, or project that may involve life, health, or property:

- Consulting.
- Investigating.
- Expert technical testimony.
- Evaluating.
- Planning.
- Design and design coordination of engineering works and systems.
- Planning the use of land and water.
- Performing engineering surveys and studies.
- Reviewing construction to monitor compliance with drawings and specifications.

(D.C. Code § 47-2853.131.)

The District of Columbia Board of Professional Engineering oversees licenses for professional engineers and land surveyors (D.C. Mun. Regs. tit. 17, § 1500.3). The mayor appoints the seven members of the DC Board of Professional Engineers (D.C. Mun. Regs. tit. 17, § 1502).

Architects

An architect's license is required for the profession of architecture, which includes rendering, or offering to render, services in connection with designing and constructing, enlarging, or altering a structure that has, as its principal purpose, human occupancy or habitation (D.C. Code § 47-2853.61(a)).

These services include:

- Planning and providing:
  - studies;
  - designs;
  - drawings;
  - specifications; and
  - other technical submissions.
- Administering construction contracts.

(D.C. Code § 47-2853.61(a).)

The District of Columbia Board of Architects, Interior Design, and Landscape Architecture oversees licenses for architects (D.C. Mun. Regs. tit. 17, § 3401.1). The Board of Architects, Interior Design, and Landscape Architecture has nine members (D.C. Code § 47-2853.06(a)).

General Contractors and Construction Managers

General contractors and construction managers must be licensed (D.C. Mun. Regs. tit. 17, § 3901). A general contractor is anyone who, for a fee, "is contracted to do construction on real property owned, controlled, or leased by another person of commercial, industrial, institutional, governmental, residential, or accessory use buildings or structures" (D.C. Mun. Regs. tit. 17, § 3999.1). General contractors include anyone engaged in:

- Heavy construction.
- Land development.
- The construction of new buildings.

(D.C. Mun. Regs. tit. 17, § 3999.1.)

Subcontractors do not need to be licensed when working under the supervision of a duly licensed general contractor (D.C. Mun. Regs. tit. 17, § 3999.1).

A construction manager is anyone who, for a fee, "is contracted to supervise and coordinate the work of design professionals and multiple general contractors, while allowing the design professionals and general contractors to control individual operations and the manner of design and construction" (D.C. Mun. Regs. tit. 17, § 3999.1).

Construction management includes, but is not limited to:

- Coordinating, managing, and supervising construction.
- Cost and budget management.
- Scheduling phases of a project.
- Design review.

(D.C. Mun. Regs. tit. 17, § 3999.1.)

There are five classes of licenses for general contractors and construction managers, including:

- Class A licenses, which provide no limitation for the value of any single contract project.

- Class B licenses, which limit the licensee to engaging in the construction of single contract projects not exceeding $10 million.
- Class C licenses, which limit the licensee to engaging in the construction of single contract projects not exceeding $5 million.
- Class D licenses, which limit the licensee to engaging in the construction of single contract projects not exceeding $2 million.
- Class E licenses, which limit the licensee to engaging in the construction of single contract projects not exceeding $500,000.

(D.C. Mun. Regs. tit. 17, § 3901.2.)

DC consolidated administrative licensing authority for general contractor and construction management licenses with the Business License Center within the Department of Licensing and Consumer Protection (D.C. Code § 47-2851.05(a)).

Land Surveyors

Anyone involved in the practice of land surveying must be licensed. The practice of land surveying means providing professional services, including:

- Consulting, investigating, evaluating testimony, expert technical testimony, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth.
- Using and developing these facts.
- Interpreting these facts into an orderly survey map, plan, report, description, or project.

(D.C. Code § 47-2853.111.)

The District of Columbia Board of Professional Engineering oversees licenses for land surveyors. The mayor appoints the seven members of the DC Board of Professional Engineers. (D.C. Mun. Regs. tit. 17, § 1502.2)

13. What are the licensing requirements for each licensed construction professional in Question 12? Are there any continuing education requirements for those licensed construction professionals?

In the District of Columbia (DC), every prospective licensee must submit a written application, fee, and other general personal information to the applicable licensing board.

Engineers

Licensing Requirements

An applicant for registration as a professional engineer must, to the District of Columbia Board of Professional Engineers' satisfaction:

- Obtain a four-year baccalaureate degree in engineering from an approved college or university (D.C. Mun. Regs. tit. 17, § 1508.2).
- Have at least four years of experience indicating that they are competent to practice engineering (D.C. Mun. Regs. tit. 17, § 1509.1).
- Include five character references, three of which must be professional engineers with personal knowledge of the applicant's engineering experience (D.C. Mun. Regs. tit. 17, §§ 1510.1, .2).
- Pass an examination on the principles and practice of engineering as the DC Board of Professional Engineers prescribes (D.C. Mun. Regs. tit. 17, § 1511.1).

(D.C. Code § 47-2853.132(a).)

Licenses are valid for two years and expire on August 31 of each even-numbered year. Licensed engineers must apply for renewal within 60 days of the license expiration date and must pay the fee before the license expiration date. (D.C. Mun. Regs. tit. 17, § 1513.) The renewal fee is $155 (Department of Licensing and Consumer Protection (DLCP): Professional Engineers.)

Continuing Education Requirements

A license renewal applicant must complete at least 20 hours of acceptable continuing professional education, including at least one hour on professional ethics, during the term of the license (D.C. Mun. Regs. tit. 17, § 1526.3).

Architects

Licensing Requirements

An applicant for an architect license must, to the District of Columbia Board of Architecture, Interior Design and Landscape Architecture's satisfaction:

- Be at least 18 years old (D.C. Mun. Regs. tit. 17, § 3402.1).

- Not have been convicted of any offense that directly bears on fitness for licensure (D.C. Mun. Regs. tit. 17, § 3402.1).
- Complete a degree program in architecture by an institution accredited by the National Architectural Accrediting Board or the Canadian Architectural Certification Board (CACB) within two years of the applicant's enrollment or either:
  - hold a professional degree in architecture from a Canadian university certified by CACB; or
  - for applicants educated outside the US, satisfy the National Council of Architectural Registration Boards education standard as verified by an Education Evaluation Services for Architects evaluation report.

  (D.C. Mun. Regs. tit. 17, § 3403.1(a).)
- Satisfy the Architectural Experience Program training requirements (D.C. Mun. Regs. tit. 17, § 3403.1(b)).
- Pass an examination on architecture practice as the District of Columbia Board of Architecture and Interior Design prescribes (D.C. Mun. Regs. Tit. 17, § 3403.1(c)).

(D.C. Code § 47-2853.62.)

Licenses expire on April 30 of each even-numbered year (D.C. Mun. Regs. Tit. 17, § 3407). Licensed architects must apply for renewal, pay the renewal fee, and complete the continuing education requirements before the license expiration date, or they may renew within 60 days of the expiration date with payment of a late fee. (D.C. Mun. Regs. tit. 17, §§ 3408.6, .8.) The fee to renew is $155 (DLCP: Architecture, Interior Design and Landscape Architecture: Licensing.)

Continuing Education Requirements

Licensed architects must complete at least 24 hours of approved continuing education training in health, safety, and welfare subjects during the two-year term (D.C. Mun. Regs. tit. 17, § 3414.2).

General Contractors and Construction Managers

Licensing Requirements

To obtain either a general contracting or construction management license, the applicant must apply for the basic business license and pay the required fee for a six-month, two-year, or four-year basic business license (D.C. Code §§ 47-2851.02 and 47-2851.08(a)). Beginning on October 1, 2025, the applicant must apply for the basic business license and pay the required fee for a six-month or two-year basic business license (the four-year basic business license will no longer be available) (D.C. Code §§ 47-2851.02 and 47-2851.04).

The applicant must also present the following information to the DLCP:

- A list of all jurisdictions where the applicant is licensed to engage in the business of general contracting or construction management (D.C. Mun. Regs. tit. 17, § 3901.4).
- A description of any disciplinary actions taken against the applicant in another jurisdiction (D.C. Mun. Regs. tit. 17, § 3901.4).
- A credit report from a credit agency subject to oversight by the Federal Trade Commission and a statement of all outstanding judgments against the applicant (D.C. Mun. Regs. tit. 17, § 3901.5).
- A certificate of insurance, issued by an insurer authorized to insure in DC, evidencing commercial general liability insurance in levels commensurate with the licensing class (D.C. Mun. Regs. tit. 17, § 3902.1). For more information on licensing classes, see Question 12: General Contractors and Construction Managers.

General contractor and construction management licenses are valid for two years, during which time the licensee must maintain all the above qualifications (D.C. Mun. Regs. tit. 17, § 3901.8). Licensed contractors and construction managers must apply for renewal and pay the renewal fee before the license expiration date. If the license holder applies for renewal within the 30 days following the expiration date and pays a penalty, the lapsed license will be reinstated. (D.C. Code § 47-2851.10(b).)

Holding a basic business license **does not** exempt general contractors or construction managers from licensing requirements applicable to specialty trades or any other related activity. For example, employees of a general contractor self-performing asbestos abatement must also be properly certified as asbestos workers.

Continuing Education Requirements

There are no continuing education requirements to renew a general contractor or construction manager license.

Land Surveyors

Licensing Requirements

An applicant for licensure as a land surveyor must, to the District of Columbia Board of Professional Engineers' satisfaction:

- Obtain a four-year baccalaureate degree in land surveying from an approved college or university (D.C. Mun. Regs. tit. 17, § 1508.4).
- Complete at least four years of experience indicating that they are competent to practice land surveying (D.C. Mun. Regs. tit. 17, § 1509.2).
- Provide five character references, three of which must be professional land surveyors with personal knowledge of the applicant's land surveying experience (D.C. Mun. Regs. tit. 17, § 1510.2).
- Pass an examination on the principles and practice of land surveying, as the District of Columbia Board of Professional Engineers prescribes (D.C. Mun. Regs. tit. 17, § 1511.5).

(D.C. Code § 47-2853.112.)

The requirement of a four-year degree in land surveying **does not** apply to professional land surveyors that:

- Are licensed and in good standing under the laws of another state.
- Can demonstrate a minimum of 12 years of combined education and land surveying experience.

(D.C. Mun. Regs. tit. 17, § 1508.5.)

Licenses expire on August 31 of each even-numbered year. Licensed surveyors must apply for renewal and pay the fee before the license expiration date, or they may renew within 60 days of the expiration date with payment of a late fee. (D.C. Mun. Regs. tit. 17, § 1513.1.) The renewal fee is $155 (DLCP: Professional Engineers and Land Surveyors Licensure Requirements.)

Continuing Education Requirements

An applicant for a license renewal must complete at least 12 hours of acceptable continuing professional education during the term of the license, including the following:

- At least eight hours of surveying education specific to DC.
- At least one hour on professional ethics.

(D.C. Mun. Regs. tit. 17, § 1526.2.)

14. What is the best way to confirm that a construction professional is duly licensed? Are there any consequences if a construction professional is not properly licensed?

License Confirmation

Individuals may confirm that a general contractor, construction manager, professional engineer, land surveyor, or architect is duly licensed in the District of Columbia (DC) using the Department of Licensing and Consumer Protection's Business License Verification system.

Consequences of Violation

DC law provides for civil and criminal penalties for unlicensed practice and false representation that a person is licensed to practice. Criminal penalties may include either or both:

- Imprisonment for up to one year.
- A fine of up to $10,000.

If the defendant has previously been convicted of the offense of unlicensed practice, the maximum fine is increased to $25,000.00. (D.C. Code § 47-2853.27.)

Civil fines, penalties, fees, and injunctions may also be imposed (D.C. Code §§ 47-2853.29 and 47-2853.30).

Professionals also can be subject to disciplinary action by their professional boards, including:

- Written reprimand.
- Suspension, probation, forfeiture, or refusal to issue or renew a license.
- A course of remediation.
- Probation.
- A cease and desist order under D.C. Code § 47-2844.01.

(D.C. Code § 47-2853.17(c).)

Unlicensed practice in DC may warrant disgorgement of monies earned and likely bars contractual equitable recovery by the purported professional (*Saul v. Rowan Heating & Air Conditioning, Inc.*, 623 A.2d 619, 621 (D.C. 1993); *Sturdza v. United Arab Emirates*, 11 A.3d 251, 257 (D.C. 2011)).

Warranties

15. Does your state recognize any implied warranties related to construction projects, whether established by statute or case law?

District of Columbia (DC) case law has not expressly recognized an implied warranty of workmanship regarding service contracts. However, case law supports the recognition of an implied warranty by inference in an action by a homeowner seeking compensation for certain defects in the design and the construction of an addition to the owner's house (*Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1200 (D.C. 1984)).

In *Ehrenhaft*, the homeowner alleged, in part, that the general contractor and architect breached their implied and express warranties that their work was to be free from faults and defects. The trial court granted summary judgment based on the statute of limitations. However, the DC Court of Appeals reversed in part on the basis that the discovery rule was applicable to preserve the contract, warranty, and negligence claims that precluded the grant of summary judgment. (*Ehrenhaft*, 483 A.2d at 1201-04.)

However, the discovery rule is "not universal" and should be applied on a case-by-case basis. The DC Court of Appeals identified four factors that courts should consider when deciding whether to apply the discovery rule in the construction context:

- Whether the plaintiff is a lay person and may therefore justifiably rely on the professional skills of those hired to perform the work.
- Whether the deficiency in design or construction was latent.
- Whether the equities favored protecting the plaintiff as weighed against potential prejudice to the defendant.
- Whether judicial economy would be served by its application.

(*Wash. Tennis & Educ. Found., Inc. v. Clark Nexsen, Inc.*, 324 F. Supp. 3d 128, 139 (D.D.C. 2018).)

In *Poole v. Terminix Co. of Maryland & Washington, Inc.*, an action for breach of implied warranty by the defendant to do a workmanlike job in carrying out the defendant's contract to insulate the plaintiff's premises against termites, the court held that the suit was barred because it was not filed within the applicable period of limitations (200 F.2d 746, 746-47 (D.C. Cir. 1952)).

Although outside the scope of this Q&A, DC courts also recognize by inference a possible claim for implied warranty of fitness for new homes. *Javins v. First National Realty Corp*. discussed whether housing code violations arising during the term of a lease have any effect on the tenant's obligation to pay rent (428 F.2d 1071, 1075-76 (D.C. Cir. 1970)).

DC's Uniform Commercial Code also provides that, unless excluded or modified, there is an implied warranty that the goods are:

- Merchantable in a contract for the sale of the goods if the seller is a merchant regarding goods of that kind (D.C. Code § 28:2-314(1)).
- Fit for the purpose for which the goods are required, if both:
  - the seller, at the time of the contract, has reason to know the purpose for which the buyer requires the goods; and
  - the seller, at the time of the contract, has reason to know that the buyer is relying on the seller's skill or judgment to select or furnish the goods.

  (D.C. Code § 28:2-315.)

Implied warranties may also arise from course of dealing or trade usage (D.C. Code § 28:2-314(3)).

16. What types of warranties are customarily included in construction contracts? What are the customary warranty periods?

Contractors in the District of Columbia generally warrant all work in the contract, which includes construction services, materials, and equipment. These warranties typically include language stating that:

- The construction work is good and workmanlike and free from defects.
- The contractor's materials and equipment are of good quality and are new unless otherwise specified in the contract documents.

Construction contracts also generally contain a separate repair warranty where the contractor agrees

to repair any deficient or defective work for a period of one year after achieving one of the following milestones:

- Beneficial use and occupancy of the premises by the owner.
- Substantial completion of the work.
- Final completion of the contract.

The one-year repair warranty has no applicability to claims against the contractor based on violation of other provisions of the contract, namely a breach of warranty for materials, equipment, or construction services.

Most construction contracts also require the contractor to obtain the manufacturers' warranties for all equipment and systems installed at the project. These warranties are typically subject to contingent assignments to allow them to survive in the event of a termination of the contract. Owners generally require that all warranties run from the date of acceptance of the equipment or building systems, rather than from the date of delivery or installation of the equipment, which can occur:

- When the owner assumes beneficial use and occupancy of the premises.
- When substantial completion has been achieved.
- On commissioning and acceptance of building systems.

17. Does your state have any statutes governing warranties for new residential construction? If so:

- What building structures and systems are warranted?
- When is each warranty in effect?
- Are there any restrictions on filing claims under the warranty?

Building Structures and Systems

District of Columbia Code Section 42-1903.16 mandates warranties against structural defects in a condominium, which includes any defect in a component that constitutes any unit or portion of common elements that either:

- Reduces the stability or safety of the structure below the commonly accepted standards.
- Restricts the normal use of all or part of the structure.

(D.C. Code § 42-1903.16(j)(6).)

The declarant gives the warranty. A declarant is a person or group of people that together do one of the following:

- Offers to dispose of that person's or group's interest in a condominium unit not previously disposed of.
- Reserves or succeeds to a declarant's special interest.
- Applies for registration of the condominium.

(D.C. Code §§ 42-1903.16(b) and 42-1901.02(11).)

To the extent that a structural defect results in damage to a unit or to a portion of the common elements, repair of the structural defect pursuant to the declarant's common element warranty against structural defects also necessitates repair of the damage to a unit or a portion of the common elements resulting from the structural defect (D.C. Code § 42-1903(a-1)(2)).

Time Period

The declarant must warrant against structural defects in the individual units and the common elements for two years. The two-year period regarding the individual units begins to run from the date each unit is conveyed to a bona fide purchaser. (D.C. Code § 42-1903.16(b).)

The two-year warranty period regarding the common elements of the condominium runs from its completion or later if the common elements are within:

- Additional land that does not contain a unit, when the additional land is added to the condominium.
- Convertible land that does not contain a unit, when the land is not convertible.
- Any additional or convertible land that does not contain a unit, when the first unit on the additional or convertible land is conveyed to a bona fide purchaser.
- Any other portion of the condominium, when the first unit is conveyed to a bona fide purchaser.

(D.C. Code § 42-1903.16(b).)

At the end of five years after the conveyance of the first residential unit to a purchaser, the declarant may sell unsold residential units as resale units, which do not require a warranty against structural defects (D.C. Code § 42-1903.16(e)(4)).

Restrictions

Declarants are not responsible for any items of maintenance relating to the units or common elements of a condominium (D.C. Code § 42-1903.16(a-1)(3)).

A declarant of a conversion condominium may offer units or common elements in "as is" condition, where the declarant's warranty against structural defects only applies to:

- A defect in components installed by the declarant.
- Work done by the declarant.

(D.C. Code § 42-1903.16(c).)

Except where the purchase is of a unit that may be used for residential purposes, the warranty against structural defects:

- May be excluded or modified by agreement of the parties.
- Is excluded by an expression of "as is" or "with all faults" disclaimers or other language that commonly calls the purchaser's attention to the exclusion of warranties.

(D.C. Code § 42-1903.16(d).)

Before the declarant conveys the first residential unit to a purchaser, the declarant must either:

- Post a bond or letter of credit with the mayor for 10% of the estimated construction or conversion costs.
- Provide any other form of security the mayor approves to satisfy the requirements.

(D.C. Code § 42-1903.16(e)(1)(B).)

A claimant asserting a claim of structural defect to a residential unit or a portion of the common elements must notify the declarant in writing via certified mail and return receipt requested of the claimant's intent to file a claim with the Mayor at least 30 calendar days before filing such a claim. The declarant has 30 days after receiving the notice to respond to the claimant. (D.C. Code § 42-1903(e)(7)(A).)

For more information on residential construction warranties, see Quick Compare Chart, Statutory Residential Construction Warranties - Select States.

Payment and Performance Bonds

18. Does your state have a "Little Miller Act" requiring contractors to provide security in connection with performing public improvement contracts? If so:

- What are the minimum requirements to trigger the law?
- What types of security can be posted?
- Where is the security posted?

The District of Columbia (DC) has a Little Miller Act, which is codified in D.C. Code. §§ 2-201.01 to 2-201.11.

Minimum Requirements

The following bonds are required for public construction jobs where the amount of the contract exceeds $25,000:

- When the total amount payable is between $25,000 and $1 million, the payment bond is one-half of the total amount payable under the terms of the contract.
- When the total amount payable is more than $1 million but not more than $5 million, the payment bond is 40% of the total amount payable under the terms of the contract.
- When the total amount payable is more than $5 million, the payment bond is $2.5 million.

(D.C. Code § 2-201.01(a).)

No bond is required for work or material involving $25,000 or less (D.C. Code § 2-201.11).

Security

Payment and performance bonds must be posted as security (D.C. Code § 2-201.01(a)).

The surety bond must be issued by either:

- A surety certified by the US Department of Treasury.
- A surety company licensed in DC meeting certain requirements.

(D.C. Code § 2-201.01(c).)

The mayor must provide a certified copy of the bond and the contract for which it was given if a party submits an affidavit confirming that:

- It supplied labor or materials for work and payment has not been made.
- It is being sued on the bond.

The copy is prima facie evidence of the contents, execution, and delivery of the original bond. (D.C. Code § 2-201.03.)

19. What is the mechanism for making a claim or filing a lawsuit against the security? Specifically:

- Are there any statutory notices for making claims against the security?
- What is the statute of limitations for making a claim against the security? For filing a lawsuit?
- Are there any other requirements associated with collection of funds against the security?

Statutory Notices

An eligible laborer or materialman in the District of Columbia (DC) may bring a claim against a payment bond 90 days after they last furnished labor or materials if the laborer or materialman remains unpaid. Sub-subcontractors and suppliers and materialmen to subcontractors may also bring a claim against the payment bond. However, a lower-tier claimant must first put the contractor on notice of its claim within 90 days of the date it last furnished labor or materials to the project. (D.C. Code § 2-201.02(a).)

The notice must be served by either:

- Sending it by registered mail, postage prepaid, in an envelope addressed to the contractor to:
  - any place the contractor maintains an office or conducts its business; or
  - the contractor's residence.
- In any way the US Marshal for DC is authorized to serve a summons.

(D.C. Code § 2-201.02(a).)

Statute of Limitations

The statute of limitations for filing a claim for unpaid amounts against the bond is one year from the date the claimant last provided labor or materials to the project (D.C. Code § 2-201.02(b)).

Additional Requirements

Every claim initiated under DC's Little Miller Act, regardless of the amount in controversy, must be brought in:

- DC's name for the use of the person suing.
- District of Columbia Superior Court.

(D.C. Code § 2-201.02(b).)

DC is not liable for the payment of any costs or expenses of any suit (D.C. Code § 2-201.02(b)).

20. Do private owners generally require payment or performance bonds or other types of security? Does the security vary by project type or dollar value of the construction? What types of security can be posted?

Whether private owners require additional security for performance in the District of Columbia depends on several factors, including:

- The contractor's financial assets.
- The contractor's track record for project completion and claims.

Bonds may be difficult or costly for contractors to obtain, so contractors either resist posting them or pass along the costs to the owner. As a result, they are usually found only on extremely large or complex projects. If not provided with a payment or performance bond, an owner usually seeks additional protection by increasing the amount of retention held.

Litigation Concerns

21. What are the applicable statutes of limitations for filing a lawsuit or commencing arbitration in connection with a construction project for:

- Breach of contract?
- Breach of warranty?
- Negligence resulting in bodily injury or property damage?
- Professional malpractice by a design professional?
- Latent defects in design or construction?

The following statutes of limitations apply to lawsuits in the District of Columbia (DC):

- **Breach of contract.** The statute of limitations is three years (D.C. Code § 12-301(7)).
- **Breach of contract under DC's Uniform Commercial Code.** The statute of limitations for a breach of contract of sale is four years (D.C. Code § 28:2-725(1)).
- **Breach of warranty.** The statute of limitations is three years (D.C. Code § 12-301(8)).
- **Negligence resulting in bodily injury or property damage.** The statute of limitations is three years (D.C. Code § 12-301(3)). Where the injury results in death and is the result of a defective or unsafe condition of an improvement to real property, DC imposes a ten-year statute of repose (D.C. Code § 12-310(a)(1); see Question 23).
- **Professional malpractice by a design professional.** The statute of limitations is three years (D.C. Code § 12-301(8)).
- **Latent defects** in design or construction. The statute of limitations is ten years (D.C. Code § 12-310(a)(1)).

There are special notice requirements that must be met when DC is a party to the action.

An action may not be maintained against DC for unliquidated damages to person or property unless, within six months after sustaining the injury or damage, the claimant or the claimant's agent or attorney gives notice in writing to the mayor of both:

- The approximate time and place of the injury or damage.
- The cause and circumstances of the injury or damage.

A written report by the Metropolitan Police Department, in the regular course of duty, is a sufficient notice. (D.C. Code § 12-309(a).)

22. Are there any special requirements for filing a construction-related lawsuit? For example:

- Is an affidavit of merit required for filing a professional malpractice claim against a design professional?
- Must a party required to be licensed allege or attach proof of licensure?
- Are there any special requirements for lawsuits alleging damages resulting from latent design or construction defects?

Affidavit of Merit

The District of Columbia (DC) does not require a certificate or affidavit of merit when filing claims against design or construction professionals.

Proof of Licensure

No proof of licensure is necessary when filing a construction-related claim in DC courts. Lack of a license can be raised as a defense.

However, when filing a mechanic's lien with the District of Columbia Office of Tax Administration, Recorder of Deeds, proof of licensure is a required portion of the form.

Special Requirements

There are no special requirements to allege causes of actions related to latent design or construction defects.

Regarding any mechanic's lien suit filed in DC, the D.C. Code requires the claimant to file a notice of *lis pendens* with the Recorder of Deeds, within ten days of filing the lawsuit to enforce its mechanic's lien (D.C. Code §§ 40-301.01 and 42-1207).

23. Does your state have a statute of repose? If so:

- What is the applicable period of limitations?
- What types of claims fall under the statute?
- Are there any special notice requirements or conditions precedent to filing a lawsuit?

Period of Repose

The period of limitations for the District of Columbia's (DC) construction statute of repose is ten years. The limitations period begins to run on the date of substantial completion of the improvement. (D.C. Code § 12-310(a).)

Where death is the basis of the action, either the death or the injury resulting in the death must occur in the ten-year period (D.C. Code § 12-310(a)).

Types of Claims Allowed

DC's statute of repose governs any action to recover damages for any of the following resulting from the defective or unsafe condition of an improvement to real property:

- Personal injury.
- Injury to real or personal property.
- Wrongful death.

(D.C. Code § 12-310(a)(1)(A).)

The statute of repose **does not** apply to:

- Actions based on express or implied contracts.
- Actions brought against the person who, when the defective or unsafe condition caused injury or death, was the owner of or in actual possession or control the property.
- Any manufacturer or supplier of any equipment or machinery or other articles installed on the property.
- DC's government.

(D.C. Code § 12-310(b).)

Notice or Conditions Precedent

There are no special notice requirements unless DC is a party to the action.

If DC is a party to the action, the mayor must be notified within six months of the injury or damage being sustained (see Question 21).

24. Are the following contractual provisions enforceable in your state:

- Liquidated damages?
- Limitations on liability?
- No-damages-for-delay clause?
- Choice of law or forum?

Liquidated Damages

In the District of Columbia (DC), a liquidated damages clause is enforceable if it:

- Is not used as a penalty.
- Bears a reasonable relationship to the damages foreseeable at the time of contracting.

(*Burns v. Hanover Ins. Co.*, 454 A.2d 325, 327 (D.C. 1982).)

To determine if a liquidated damages clause is a penalty, DC's courts consider whether the damages stipulated to in advance are greater than "those which at the time of the execution of the contract can be reasonably expected from its future breach." DC courts do not enforce "agreements to pay fixed sums plainly without reasonable relation to any probable damage which may follow a breach." (*Order of AHEPA v. Travel Consultants, Inc.*, 367 A.2d 119, 126 (D.C. 1976).)

Limitations of Liability

Limitations of liability clauses are enforceable if the party did not commit:

- Gross negligence.
- Willful misconduct.
- Fraud.

(*Houston v. Sec. Storage Co. of Wash.*, 474 A.2d 143, 144 (D.C. 1984).)

A provision in a construction contract is void and unenforceable if it requires a subcontractor to indemnify or hold harmless a contractor or owner against liability caused by or resulting solely from the

contractor's, owner's, or their agents' or employees' sole negligence (D.C. Code § 27A-202).

Caselaw emphasizes that indemnity provisions should not be construed to permit an indemnitee to recover for its own negligence unless the court is convinced that such an interpretation reflects the parties' intention (*Parker v. John Moriarty & Assoc.*, 189 F.Supp.3d 38, 43 (D.D.C. 2016); *W.M. Schlosser Co. v. Md. Drywall Co.*, 673 A.2d 647, 653 (D.C. 1996)).

For more information, see Construction Anti-Indemnity Statutes: State Comparison Chart.

No-Damages-for-Delay Clause

No-damage-for-delay clauses are generally valid and enforceable in DC but are not favored when used as an exculpatory clause.

While DC courts have found that a no-damage-for-delay clause is generally enforceable, it does not enforce the clause when the delay:

- Was not contemplated by the parties under the clause.
- Amounts to an abandonment of the contract.
- Was caused by bad faith.
- Amounts to active interference.

(*Blake Constr. Co., Inc. v. C. J. Coakley Co., Inc.*, 431 A.2d 569, 578-79 (D.C. 1981).)

Choice of Law or Forum

In DC, contractual choice of law and forum selection provisions are generally enforceable.

DC courts treat choice of law and forum selection provisions the same as any contractual provision and the review standard is *de novo*. The threshold question for the court is "whether the existence of the clause was reasonably communicated to the plaintiff." (*Forrest v. Verizon Commc'ns, Inc.*, 805 A.2d 1007, 1010 (D.C. 2002).)

For more information, see Choice of Law and Forum Selection in Construction Contracts: State Comparison Chart.