

Construction Laws and Customs: Georgia

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A Q&A guide to construction projects in Georgia. 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 “Little Miller Acts,” construction litigation statutes of limitation and pleading requirements, and the enforceability of specific clauses such as liquidated damages, limitations on 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?

Sections 13-11-1 to 13-11-11 of the Georgia Code, known as the Georgia Prompt Payment Act (PPA), govern times for payment on publicly owned or financed projects.

PAYMENTS BY OWNERS

Owners must pay contractors within 15 days of receipt of invoice, although the parties may agree by contract to other payment periods and contract terms and those terms control (O.C.G.A. § 13-11-4(a)). The Prompt Payment Act applies to public owners, including state, local, or municipal government agencies, instrumentalities, or entities but excludes:

- Counties with a population of less than 10,000.
- Municipalities with a population of less than 2,500.

Population numbers are based on the latest US decennial census. (O.C.G.A. § 13-11-2(4).)

PAYMENT BY PRIME CONTRACTORS

Prime contractors must pay subcontractors within ten days of the contractor’s receipt of each periodic or final payment (O.C.G.A. § 13-11-4(b)). The parties may agree by contract to other payment periods and contract terms and those terms control.

PENALTIES FOR FAILURE TO COMPLY

An owner, contractor, or subcontractor must pay a contractor or subcontractor interest, beginning the day after the due date of any payment at the rate of 1% per month. No interest is due unless the person being charged interest receives notice of the statute’s interest provisions at the time the payment request is made. Accepting a progress payment releases all claims for interest that the accepting party might otherwise have been owed. (O.C.G.A. § 13-11-7(a).)

The owners, contractors, and subcontractors may agree by contract to other interest rates or periods and those terms control (O.C.G.A. § 13-11-7(b)). However, if there is a willful breach of contract provisions regarding the time of payment, the statutory 1% interest rate applies (O.C.G.A. § 13-11-7; *Manhattan Constr. Co. v. McArthur Elec., Inc.*, 2008 WL 11333433, at *7-8 (N.D. Ga. July 7, 2008)).

RIGHT TO STOP WORK

Georgia's PPA does not specifically address a contractor's right to stop work if there is nonpayment by a public owner.

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?

Sections 13-11-1 to 13-11-11 of the Georgia Code, known as the Georgia Prompt Payment Act (PPA), govern times for payment on privately owned or financed projects. However, the PPA excludes contracts for improvements to residential real property with 12 or fewer residential units.

PAYMENTS BY OWNERS

Owners must pay contractors within 15 days after receipt of any payment request for work completed or service provided (O.C.G.A. § 13-11-4(a)). However, the parties may agree by contract to other payment periods and contract terms and those terms control.

PAYMENT BY PRIME CONTRACTORS

Georgia's PPA requires prime contractors to pay subcontractors within ten days of the contractor's receipt of periodic or final payment (O.C.G.A. § 13-11-4(b)). The parties may agree by contract to other payment periods and contract terms and those terms control.

PENALTIES

An owner, contractor, or subcontractor must pay a contractor or subcontractor interest, beginning the day after the due date of any payment at the rate of 1% per month. The person being charged interest must receive notice of the statute's interest provisions at the time the payment request is made. Accepting a progress payment releases all claims for interest that the accepting party might otherwise have been owed (O.C.G.A. § 13-11-7(a)).

The owners, contractors, and subcontractors may agree by contract to other interest rates or periods and those terms control (O.C.G.A. § 13-11-7(b)). However, if there is a willful breach of contract provisions regarding the time of payment, the statutory 1% interest rate applies (O.C.G.A. § 13-11-7; *Manhattan Constr. Co.*, 2008 WL 11333433, at *7-8).

RIGHT TO STOP WORK

Georgia's PPA does not specifically address a contractor's right to stop work if there is nonpayment by a private owner.

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?

Georgia has a prompt payment act that sets 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 common law restrictions on the flow down of payments to subcontractors, such as prohibiting "pay-if-paid" or "pay-when-paid" clauses?

Georgia has a prompt payment act (see Questions 1 and 2) that regulates the timing of payments to subcontractors for public and private construction projects.

Georgia case law addresses and permits "pay-if-paid" and "pay-when-paid" clauses that might otherwise be considered conditions precedent (see *Associated Mech. Corp. v. Eby Constr. Co.*, 67 F. Supp. 2d 1375, 1378-79 (M.D. Ga. 1999)).

A "pay-if-paid" or "pay-when-paid" clause is enforceable if it is clear. These clauses may make payment by the owner a condition precedent to a subcontractor's right to payment if the contract contains "an express condition clearly showing that to be the intention of the parties" (*St. Paul Fire & Marine Ins. Co. v. Ga. Interstate Elec. Co.*, 370 S.E.2d 829, 830-31 (Ga. Ct. App. 1988); *U.S. ex rel. McKenney's, Inc. v. Gov't Tech. Servs., LLC*, 531 F. Supp. 2d 1375, 1378 (N.D. Ga. 2008) (holding that a condition precedent to payment, including when the subcontractor receives money only when the prime contractor is paid, is not simply a timing mechanism but bars recovery by the subcontractor until the condition is met)).

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?

Section 13-10-80 of the Georgia Code regulates the withholding of retainage on publicly owned or financed construction projects.

AMOUNT OF RETAINAGE

The maximum rate of retainage that can be withheld is 10% of each progress payment (O.C.G.A. §13-10-80(b)(1)). Owner stops holding retainage when:

- 50% of the contract value is due (including change orders and other additions to the contract).
- Owner is satisfied with the work and the progress of the work.

(O.C.G.A. §13-10-80(b)(2)(A).)

- Owner can continue to withhold retainage if the work is:
 - Unsatisfactory.
 - Behind schedule.

(O.C.G.A. §13-10-80(b)(2)(B).)

The contractor and subcontractor must pass through and reduce retainage payments in the same manner as their retainage is reduced by the owner or contractor, respectively, if:

- The value of the subcontractor's or lower-tier subcontractor's work that is complete and in place is equal to 50% of the subcontract (or lower-tier subcontract) value.
- The work of the subcontractor or lower tier subcontractor is proceeding in a satisfactory manner.
- The subcontractor or lower tier subcontractor gives reasonable assurance of continued performance and financial responsibility to complete its work.

(O.C.G.A. §13-10-80(b)(2)(D), (E).)

PARTIAL RELEASE OF RETAINAGE

The owner has discretion, with approval of the contractor, to release the retainage of each subcontractor as it completes its work (O.C.G.A. § 13-10-80(b)(2)(A)).

FINAL RELEASE OF RETAINAGE

After satisfactory and substantial completion of the work, the owner must pay the retainage to the contractor within 30 days after receiving an invoice and other appropriate documentation required by the contract. If minor items remain unfinished at the time of substantial completion, the owner may withhold 200% of the value of each item until the items are completed (O.C.G.A. §13-10-80(b)(2)(C)).

PENALTIES

There are no penalties for a failure to comply with the retainage requirements.

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?

Section 13-11-5 of the Georgia Code regulates the withholding of retainage on privately owned or financed construction projects.

AMOUNT OF RETAINAGE

An owner can withhold a reasonable amount for retainage if the withheld amount does not exceed the retainage percentage stated in the contract between the contractor and the owner (O.C.G.A. § 13-11-5(a)). A contractor or subcontractor can withhold a reasonable amount of retainage for a subcontractor's work if the withheld amount does not exceed the percentage retained from the contractor by the owner for that work (O.C.G.A. § 13-11-5(b)).

PARTIAL RELEASE OF RETAINAGE

The statute does not require a partial release of or reduction in retainage.

FINAL RELEASE OF RETAINAGE

There are no specific requirements for the final release of retainage other than general payment requirements in Section 13-11-4 of the Georgia Code.

PENALTIES

Overdue payments bear interest at 1% per month on the unpaid balance. No interest is due unless the person being charged interest receives notice of the statute's interest provisions at the time the payment request is made. Accepting a late payment releases all claims for interest that the accepting party might otherwise have been owed. The owners, contractors, and subcontractors may agree by contract to other interest rates or periods and those terms control (Ga. Code Ann. § 13-11-7(b)). However, if there is a willful breach of contract provisions regarding the time of payment, the statutory 1% interest rate applies (Ga. Code Ann. § 13-11-7; *Manhattan Constr. Co.*, 2008 WL 11333433, at *7-8).

No interest is due unless the person being charged interest receives notice of the statute's interest provisions at the time the payment request is made. Accepting a progress payment releases all claims for interest that the accepting party might otherwise have been owed.

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?

Georgia regulates retainage on privately owned construction projects (see Question 6).

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?

Construction Manager at Risk (CMAR) is the most commonly used delivery system for large-scale commercial construction projects. CMAR is a delivery method that utilizes a Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP), which is based on:

- The relevant construction documents and specifications at the time of the GMP.
- Any other items that may be reasonably inferred as within the scope of work.

Under this delivery system, and subject to a contract's terms, the CM typically "holds the trade contracts and is at risk for performance deficiencies, construction delays, and cost overruns." CMAR can also be "fast tracked," saving substantial project construction time when construction begins before the designs are completed.

(*Holder Const. Grp. v. Georgia Tech Facilities, Inc.*, 640 S.E.2d 296, 297 (Ga. Ct. App. 2006).)

Under CMAR, as opposed to a traditional design-bid-build project delivery method, the construction manager and sometimes its subcontractors often work proactively with the owner and its design professionals during the design development process to provide staged cost estimation and design constructability review services to help control costs and reduce construction time (1 Bruner & O'Connor Construction Law § 2:16.).

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?

Section 32-2-81 of the Georgia Code specifies that the Georgia Department of Transportation may use the design-build procedure for its buildings, bridges and approaches, rail corridors, and limited or controlled access projects or projects, constructed in existing rights of way, when the parties can either:

- Clearly define the scope of work.
- Recognize significant savings in project timing.

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?

The American Institute of Architects (AIA) forms are the most commonly used forms in private construction projects. The forms follow the AIA numbering convention based on the type of delivery system.

For more information on these contract families, see Practice Note, Standard Construction Industry Documents: Overview ([9-560-0605](#)).

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

The most heavily negotiated terms in construction contracts include:

- Liquidated damages.
- Delay damages.
- Indemnity.
- Waiver of consequential damages.

These terms typically vary by the type of contract being negotiated, as well as the risk tolerance of the parties involved.

LIQUIDATED DAMAGES

The parties may allocate a set amount of damages as compensation to the injured party for a specific breach, typically delayed completion of work, when proving the amount of damages is difficult.

Liquidated damages clauses, including those that provide for a charge or schedule of deductions for each delayed day, are generally enforceable (see *Fortune Bridge Co. v. Dep't of Transp.*, 250 S.E.2d 401, 402-03 (Ga. 1978)).

To enforce a liquidated damages clause, the trial court must determine whether the pre-estimation of damages is enforceable or amounts to an unenforceable penalty. To be enforceable:

- It is difficult or impossible to accurately determine an estimation of the injury caused by the breach.
- The parties must have intended to provide for damages rather than a penalty.
- The sum stipulated must have been a reasonable pre-estimate of the probable loss.

(7 Ga. Jur. Contracts § 5:103.)

DELAY DAMAGES

The parties may allocate the risk for delays and determine whether to grant a contractor to either or both an:

- Extension of time.
- Increase in compensation.

There are many ways to allocate the risks and there are no hard and fast rules. For example, force majeure delays are often treated as excusable (the contractor gets an extension of time) but not compensable (the contractor is not entitled to additional compensation). Some contractors negotiate for an extension of time and at least extended general conditions for force majeure delays.

A no-damages-for-delay provision, in which the contractor receives only an extension of time if the work is delayed for reasons beyond the contractor's control, is an often-negotiated provision. These provisions are common and are generally enforceable in Georgia (see *L & B Constr. Co. v. Ragan Enters., Inc.*, 482 S.E.2d 279, 282-3 (Ga. 1997)). A no-damages-for-delay provision is enforced if it is clear and unambiguous. Any ambiguity regarding the existence or coverage of the provision is construed against the drafter seeking reliance as these clauses are considered exculpatory (*Atlanta Econ. Dev. Corp. v. Ruby-Collins, Inc.*, 425 S.E.2d 673, 675 (Ga. Ct. App. 1992).)

INDEMNITY

Georgia has an anti-indemnity statute that limits the enforceability of certain indemnity provisions in construction contracts including limiting provisions in the context of:

- Construction, alteration, repair, or maintenance of a building structure, appurtenances, and appliances, including moving, demolition, and excavation, and specifically prohibits one party from indemnifying the other party (or some other named indemnitee) for their sole negligence.
- Engineering, architectural, or land surveying contracts, and specifically makes void and unenforceable indemnity provisions, except for indemnifying damages, losses, or expenses caused by negligence, recklessness, or intentionally wrongful conduct by the indemnitor or persons utilized by the indemnitor.

(O.C.G.A. § 13-8-2.)

WAIVER OF CONSEQUENTIAL DAMAGES

A waiver of consequential damages excludes a certain category of damages from possible recovery. Remote or consequential damages are not recoverable unless they:

- Can be traced solely to the breach of the contract.
- Are capable of exact computation, including profits which are the immediate fruits of the contract, and are independent of any collateral enterprise entered into in contemplation of the contract

(O.C.G.A. § 13-6-8.)

A waiver of consequential damages is enforceable under Georgia law unless it violates statute or public policy (*Mark Singleton Buick, Inc. v. Taylor*, 391 S.E.2d 435, 437 (Ga. Ct. App. 1990)).

An often-litigated key issue is whether the damages in question are properly categorized as consequential damages to trigger a waiver provision or direct damages. Effective waivers of consequential damages expressly define the scope of damages that the provision is designed to exclude.

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?

Georgia requires the following construction-related professions to be licensed to practice:

- Architects (O.C.G.A. § 43-4-14; see Architects).
- Landscape architects (O.C.G.A. § 43-23-1; see Landscape Architects).
- Engineers and land surveyors (O.C.G.A. § 43-15-1; see Professional Engineers and Land Surveyors).
- Residential and general contractors (O.C.G.A. § 43-41-1; see Residential and General Contractors).
- Specialty contractors (O.C.G.A. § 43-14-1; see Specialty Contractors).

ARCHITECTS

Architects must be registered to practice architecture in Georgia (O.C.G.A. § 43-4-14). A “registered architect” is an individual who is technically and legally qualified and currently registered with the Georgia State Board of Architects and Interior Designers (GSBAID) to practice architecture in Georgia (O.C.G.A. § 43-4-1(12)).

Plans, specifications, drawings, reports, or other architectural documents issued to obtain a building permit must be sealed by the architect.

Construction drawings for certain kinds of structures do not require the seal of a registered architect, including:

- One and two-family residences.
- Agricultural occupancy buildings.

- Certain single-story buildings.
- Nonstructural interior construction within existing or planned structures.

(O.C.G.A. § 43-4-14(b).)

The GSBAID has nine appointed members, including six members from the architecture profession, two members from the registered interior designer profession, and one member with no connection to the practice or profession of architecture or interior design. The governor appoints the board members. (O.C.G.A. § 43-4-2.)

LANDSCAPE ARCHITECTS

A license is required to practice landscape architecture in Georgia, which includes consultation, investigation, planning, design, preparation of drawings and specifications, and responsible supervision for the preservation or determination of:

- Proper land uses.
- Natural land features.
- Esthetics.
- Planting plans.
- Shaping land to produce the best functional and esthetic effect.
- Grading plans and determining drainage.

(O.C.G.A. § 43-23-1.)

The Georgia State Board of Landscape Architects is under the jurisdiction of the Georgia secretary of state and consists of five members, and each is appointed by the governor. (O.C.G.A. § 43-23-2.)

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Professional engineers and land surveyors must have a current certificate of registration (O.C.G.A. § 43-15-2(7), (10)).

Professional engineering includes:

- Consultation
- Investigation.
- Evaluation.
- Planning.
- Designing.
- Responsible supervision of construction or operation.

These functions apply to any public or private:

- Utilities.
- Structures.
- Buildings.
- Machines.
- Equipment.
- Processes.
- Works.
- Projects.

Professional engineering requires the application of engineering principles, data, and training in the application of math and physical sciences. (O.C.G.A. § 43-15-2.)

Land surveying includes measuring and locating lines, angles, elevations, natural and manmade features for:

- Reporting positions.
- Land platting and layout.
- Designing, platting, and layout incidental to subdivisions.
- Conducting horizontal and vertical control surveys.
- Preparing maps, recording plats, drawings, exhibits, field notes, or property descriptions.

(O.C.G.A. § 43-15-2.)

The Georgia State Board of Registration for Professional Engineers and Land Surveyors has six professional engineers, two land surveyors, and a member not related to the professions. These members are appointed by the governor. (O.C.G.A. § 43-15-3.)

RESIDENTIAL AND GENERAL CONTRACTORS

Licenses are required for residential and general contractors to conduct business in Georgia (O.C.G.A. § 43-41-2). Residential contractors include:

- Residential-basic contractors, whose work includes detached one- and two-family residences and one-family townhouses.
- Residential-light commercial contractors, whose work includes multifamily and multiuse light commercial buildings and structures.

(O.C.G.A. § 43-41-2(10), (11).)

The Georgia State Licensing Board for Residential and General Contractors has 15 members, who are all appointed by the governor. The Board consists of the residential contractor division and the general contractor division. (O.C.G.A. § 43-41-3.)

SPECIALTY CONTRACTORS

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

- Electricians.
- Plumbers.
- Air conditioning contractors.
- Low-voltage contractors.
- Utility contractors.

(O.C.G.A. § 43-14-1.)

The Georgia State Construction Industry Licensing Board falls under the jurisdiction of the secretary of state's office and has 27 members, all of whom are appointed by the governor (Ga. Code. Ann. § 43-14-3).

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?

ARCHITECTS

Licensing Requirements

To obtain an architecture license, an applicant must:

- Pass an examination prepared and graded by the National Council of Architectural Registration Boards (NCARB).

■ Have a:

- professional degree in architecture from a school or college approved by the National Architectural Accrediting Board; or
- bachelor's degree in architectural engineering technology from an approved school or college.

(O.C.G.A. § 43-4-11.)

Certificates of registration must be renewed every two years by June 30 in odd-numbered years. The renewal fee is \$90, and an applicant for renewal must meet the professional development requirements as specified by the Georgia State Board of Architects and Interior Designers (O.C.G.A. § 43-4-12).

Continuing Education Requirements

Licensed architects must complete 24 hours of continuing education every two years, as follows:

- Sixteen hours in public protection subjects and taught through a structured educational activity, including:
 - a seminar;
 - an internet course; or
 - a correspondence course.
- Eight hours earned in related practice subjects.

The two-year period begins running on July 1 of odd-numbered years through June 30 of the following odd-numbered year. (Ga. Comp. R. & Regs. 50-6-.01 and 50-6-.04.)

LANDSCAPE ARCHITECTS

Licensing Requirements

To be licensed, a landscape architect must file an application for a license with the Georgia State Board of Landscape Architects (GSBLA). Applicants must:

- Be at least 18 years old.
- Have a:
 - bachelor of landscape architecture degree; or
 - bachelor of science degree in landscape architecture from a college or school of landscape architecture, environmental design, or its equivalent approved by the GSBLA.
- Have:
 - at least 18 months of training in the field; or
 - earned a postgraduate degree in landscape architecture or environmental design.
- Pass a written examination.

(O.C.G.A. § 43-23-7.)

All registrations expire on December 31st of even-numbered years and are renewable biennially (Ga. Comp. R. & Regs. 310-4-.02). The GSBLA establishes a fee schedule. The biennial renewal fee is \$125. (Ga. Comp. R. & Regs. 310-3-.01; Landscape Architects Fee Schedule.)

Continuing Education Requirements

Landscape architects are required to complete six hours of continuing education each year (O.C.G.A. § 43-23-7.1).

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Licensing Requirements

To obtain a professional engineering license, an applicant must:

- Be certified by the Georgia Board of Professional Engineers and Land Surveyors (GBPELS) as an engineer-in-training by passing an engineer-in-training examination and:
 - graduate from a four-year or more engineering program;
 - graduate from a four-year or more engineering, engineering technology, or related science program; or
- Have at least eight years of experience in engineering work of a nature satisfactory to the GBPELS.
- Have at least four years' experience in engineering work.
- Pass a professional engineer's written examination

(O.C.G.A. §§ 43-15-8 and 43-15-9.)

To obtain a land surveyor license, an applicant must:

- Obtain certification as a land surveyor-in-training as described in Section 43-15-12 of the Georgia Code.
- Have at least four years of combined field and office experience in land surveying, including three years' experience in the "responsible charge of land" surveying projects under the supervision of a registered land surveyor.
- Pass a written examination.

(O.C.G.A. § 43-15-13.)

Licenses must be renewed every two years. The renewal fee is \$50 each for professional engineering and land surveying (Engineer and Land Surveyor Fee Schedule.)

Continuing Education Requirements

Professional engineers must complete 30 professional development hours (PDH) each two-year renewal period. If an engineer exceeds the requirements in any renewal period, up to 15 PDHs may be carried forward to the next renewal period. (Ga. Comp. R. & Regs. 180-11-.03(1).)

Land surveyors must complete 15 PDHs every two-year renewal period. Once every five years, at least six of a land surveyor's PDHs must cover "Minimum Technical Standards." Up to seven and one-half PDHs can be carried forward to the next renewal period. (Ga. Comp. R. & Regs. 180-11-.03(2).)

Dual registrants must complete 30 PDHs every two-year renewal period, with at least one-third of its hours in each of engineering and surveying. Up to 15 PDHs may be carried forward into the next renewal period. (Ga. Comp. R. & Regs. 180-11-.03(3).)

RESIDENTIAL AND GENERAL CONTRACTORS

Licensing Requirements

To obtain a residential or general contractor license, the applicant must file an application form provided by the residential or general contractor division of the Georgia Board of Residential and General Contractors. All applicants must:

- Submit and successfully pass an examination prepared or approved by the appropriate division.
- Be at least 21 years old.

- Have good character and otherwise qualify in:
 - competency;
 - ability; and
 - integrity.

(O.C.G.A. § 43-41-6.)

A residential-basic contractor applicant must have:

- At least two years of:
 - experience working as or for a residential contractor primarily in the residential-basic area; or
 - other substantially similar experience.
- Had significant responsibility for the successful performance and completion of two projects within the residential-basic category in the two years before the application.

(O.C.G.A. § 43-41-6(b).)

A residential-light commercial contractor applicant must have:

- One of the following:
 - a bachelor's degree from an accredited college in engineering, architecture, construction management, building construction, or other acceptable field and at least one year of experience working as a residential contractor, general contractor, or other substantially similar experience;
 - at least four years of a combination of credits from accredited college-level courses and practical experience working as a residential contractor, general contractor, or other substantially proven experience; or
 - at least four years of proven active experience working in a construction industry related field; in two of those years, the applicant must be employed by a residential contractor or other acceptable experience.
- Had significant responsibility for the successful performance and completion of at least two projects in the residential-light category in the four years before the application.

(O.C.G.A. § 43-41-6(c).)

A general contractor applicant must have one of the following:

- A bachelor's degree from an accredited four-year college in engineering, architecture, construction management, building construction, or other acceptable field, and at least one year of experience working as a general contractor or have other substantially similar experience.
- A least four years in the aggregate of a combination of:
 - acceptable academic credits from accredited college-level courses; and
 - practical experience being employed by a general contractor or substantially similar experience.
- At least four years of active experience working in a construction industry-related field, including at least two years employed by a general contractor or other experience acceptable to the division, at least one year related to administration, marketing, accounting and other related fields.

(O.C.G.A. § 43-41-6(d).)

Licenses must be renewed biennially by June 30 during even-numbered years. The renewal fee is \$100. (Ga. Comp. R. & Regs. 553-12-.01; Contractors FAQ.)

Continuing Education Requirements

To renew a residential or general contractor license, the licensee may be required to complete the applicable division's approved continuing education of a maximum of:

- Three hours annually for a residential-basic license.
- Six hours annually for a residential-light commercial license.

(O.C.G.A. § 43-41-6(k).)

Georgia does not require continuing education for general contractors.

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

The best method to confirm whether a construction professional is properly licensed is to conduct a license search on the Georgia secretary of state's website.

CONSEQUENCES

Any person, firm, or corporation not being duly authorized who engages in business as one of the following licensed professionals may be subject to criminal prosecution, imprisonment, fines, or all three:

- Architects and Interior Designers (O.C.G.A. § 43-4-18).
- General contractors (O.C.G.A. § 43-41-12).
- Professional engineers and surveyors (O.C.G.A. § 43-15-30).
- Landscape architects (O.C.G.A. § 43-23-18).
- Electricians (O.C.G.A., § 43-14-12.2).
- Plumbers (O.C.G.A., § 43-14-12.2).
- Air conditioning contractors (O.C.G.A., § 43-14-12.2).
- Low-voltage contractors (O.C.G.A., § 43-14-12.2).
- Utility contractors (O.C.G.A., § 43-14-12.2).

WARRANTIES

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

The obligation to perform the work in a fit and workmanlike manner is implied in every contract with building contractors. The implied duty is breached "when the builder fails to exercise a reasonable degree of care, skill, and ability under similar conditions and like surrounding circumstances as is ordinarily employed by others in the same profession." (*Schofield Interior Contrs. Inc. v. Std. Bldg. Co.*, 293 Ga. App. 812, 814 (2008).)

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

One-year warranties are typical on commercial projects and will vary based on negotiated terms. Standard warranties on commercial projects include the following:

- Materials and equipment used by the contractor will be new and of good quality unless as otherwise required.
- The work is free from defects other than those inherent in the work as specified.
- The work conforms to the requirements of the contract documents.

(American Institutes of Architects A201-2017: General Conditions of the Contract for Construction.)

Generally, the contractor's warranty excludes:

- Damages or defects caused by abuse.
- Alterations of the work not executed by the contractor.
- Improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

(American Institutes of Architects A201-2017: General Conditions of the Contract for Construction.)

Depending on the nature and subject matter of the project, express warranties may be included in the contract outside of the general warranties such as performance specifications (for example, output or throughput-based specifications).

In addition to express warranties, implied warranties may apply to commercial construction contracts (see Question 15).

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?

A licensed residential contractor and any affiliated entities must offer a written warranty in connection with each contract to construct or superintend or manage the construction of any single-family residence if the value of the work or compensation to the contractor is over \$2,500. The residential contractor division establishes minimum requirements for warranties. (O.C.G.A. § 43-41-7.)

The written warranty must describe, at a minimum, the:

- Covered work and activities.
- Covered exclusions.
- Standards for evaluating work and activities.
- Terms of the warranty.
- Claim procedures.
- Contractor response options.
- Assignable manufacturer warranties.

(Ga. Comp. R. & Regs. 553-7-.01.)

For example, a popular general warranty might include a one-year warranty for workmanship defects, two years for system defects (HVAC, electrical, and plumbing), and up to ten years for structural defects (for example, the foundation or roof).

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?

Georgia has a Little Miller Act, which is codified in Sections 13-10-1 to 13-10-4 of the Georgia Code.

MINIMUM REQUIREMENTS

Any bond required by the Little Miller Act must be approved and filed with the treasurer of the obligee named in the bond. Bid bonds, performance bonds, or payment bonds required by the statute must be approved in form and as to the solvency of the surety by an officer of the state, agency, or authority of the state negotiating the contract on behalf of the state. (O.C.G.A. § 13-10-2.)

All state public works construction contracts with estimated bids or proposals over \$100,000 require bid bonds, payment bonds, and performance bonds. At the state’s election, these bonds may also be required for projects worth less than \$100,000. (O.C.G.A. §§ 13-10-20, 13-10-40, and 13-10-60.)

SECURITY

The bid, payment, and performance bonds required by Georgia’s Little Miller Act must be in the amount of at least the total amount payable under the contract and must increase if the contract amount increases (O.C.G.A. §§ 13-10-20, 13-10-40, and 13-10-60).

In lieu of the bond required by Section 13-10-20 of the Georgia Code, the state may accept a cashier’s check, certified check, or cash (payable to and for the protection of the state) in the amount of at least 5% of the total amount due under the contract (O.C.G.A. § 13-10-21).

If the amount of any bid or performance bond is less than \$300,000, the state can accept an irrevocable letter of credit rather than requiring the bond (O.C.G.A. § 13-10-21).

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

A contractor furnishing the payment bond or security notice must post on the public works construction site and file with the clerk of the superior court where the site is located a notice of commencement no later than 15 days after work begins (O.C.G.A. § 13-10-62).

If the contractor posts the notice of commencement, a subcontractor with no direct privity to the contractor providing the payment bond can pursue an action against the payment bond or security deposit if the subcontractor gives written notice to the contractor:

- By the later of:
 - 30 days from when the notice of commencement is filed; or
 - 30 days after first delivering labor or materials.
- Containing:
 - the name, address, and telephone number of the person providing labor or materials;
 - the name and address of each person to which the labor or materials was furnished;
 - the name and location of the public works construction site; and
 - a description of the labor or materials provided (and value if known).

(O.C.G.A. § 13-10-63(a)(2).)

If the contractor does not file a notice of commencement, a subcontractor with no direct privity to the contractor providing the payment bond is exempt from the more stringent notice requirements referenced and may instead pursue an action against the bond by simply providing written notice:

- To the contractor furnishing the payment bond.
- Within 90 days from when work was last performed.
- Stating the claim amount.
- Identifying the party for whom work was performed.
- By registered or certified mail or overnight delivery with postage prepaid.

(O.C.G.A. § 13-10-63(a)(1).)

STATUTE OF LIMITATIONS

Actions involving bid, performance, or payment bonds must be brought within one year from completion of the contract and acceptance of the public work by the state (O.C.G.A. §§ 13-10-24, 13-10-42, and 13-10-65).

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?

Private owners in Georgia can require contractors to:

- Provide payment and performance bonds.
- If the general contractors are financially solvent, use their own subcontract default protection program, which may be used to:
 - procure payment and performance bonds;
 - enroll the subcontractor or vendor in a default insurance program; or
 - self-insure the risk.

Other types of security are not commonly required by private owners in Georgia.

LITIGATION CONCERNS

21. What are the applicable statutes of limitation 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 limitation apply to claims in Georgia:

- Breach of written contract and breach of express warranty, six years (O.C.G.A. § 9-3-24).
- Breach of oral contract, four years (O.C.G.A. § 9-3-26).
- Injury to persons, two years (O.C.G.A. § 9-3-33).
- Injury to personal property and negligent construction, four years (O.C.G.A. § 9-3-32).
- Fraud, two years (O.C.G.A. § 9-3-33).
- Trespass, four years (O.C.G.A. § 9-3-30).

There is a four-year statute of limitations for defective design and construction claims (O.C.G.A. § 9-3-30(a); *Hall v. Harris*, 239 Ga. App. 812, 818 (1999) (“[a]n action under OCGA § 9-3-30 for a construction defect for improvement to realty must be brought within four years of substantial completion of the work”); *Bicknell v. Richard M. Hearn Roofing & Remodeling, Inc.*, 171 Ga. App. 128, 130 (1984) (applying O.C.G.A. § 9-3-30 to “property owner’s cause of action for damage to a building resulting from negligent construction”)).

There is an eight-year statute of repose for “any deficiency in the survey or plat, planning, design, specifications, supervision or observation of construction, or construction of an improvement to real property” (O.C.G.A. § 9-3-51).

In Georgia, the discovery rule does not apply to causes of actions involving only property damage on commercial projects. The discovery rule applies “to cases of bodily injury which develop only over an extended period of time.” (*Corp. of Mercer Univ. v. Nat’l Gypsum Co.*, 368 S.E.2d 732, 733 (Ga. 1988).)

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

For professional malpractice claims often filed in a construction defect case or together with a negligent design claim, an affidavit from a licensed professional is required. The expert affidavit must be filed with the complaint when a construction defect claim is made

against certain design professionals such as architects, professional engineers, and land surveyors. The affidavit should address the applicable standard of care for the design professional and what actions or inactions of the design professional failed to satisfy that standard. (O.C.G.A. § 9-11-9.1(a).)

PROOF OF LICENSURE

Georgia does not require a licensed party to attach proof of licensure to a suit.

SPECIAL REQUIREMENTS

For residential construction, the Georgia Right to Repair Act requires a homeowner to give written notice to the contractor at least 90 days before filing a lawsuit (O.C.G.A. §§ 8-2-35 to 8-2-43).

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 LIMITATIONS

Georgia has a statute of ultimate repose of eight years. For injury or wrongful death cases, however, the claim can be brought up to two years after the injury occurred, meaning no more than ten years after the date of substantial completion. (O.C.G.A. § 9-3-51.)

TYPES OF CLAIMS ALLOWED

The statute of repose applies to construction defect claims, including:

- Deficiencies in plats or specifications.
- Injury to real or personal property.
- Injury to person.
- Wrongful death.

(O.C.G.A. § 9-3-51.)

NOTICE OR CONDITIONS PRECEDENT

For residential construction, homeowners making a claim against a contractor must give written notice to the contractor at least 90 days before filing suit (O.C.G.A. §§ 8-2-35 to 8-2-43). The notice must:

- State that the homeowner is making a claim for one or more construction defects.
- Inform that the letter satisfies the statutory notice requirement.
- Include any expert reports for the defects.

(O.C.G.A. § 8-2-38.)

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

Liquidated damages are enforceable and often used in both commercial and residential construction projects. Courts will enforce this provision if:

- The injury caused by a breach of the contract is difficult or impossible to estimate accurately.
- The parties intended to provide for damages rather than a penalty.
- The stipulated amount is a reasonable estimate of the probable loss.

(*Swan Kang, Inc. v. Kang*, 243 Ga. App. 684, 686 (Ga. Ct. App. 2000).)

LIMITATIONS ON LIABILITY

Limitations on liability are often included in construction contracts in Georgia and are enforceable unless the defendant is grossly

negligent or shows wanton or willful misconduct (*Doty Comm., Inc. v. L.M. Berry & Co.*, 417 F. Supp. 2d 1355 (N.D. Ga. 2006)).

NO-DAMAGES-FOR-DELAY CLAUSE

No-damages-for-delay clauses are enforceable in Georgia. This is often a point of negotiation between contractual parties, depending on the type of contract, for example, design-build, fixed-price, and cost-plus contracts (see *L&B Constr. Co.*, 482 S.E.2d at 279 (enforcing a flow-down “no damages for delay” clause)).

CHOICE OF LAW

Georgia courts uphold the parties’ right to agree what law will govern the transaction, unless there is some contrary public policy reason not to enforce the provision (*Scales v. Textron Financial Corp.*, 276 Ga. App. 232, 233 (Ga. Ct. App. 2005)).

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