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# Construction Laws and Customs: Ohio

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A Q&A guide to construction projects in Ohio. 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).

Real estate and construction transactions are currently being impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws impacted by COVID-19, including eviction and foreclosure moratoriums, business closures, electronic signatures, recordings and notarization laws, and general crisis management guidance in handling real estate and construction matters, see Real Estate Global Coronavirus Toolkit.

## 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?

The following Ohio statutes govern times for payment on publicly owned or financed projects:

- R.C. 153.12 to 153.14 (payments to prime contractors).
- R.C. 4113.61 (payments to subcontractors).
- R.C. 5525.19 (Department of Transportation projects).

### Payments by Owners

Contracts for the establishment, construction, reconstruction, improvement, maintenance, or repair of a state highway require payment by the owner to the contractor at least once a month as the work progresses, based on estimates made by the applicable district deputy of transportation in charge of the improvement and after approval by the director of the Ohio Department of Transportation (R.C. 5525.19).

On all other public contracts, payment is due from the owner when the contract for payment specifies. The payment is made using an owner-approved estimate of the labor performed and material furnished under the contract, based on the actual measurement of the labor and materials. (R.C. 153.13.) The contractor must prepare and submit a schedule of values, which must be

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approved by the architect or engineer and is used to make partial payments (R.C. 153.12(A)). Payment on approved estimates filed with the owner must be made within 30 days (R.C. 153.14).

## Payment by Prime Contractors

Ohio has a Prompt Payment Act (PPA) that requires a contractor to make payments to a subcontractor on a **public or private** construction project. If a contractor receives an application or request for payment, or an invoice for materials from a subcontractor, which the contractor can include in its application, request, or invoice to the owner, the contractor must, within **ten calendar days** after receipt of payment from the owner, pay:

- The subcontractor an amount equal to the percentage of completion of the subcontractor's contract allowed by the owner for the amount of work or labor performed.
- The material supplier an amount equal to all or that portion of the invoice for materials furnished by the supplier.

(R.C. 4113.61(A)(1).)

Within ten days of receipt of payment from the contractor, a subcontractor must make payments to:

- Lower-tier subcontractors in an amount equal to the percentage of completion of the lower-tier subcontractor's contract allowed by the owner for the amount of labor or work performed.
- Lower-tier material suppliers in an amount for furnished materials.

(R.C. 4113.61(A)(2).)

Prime contractors may withhold amounts necessary to resolve disputed claims involving the work or labor performed by a subcontractor (R.C. 4113.61(A)(1)). However, the Ohio Supreme Court has imposed limits on the type of amounts that may properly be withheld from payments to lower-tier contractors (*Masiongale Elec.-Mechanical, Inc. v. Constr. One, Inc.*, 806 N.E.2d 148, 151-52 (Ohio 2004)).

## Penalties for Failure to Comply

Interest accrues on amounts unpaid by the public owner within 30 days of the filing of an approved estimate by the contractor. The rate of interest is the average of the prime rate established at the commercial banks in the city closest to the construction project with a population over 100,000 people. (R.C. 153.14.)

Under the PPA, subcontractors or suppliers are entitled to interest at a rate of 18% per annum beginning on the 11th day following the contractor's receipt of payment from the owner and ending on the date of full payment of the payment due plus interest (R.C. 4113.61(A)(1)). Ohio courts also have discretion under the PPA to award reasonable attorneys' fees and court costs, unless the court determines that the payment of attorneys' fees would be inequitable (R.C. 4113.61(B)(1), (3)). In exercising its discretion, the court must consider all relevant factors, including but not limited to:

- The presence or absence of good-faith allegations or defenses asserted by the parties.
- The proportion of the amount of recovery related to the amount demanded.
- The nature of the services rendered and the time spent in rendering the service.

(R.C. 4113.61(B)(2).)

## Right to Stop Work

Ohio's public payment statutes do not specifically address:

- A prime contractor's right to stop work if a public owner does not make the required payments.
- A subcontractor's right to stop work if a prime contractor does not make the required payments.

**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?

Ohio Revised Code 4113.61 governs times for payment to subcontractors on privately or publicly owned or financed projects.

## Payments by Owners

Ohio does not have any statutes governing the timing of payments to prime contractors on privately owned



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construction projects. However, Ohio has a general interest statute that imposes interest on any unpaid amounts from when those amounts became "due and payable" under any verbal or written contract (R.C. 1343.03(A)).

## Payment by Prime Contractors

Ohio has a Prompt Payment Act (PPA) requiring a contractor to make payments to a subcontractor on a public or private construction project (see Question 1: Payment by Prime Contractors).

## Penalties for Failure to Comply

Under Ohio's general interest statute, the contractor is entitled to simple interest at the federal short-term per annum rate on October 15th of the previous calendar year, rounded to the nearest whole number percent, unless a written contract provides a different interest rate. If a written contract provides a different interest rate, the creditor is entitled to that interest rate. (R.C. 1343.03(A) and 5703.47.)

For information about penalties for a contractor's failure to comply with the PPA, see Question 1: Penalties for Failure to Comply.

## Right to Stop Work

Ohio statutes do not specifically address:

- A prime contractor's right to stop work if a private owner does not make timely payments.
- A subcontractor's right to stop work if a prime contractor does not make the required payments under the PPA.

### 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?

Ohio has a prompt payment act that sets out the requirements for payments and interest on:

- Public construction projects to prime contractors.
- Public and private construction projects to subcontractors.

(See Questions 1 and 2.)

For payments to prime contractors on private construction projects, construction contracts typically require payment within 30 days of submission of an approved pay application. Additionally, construction contracts on private projects often include a provision giving the contractor the right to stop work because of an owner's nonpayment and usually include notice provisions and an opportunity to cure.

### 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?

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

In addition, both "pay-if-paid" and "pay-when-paid" clauses are enforceable under Ohio common law. The Ohio Supreme Court has held that if contractual language clearly and unequivocally shows the intent of the parties to transfer the risk of the project owner's nonpayment from the general contractor to the subcontractor, the clause will be enforced as a valid "pay-if-paid" clause (*Transtar Elec., Inc. v. A.E.M. Elec. Servs. Corp.*, 16 N.E.3d 645, 652 (Ohio 2014)).

Under a valid "pay-if-paid" clause, the contractor is not obligated to pay the subcontractor if the owner never pays the contractor (*Transtar Elec., Inc.*, 16 N.E.3d at 649).

Payment provisions that lack clear language shifting the risk of an owner's nonpayment to the subcontractor but specifying that the subcontractor will be paid within a certain number of days after the contractor is paid are enforced as "pay-when-paid" clauses. Under these types of clauses, the contractor's obligation to pay the subcontractor will come due at some point, even if the owner has still not paid the contractor. For a further discussion of these clauses, see Practice Note, Pay-if-Paid vs. Pay-when-Paid in Construction Contracts.



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**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?

The following Ohio statutes regulate the withholding of retainage on publicly owned or financed construction projects:

- R.C. 153.12 (award and execution of contract, price, and partial payments).
- R.C. 153.13 (estimates of labor and materials, funds in escrow account).
- R.C. 153.63 (escrow account for contractor).

## Amount of Retainage

For a unit or lump sum price contract, 8% of approved progress payments must be held back as retainage on public projects until the job is 50% complete. After 50% completion, 100% of approved progress payments must be released. (R.C. 153.12(A).)

Ohio law does not address the amount of retainage that can be withheld from a subcontractor or material supplier's progress payments.

## Partial Release of Retainage

The statutes do not authorize the release of retainage held before a public project reaches substantial completion. However, for all public projects with a total cost of over $15,000, after attaining 50% completion, all retained funds must be deposited into an escrow account and invested in obligations selected by an escrow agent. (R.C. 153.13 and 153.63(A).)

## Final Release of Retainage

Any retained funds and associated income on the funds must be paid to the contractor within 30 days, with only an amount necessary to assure project completion to be withheld, if both:

- The major portion of a project is substantially completed and occupied, in use, or otherwise accepted.
- There is no other reason to withhold retained funds.

(R.C. 153.13.)

Additionally, an escrow agent may only release any escrowed retainage if either:

- The public owner and contractor agree on dispersing the retainage.
- The escrow agent receives an arbitration or court order.

(R.C. 153.63(A)(2).)

## Penalties for Failure to Comply

Retainage not timely paid or deposited into escrow by the public owner accrues interest at 8% per annum, compounded daily (R.C. 153.63(D)). Unauthorized withholding of retainage also accrues interest at the average of the prime rate established at the commercial banks in the city closest to the construction project with a population of over 100,000 people (R.C. 153.14). This interest is in addition to any interest earned in the escrow account (R.C. 153.13).

**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?

Ohio has no statute governing withholding retainage on privately owned or financed construction projects.

However, Ohio's Prompt Payment Act specifies that a contractor can only withhold retainage from a subcontractor if the owner withholds retainage from the contractor in that same amount. If a contractor withholds retainage from a subcontractor, the retained


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amounts must be paid to the subcontractor within the shorter of:

- Ten calendar days after the contractor receives its retainage payment from the owner.
- The time period provided in the contract.

(R.C. 4113.61(A)(3).)

A contractor violating these provisions is subject to interest costs at the rate of 18% per annum and potentially attorneys' fees (see Question 1).

**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 Ohio, private owners typically withhold five to ten percent in retainage, depending on the size and type of project, the requirements of lenders, or other factors. There is generally no difference between retainage on labor or material, although some contractors may request that an owner waive retainage on payments of fee or general conditions items.

### Partial Retainage

Parties often negotiate for early release of retainage for early completing subcontractors. The owner usually retains a measure of control over the decision to release retainage early.

### Final Retainage

Retainage is released at substantial completion. The owner will retain an amount to cover any remaining punch list or other incomplete work, lien claims, or other possible identified claims. The amount withheld at substantial completion is typically one and a half or two times the value of the remaining punch list work. The final amount withheld is paid as the punch list is completed or after final completion of all work.

## 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?**

In Ohio, private projects can use any project delivery system agreed to by the parties. Parties commonly use:

- Design-bid-build.
- Construction manager at risk.
- Design-build.

The construction manager at risk and design-build approaches are generally favored on large and complex projects because they typically allow the design and construction processes to proceed concurrently on an integrated and fast-track basis.

Deciding which project delivery system to use depends on the type of project, the schedule, and cost constraints. An owner might use the design-build or construction manager at risk method instead of the traditional design-bid-build method if there is not enough time for the design team to develop full plans before a set deadline for project start. The design-build method allows flexibility for schedule compression and saves the owner in costs by consolidating the design and construction under one umbrella. However, the owner in a design-build method relinquishes some control and independent checks over the design process, which may result in loss of quality in the construction.

For a discussion of the characteristics of different project delivery systems and ways to mitigate the risks associated with each, see Practice Notes, Private Construction Project Delivery Systems: Overview and Selecting the Right Private Project Delivery System.

On public projects, owners now have significantly more flexibility in choosing project delivery systems. Previously, Ohio public agencies were required to use the "multiple prime" method of contracting, where the public owner held all of the trade contracts directly. Public owners can now use any of the following delivery methods:

- Construction management at risk.
- Construction management as advisor.
- Design-build.
- General contracting.



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### 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?

## Private Projects

Under Ohio law, a contractor may provide design services through a design-build contract if both:

- The design services were provided by a licensed architect.
- The architect was either:
  - directly employed by the contractor; or
  - engaged under a separate agreement with the contractor.

(R.C. 4703.182(A)(1).)

There is a similar statute relating to engineering services (R.C. 4733.161).

There are no construction management statutes applicable to private projects.

## Public Projects

Ohio law authorizes design-build services on public projects for architecture services and engineering services (R.C. 4703.182 and 4733.161). A design-build contractor on a public project must meet statutory requirements relating to professional liability insurance (R.C. 153.70).

On road construction projects, design and construction may only be under a single contract if the project bid does not exceed $5 million (R.C. 5543.22). The Ohio Department of Transportation has authority to use design-build for "special" highway or bridge projects if the total value of the contracts under the program does not exceed $1 billion per fiscal year (R.C. 5517.011).

Construction management at risk and construction management as advisor delivery methods are authorized for public projects (R.C. 9.33 to 9.335).

Chapter 153 of the Ohio Revised Code also contains various statutes applicable to design-build and construction management delivery on public projects including but not limited to the following:

- R.C. 153.501 (subcontracts awarded by construction manager at risk, design-build firm, or general contracting firm; utilization of design-assist firm; self-performed portions of work).
- R.C. 153.502 (construction management or design-build contracts; prequalification of bidders).
- R.C. 153.65 (professional design services definitions).
- R.C. 153.693 (evaluation of design-build firms).
- R.C. 153.70 (requiring professional liability insurance).
- R.C. 153.72 (authority of design-build firm).
- R.C. 5543.22 (design-build contracts).

### 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?

In Ohio, the most commonly used standard forms are those prepared by the American Institute of Architects (AIA). The ConsensusDOCS family of forms is also sometimes, but not often, used in Ohio. Additionally, parties may use the design-build forms provided by the Design-Build Institute of America (DBIA) for design-build projects.

The AIA forms are typically considered the most evenly balanced to all parties and consist of a variety of documents for most standard project delivery types. However, the cost of the licensing software may be prohibitive for some parties or projects.

All standard forms are usually modified, and in some cases substantially, to account for the particular circumstances of the project, including its size and complexity.

For more information on these contract families, 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?

In Ohio, the most commonly negotiated business terms include:

- The price.
- The schedule.
- The scope of work.

Pricing components are often heavily negotiated in construction management at risk agreements, which



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typically use a cost of the work with a guaranteed maximum price (GMP) mechanism (see Practice Note, Guaranteed Maximum Price Contracts: Drafting Strategies). Negotiated terms include:

- The definition of cost of the work. For example, the parties may agree to "lump sum" certain staff costs or general conditions items and pay those items at a fixed price rather than as costs of the work.
- The construction manager's fee and contingency. Unused contingency normally belongs to the owner, but the parties may negotiate a sharing of unused contingency and other project savings. The parties may also agree to a contingency reduction framework to return contingency funds to the owner as the project achieves completion milestones.
- Insurance and bonding. These are reimbursable as costs of the work but are usually heavily negotiated on complex projects to manage costs. For example, the parties may negotiate a "wrap" insurance product to cover multiple parties under a single liability policy, or may investigate subcontractor default insurance (also known as "subguard") as an alternative to expensive subcontractor bonding.

The most commonly negotiated legal terms include:

- Indemnification and limitations of liability.
- Waivers of consequential damages.
- Liquidated damages.

These clauses are often negotiated in tandem to manage the risk of delay and defective work potential on the project. Liquidated damages clauses must be carefully negotiated and drafted to comply with legal requirements to be valid and enforceable.

## 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?

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

- Architects (R.C. 4703.01 and 4703.02; see Architects).
- Landscape architects (R.C. 4703.30; see Landscape Architects).
- Engineers (R.C. 4733.01; see Engineers).
- Land surveyors (R.C. 4733.01; see Land Surveyors).
- Certain commercial contractors (R.C. 4740.01(A); see Commercial Contractors).

### Architects

Ohio requires an architect's license to practice in the field of architecture (R.C. 4703.06(A)).

The practice of architecture includes the rendering or offering to render advice, consultation, evaluation, planning, any type of architectural plans, designs, or specifications, or administration of construction contracts in connection with the design and construction, enlargement, or alteration of any building or buildings, or the equipment or utilities or accessories (Ohio Adm. Code 4703-1-01(B); *Bernard v. Lloyd*, 1983 WL 7369, at *3 (Ohio Ct. App. May 23, 1983)).

The Ohio Architects Board, which is appointed by the governor and composed of five architects who have been actively practicing in the state for at least ten years, licenses and regulates architects (R.C. 4703.01 and 4703.02).

### Landscape Architects

Ohio requires a license for the profession of landscape architecture, which includes the preparation of plans, studies, and construction documents, as well as the observation, coordination, and supervision of the execution of projects where the dominant purpose of the service involves:

- The preservation, conservation, enhancement, or determination of proper land and water uses, natural land features, ground cover and plantings, naturalistic and aesthetic values, natural systems, reforestation, restoration, and reclamation.
- The determination of settings, grounds, and approaches for buildings and structures or other improvements.
- The determination of environmental problems of land relating to erosion and sediment control, flooding, blight, and other hazards.
- The shaping and contouring of land and water forms.



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- The determination of grades and the determination of surface and ground water drainage and providing for drainage systems where these systems do not require structural design of system components or a hydraulic analysis of the receiving storm water conveyance system.
- The development of roadways and parkways, equestrian, bicycle, and pedestrian circulation systems, sidewalks, parking, planting, pools, irrigation systems, and other ancillary elements, for public and private use and enjoyment.

(R.C. 4703.30(B).)

The practice of landscape architecture does **not** include the design of:

- Structures or facilities with separate and self-contained purposes for habitation or industry.
- Streets and highways.
- Utilities.
- Storm, and sanitary sewers.
- Water and sewage treatment facilities.

These designs are exclusive to the practice of engineering or architecture. (R.C. 4703.30(B).)

The Ohio Landscape Architects Board licenses and regulates landscape architects. The board is composed of five members who are appointed by the governor. Three members must be registered landscape architects, one member must be a licensed design professional, and one member represents the public. (R.C. 4703.31.)

## Engineers

An engineer in Ohio must be licensed to perform any professional services in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works, or projects for which the required training and experience are needed to protect the public welfare or the safeguarding of life, health, or property.

These services may include:

- Consultation.
- Investigation.
- Evaluation.
- Planning.
- Design.
- Inspection of construction or operation for assuring compliance with drawings or specifications

(R.C. 4733.01(E).)

The Ohio Engineers and Surveyors Board handles both engineering and land surveying licensing and oversees matters relating to the licensing of both professions. The board consists of four professional engineers, at least one of whom also is a professional surveyor, and one professional surveyor. Members are appointed by the governor, with the advice and consent of the senate, for terms of five years. (R.C. 4733.03.)

## Land Surveyors

A land surveyor in Ohio must be licensed to perform any professional service that requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for the adequate performance of the art of surveying, including but not limited to:

- Measuring the area or the contours of any portion of the earth's surface.
- Measuring the lengths and directions of the bounding lines, and the contour of the surface, for their correct determination and description and for conveyancing for recording, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions.
- "Mine surveying," which involves measurements and operations involved in the surveying of mines.

(R.C. 4733.01(G).)

The Ohio Engineers and Surveyors Board handles both engineering and land surveying licensing and oversees matters relating to the licensing of both professions (see Engineers).

## Commercial Contractors

Five types of commercial contractors must be licensed to conduct business in Ohio:

- Heating, ventilating, and air conditioning (HVAC) contractors.
- Refrigeration contractors.
- Electrical contractors.
- Plumbing contractors.
- Hydronics contractors.

(R.C. 4740.01(A).)



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To qualify as a contractor and comply with the licensing requirements, the individual or business must:

- Have responsibility for the means, methods, and manner of construction, improvement, renovation, repair, or maintenance on a construction project for one or more trades. This includes offering, identifying, advertising, or otherwise representing itself as permitted or qualified to conduct the business for compensation.
- Perform or employ tradespersons who perform construction, improvement, renovation, repair, or maintenance on construction projects regarding the contractor's trades.

(R.C. 4740.01(B).)

The Ohio Construction Industry Licensing Board, part of the Ohio Department of Commerce and composed of 17 appointed individuals, licenses and regulates commercial contractors (R.C. 4740.02).

**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

In Ohio, an individual must secure a certificate of qualification from the Ohio Architects Board (OAB) before engaging in the practice of architecture. The applicant must file an application with the OAB, pay the required fee, and satisfy the following requirements:

- Successfully pass the Ohio Architect Registration Examination.
- Be at least 18 years old.
- Obtain a professional degree in architecture from a program accredited by the national architectural accrediting board.
- Have the requisite experience by completing the Intern Development Program established by the National Council of Architectural Registration Boards (NCARB) and adopted by the OAB, which requires experience in:
  - design and construction documents;
  - construction administration;
  - office management; or
  - equivalent experience acceptable to the board.

(R.C. 4703.06(A) and 4703.07; Ohio Adm. Code 4703-2-01 to 4703-2-04.)

Ohio also allows registration by reciprocity for architects licensed in another jurisdiction. These applicants must:

- Have a NCARB certificate and have the certificate transferred to the OAB.
- Complete Ohio's application for registration by reciprocity.
- Pay the required fee.
- Fulfill the requirements satisfactory to the OAB.

(R.C. 4703.08; Ohio Adm. Code 4703-2-05.)

Licenses expire on the last day of December in each odd numbered year and must be renewed by submitting a renewal application before the expiration date and paying the fee set by the OAB (R.C. 4703.12(A), 4703.13, and 4703.16).

### Continuing Education Requirements

All practicing architects must earn a minimum of 12 health, safety, and welfare continuing education hours per calendar year to renew their license. These hours must be obtained through structured educational activities. Excess hours are not rolled over to the future calendar year. (R.C. 4703.13; Ohio Adm. Code 4703-2-07.)

## Landscape Architecture

### Licensing Requirements

An applicant must file an application and fee with the Ohio Landscape Architects Board (Board) to be registered as a landscape architect. The applicant must also satisfy the following requirements:

- Successfully pass the Ohio Landscape Architect Registration Examination.
- Be at least 18 years of age.
- Obtain a professional degree in landscape architecture from a program accredited by the national landscape architect accrediting board.
- Possess the requisite experience, which includes three years of practical experience under the supervision of a registered landscape architect. This experience must include design, contract documents, contract administration and office management.

(R.C. 4703.34 and 4703.33; Ohio Adm. Code 4703:1-2-01.)



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Ohio also allows registration by reciprocity for landscape architects who are currently registered in good standing in another jurisdiction. The applicants must submit:

- Ohio's application for registration for reciprocity and the required fee.
- Their record from the Council of Landscape Architectural Registration Boards.

The qualifications of a reciprocity candidate must be substantially equivalent to the requirements required by Ohio for examination applicants. (R.C. 4703.35; Ohio Adm. Code 4703:1-2-02.)

Licenses expire on the last day of December in each even numbered year and must be renewed by submitting a renewal application before the expiration date and paying the fee set by the Board (R.C. 4703.36(B)).

### Continuing Education Requirements

Landscape architects must complete a minimum of 24 contact hours of continuing education during each two-year renewal period (R.C. 4703.33; Ohio Adm. Code 4703:1-1-06).

## Engineers

### Licensing Requirements

To obtain an engineering license, an individual must apply and pay the required fee. The applicant must, among other requirements, meet the following education and experience requirements:

- Graduate from an accredited engineering curriculum (or acceptable non-accredited equivalent) of four years or more.
- Four or more years of practical experience in engineering work (eight years if the applicant was educated from a non-accredited curriculum).
- Successfully pass the required principles and practices of engineering examination. Applicants must have already passed the fundamentals of engineering exam before taking the principles and practices of engineering exam.

(R.C. 4733.11 to 4733.13; Ohio Adm. Code 4733-9-01, 02, 04.)

Ohio also allows reciprocal admission for engineers licensed in other jurisdictions if the applicant has met the standards equal to those required by Ohio when the out-of-state certificate of registration was received (R.C. 4733.19, Ohio Adm. Code 4733-13-01).

Licenses expire biennially on the last day of December in the year following initial registration or any renewal of registration. Renewals are effective on payment of a $40 fee and proof of completion of the professional development requirements. (R.C. 4733.15(A).)

### Continuing Education Requirements

Ohio licensed engineers must complete 30 continuing professional development hours during each two-year renewal period. Up to 15 excess hours can be credited towards future renewal periods. (R.C. 4733.151.)

## Land Surveyor

### Licensing Requirements

To be licensed to practice the profession of land surveying in Ohio, an individual must apply and pay the required fee. The applicant must, among other requirements, meet the following education and experience requirements:

- Graduate from an approved surveying curriculum of four years or more (or from an accredited civil engineering curriculum plus 16 semester hours of survey specific courses).
- Four or more years of surveying office and field experience with at least two of the four years in the surveying of land boundaries under the direct supervision of a professional surveyor.
- Pass the required professional surveying examination.

(R.C. 4733.11 to 4733.13; Ohio Adm. Code 4733-9-01 and 4733-9-04.)

Ohio allows reciprocal admission for surveyors currently licensed out-of-state. That reciprocal admission process is similar to the process for engineers, except that out-of-state surveyors are required to pass a two-hour professional practice examination concerning the laws and practices of Ohio before being registered. (R.C. 4733.19; Ohio Adm. Code 4733-13-01.)

Licenses expire biennially on the last day of December in the year following initial registration or any renewal on payment of a $40 fee and proof of completion of the professional development requirements (R.C. 4733.15(A)).

### Continuing Education Requirements

Ohio land surveyors must complete 30 continuing professional development hours during each two-year renewal period. Up to 15 excess hours can be credited towards future renewal periods. (R.C. 4733.151.)



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## Commercial Contractors

### Licensing Requirements

An individual or business must apply for a license and pay the required fee to obtain a license for one of the four classifications of contractors (see Question 12: Commercial Contractors). While a business can apply for a license, the application must be in the name of an individual. The application must be on the trade section's application form from which the applicant needs a license. Information showing that the applicant meets the licensing requirements must be included in the form. The application and fee are submitted to the trade section.

The applicant must also pass a licensing examination to receive the license. To qualify for the examination, the application must:

- Be at least 18 years old.
- Be a US citizen or legal alien with proof of legal status.
- Either:
  - have been a tradesperson in the type of licensed trade for which the application is filed for at least five years immediately before the filing;
  - be a currently registered engineer in Ohio with three years of business experience in the construction industry in the trade for which the engineer is applying to take a licensing examination; or
  - have other experience acceptable to the appropriate trade section of the Ohio Construction Industry Licensing Board (OCILB).
- Maintain contractor's liability insurance, including completed operations coverage, in an amount prescribed by the appropriate trade section.
- Not:
  - violated the contractor licensing statute or any rule adopted under it;
  - obtained or renewed a license issued under the contractor licensing statute, or any order, ruling, or authorization of the OCILB by fraud, misrepresentation, or deception; or
  - engaged in fraud, misrepresentation, or deception in the conduct of business.

The appropriate trade section authorizes the OCILB to license the applicant after all the requirements are met. (R.C. 4740.06(B)(1) to (5).)

Contractors in good standing may renew their license every one or three years. If the contractor chooses a one-year renewal, the fee to renew is $60 per license and, if the three-year renewal is chosen, the fee to renew is $180 per license. (Ohio Adm. Code 4101:16-2-09.)

### Continuing Education Requirements

Licensed contractors must obtain ten hours of continuing education courses per year (R.C. 4740.04 and 4740.05; Ohio Adm. Code 4101:16-2-08).

**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

To confirm that a construction professional is duly licensed in Ohio, a search can be conducted on the following websites:

- The Ohio eLicense Center's website for architects, landscape architects, professional engineers, and professional surveyors.
- Ohio Construction Industry Licensing Board's (OCILB) website for contractors.

## Consequences

After investigation of an unlicensed architecture or landscape architecture professional, the Architects and Landscape Architects Board may:

- Seek a settlement agreement.
- Seek a court injunction (Ohio Adm. Code 4703-3-06).
- Refer the case to the prosecutor for criminal prosecution.

A contract with an unlicensed architect is considered void and no recovery under the contract will be allowed (*Bernard*, 1983 WL 7369 at *4; *Elephant Lumber Co. v. Johnson*, 202 N.E.2d 189, 191 (Ohio Ct. App. 1964)).

The Ohio Engineers and Surveyors Board may apply for injunctive relief or a restraining order to prevent any unauthorized practice. Violators of these licensing requirements are subject to a fine or prosecution. (R.C. 4733.23.)

If a contractor is not properly licensed, the Ohio Attorney General may, at the request of the OCILB, bring a civil



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action for appropriate relief, including a temporary restraining order or permanent injunction (R.C. 4740.13(B)).

## Warranties

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

Ohio common law imposes an implied warranty on contractors that their services will be performed in a workmanlike manner (*Mitchem v. Johnson*, 218 N.E.2d 594, 596-97 (Ohio 1966)). This implied warranty is essentially a standard of care duty for contractors and requires a construction professional to act reasonably and exercise the degree of care that a member of the construction trade in good standing in that community would exercise under the same or similar circumstances (*River Oaks Homes, Inc. v. Twin Vinyl, Inc.*, 2008 WL 3892260, at *5 (Ohio Ct. App. 2008); *Jarupan v. Hanna*, 878 N.E.2d 66, 73 (Ohio Ct. App. 2007)).

A contractor who breaches the implied warranty to perform in a workmanlike manner is liable for damages to repair the constructed improvement to the condition contemplated by the parties when the contract was entered into (*River Oaks Homes, Inc.*, 2008 WL 3892260, at *5; *McCray v. Clinton Cty. Home Improvement*, 708 N.E.2d 1075, 1076 (Ohio Ct. App. 1998); *Barton v. Ellis*, 518 N.E.2d 18, 20-21 (Ohio Ct. App. 1986)).

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

In Ohio, the contractor typically includes a general warranty that all items furnished and installed by the contractor will be new (unless otherwise specified by the contract documents) and free of defects in materials and workmanship. The contractor also typically agrees to a contractual duty to correct defective or incomplete work within one year of substantial completion. It is important that the agreement clearly state that the one year duty to correct does not establish a time limit on the contractor's general warranty or on any manufacturer or other subcontractor warranties that may include longer warranty periods.

### 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?

Ohio does not have any statutes governing warranties for new residential construction. However, Ohio's common law implied warranty of workmanlike manner applies to both commercial and residential construction projects in Ohio (see Question 15).

## 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?

Ohio has a Little Miller Act, codified in R.C. 153.54 to 153.58, to provide security in connection with performing public improvement contracts.

### Minimum Requirements

Except for a construction manager at risk or a design-build contract, any person bidding for a contract with the state of Ohio or any of its political subdivisions or agencies for any public improvement, except Ohio Department of Transportation projects, must file a bid guaranty with the bid (R.C. 153.54(A)).

### Security

A bid guaranty must be submitted in the form of either:

- A bond for the full amount of the bid.
- A certified check, cashier's check, or letter of credit equal to 10% of the bid. The contractor must furnish a bond for the full amount of the contract on execution of the contract.

(R.C. 153.54(A).)



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Both forms combine the performance and payment bond obligations into a single statutory bond. A contractor submitting either form of guaranty is responsible for indemnifying the public owner for all damages caused by the failure to perform the contract and for paying all subcontractors, suppliers, and laborers for labor performed or material furnished in completing the contract (R.C. 153.54(B)(2), (C)(1)).

Bid guaranties are payable to the owner of the public improvement project. All bonds must be issued by a surety company authorized to do business in Ohio and approved by the board, officer, or agent awarding the contract on behalf of the owner. (R.C. 153.54(F).)

### 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

In Ohio, a claimant seeking money due for labor performed or materials furnished must provide the sureties on the bond, a statement of the amount, due no later than 90 days after the completion and acceptance of the contract. A suit can be filed against the sureties 60 days after delivery of the statement if the indebtedness has not been paid in full. (R.C. 153.56(A), (B).)

### Statute of Limitations

A claim against a payment bond must be filed within one year of the project's date of acceptance by the public owner (R.C. 153.56(B)).

### Additional Requirements

A subcontractor or materials supplier whose labor or materials cost more than $30,000 and who is not in contractual privity with the prime contractor must serve a notice of furnishing on the prime contractor. The claimant has a right to recover amounts due for labor and materials furnished during and after the 21 days before the service of the notice of furnishing. (R.C. 153.56(C), (D).)

### 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?

Performance and payment bonds are not normally required on private projects in Ohio. Bonds typically cost 1 to 2% of the contract price, which could be a significant cost on larger projects. However, some companies have a policy of requiring bonds when the project is of a certain size or type, or when the contractor does not have significant assets. Some developers and owners choose to forgo bonding where a construction manager has a proven track record and demonstrates that it has the sufficient financial strength to sustain a major subcontractor default.

## 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?

### Breach of Contract

Under Ohio law, the statute of limitations is:

- Six years for written contracts, excluding contracts with the state of Ohio.
- Four years for oral or implied contracts.

(R.C. 2305.06 and 2305.07.)

For breach of contract actions against the state of Ohio or any of its governmental departments, including the Ohio Department of Transportation (ODOT) and the Ohio Department of Administrative Services, the statute of limitations is two years (R.C. 2743.16(A)). The limitations



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period generally begins to run on the date of project completion, though the discovery rule can apply and extend the limitations period (*Rosendale v. Ohio Dep't of Transp.*, 2008 WL 4368580, at *2 (Ohio Ct. App. Sept. 25, 2008)).

However, if a public contract requires a contractor to first exhaust an administrative remedy process before filing a lawsuit, the contractor is deemed to have exhausted all administrative remedies 120 days after submission of a claim to the administrative agency if no decision is made by that time (R.C. 153.16(B)). Therefore, the two-year limitations period begins to run no later than 120 days after submission of an administrative claim, even if the administrative agency issues a decision at a later date (*Painting Co. v. Ohio State Univ.*, 2009 WL 3495053, at *3 (Ohio Ct. App. Oct. 29, 2009)).

## Breach of Warranty

There is no separate statute of limitation in Ohio for breach of warranties. The breach of an express warranty is governed by the six-year statute of limitations for written contracts and four-year statute of limitations for oral contracts (R.C. 2305.06 and 2305.07).

For breach of the implied warranty to perform in a workmanlike manner, the statute of limitations varies depending on the circumstances (see Question 15). If the builder contracts to sell an already-completed structure (for example, a spec home), the cause of action for failing to build in a workmanlike manner sounds in tort and is subject to Ohio's four-year statute of limitations for real property damage claims (*Vellota v. Leo Petronzio Landscaping, Inc.*, 433 N.E.2d 147, 149-50 (Ohio 1982)). If the builder contracts to build a structure, the cause of action for failure to build in a workmanlike manner sounds in contract and is subject to the eight-year limitations period for written contracts or the six-year limitations period for oral contracts.

## Negligence Resulting in Bodily Injury or Property Damage

The statute of limitation for bodily injury or personal property damages is two years from when the cause of action accrues (R.C. 2305.10(A)). The statute of limitations for damage to real property is four years (R.C. 2305.09(D)).

## Professional Malpractice by a Design Professional

No statute of limitation in Ohio specifically applies to professional malpractice claims against a design professional. The statutes of limitation for contracts and torts apply (see Breach of Contract and Breach of Warranty).

## Latent Defects in Design or Construction

No statute of limitation in Ohio specifically applies to latent defects in design or construction. The applicable limitations period for breach of contract or tort damages to real property begins to run from the date the claim accrues. Ohio recognizes the discovery rule, where a claim for negligence accrues when the party first suffers injury or damage and discovers that the injury was related to the defendant's actions or omissions (*Vellota*, 433 N.E.2d at 150). Ohio has a ten-year statute of repose (see Question 23).

### 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

Ohio law does not require filing an affidavit of merit for malpractice claims against design professionals.

## Proof of Licensure

Generally, any person may bring a civil action in Ohio against an individual, corporation, or other person for whom any of the following apply:

- Transacts business in Ohio.
- Contracts to supply services or goods in Ohio.
- Causes injury in Ohio.
- Agrees to be bound by, and subjects to, the jurisdiction of the laws of Ohio.
- Is a resident of Ohio.
- Is incorporated in Ohio.

(R.C. 2307.382 and 2307.39.)



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A construction professional required to be licensed customarily alleges in the complaint or counterclaim that they hold the required license, but it is not fatal to the pleading if omitted. Failure to be properly licensed voids any contracts and prevents any remedies under the contract (*Bernard*, 1983 WL 7369 at *4).

## Special Requirements

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

### 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

In Ohio, no claim may accrue if more than ten years have passed since substantial completion of the project (R.C. 2305.131(A)(1)). If an alleged defect is discovered during the ten-year period but less than two years before the expiration of that period, the plaintiff may bring a civil action to recover damages within two years from the date of the discovery of the defective and unsafe condition (R.C. 2305.131(A)(2)).

The statute of repose:

- Cannot be used as a defense by a defendant that engages in fraud regarding the furnishing of the design, planning, supervision, or construction of an improvement or any relevant information pertaining to a bodily injury, injury to real or personal property, wrongful death, or defective and unsafe conditions of real property.
- Does not prohibit the filing of a civil action for damages regarding an express warranty or guaranteed improvement in property for longer than the ten-year period, where the warranty or guarantee has not expired at the date of the alleged injury or wrongful death.

(R.C. 2305.131(C), (D).)

## Types of Claims Allowed

The statute of repose applies to personal injury or property damage claims against contractors or design professionals that arise out of a defective and unsafe condition of an improvement to real property (R.C. 2305.131(A)(1)).

The Ohio Supreme Court has held that the statute applies to all causes of action, whether sounding in tort or contract, that seek to recover damages for bodily injury, an injury to real or personal property, or wrongful death (*New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng'g, Inc.*, 133 N.E.3d 482, 490-91 (Ohio 2019)).

## Notice or Conditions Precedent

There are no special notice requirements or conditions precedent to filing a lawsuit relating to the statute of repose.

### 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 under Ohio law if they are not used to penalize a party. Ohio applies the following three-part test:

- The amount of actual damages would be uncertain or difficult to prove.
- In the whole context of the contract, the amount of liquidated damages is not so "manifestly unconscionable, unreasonable, and disproportionate" that it does not distort the true intention of the parties.
- The parties intended for the amount set as liquidated damages to apply if a breach occurs.

(*Samson Sales, Inc. v. Honeywell, Inc.*, 465 N.E.2d 392, 394 (Ohio 1984).)

## Limitations of Liability

Limitations of liability clauses are enforceable if the clause is conspicuous and its terms are clear and straightforward (*Collins v. Click Camera & Video, Inc.*, 621 N.E.2d 1294, 1300 (Ohio Ct. App. 1993)). Enforceability is determined on a case-by-case basis. Limitations of liability clauses are not enforced if the breaching party was grossly negligent or if the contract is shown to be unconscionable (see *Samson Sales, Inc.*, 465 N.E.2d at 394; *Richard A. Berjian, D.O., Inc. v. Ohio Bell Tel. Co.*, 375 N.E.2d 410, 414 (Ohio 1978)).



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## No-Damages-for-Delay Clause

Generally, no-damages-for-delay clauses are valid and enforceable in Ohio, but they are strictly construed and limited by common law and statutory exceptions (*Digioia Bros. Excavating v. City of Cleveland*, 734 N.E.2d 438, 448-49 (Ohio Ct. App. 1999)).

Ohio courts have noted several exceptions to the validity of the no-damages-for-delay clause, including where the delays:

- Were not intended or contemplated by the parties to be within the scope of the provisions.
- Resulted from fraud, misrepresentation, or other bad faith on the party seeking the benefit of the provision.
- Have been extended to a length of time so unreasonable that the party being delayed would have been justified in abandoning the contract.
- Are not specifically enumerated.

(*Digioia Bros. Excavating*, 734 N.E.2d at 448-49.)

Under Ohio's Fairness in Contracting Act, no-damages-for-delay clauses or any contractual provisions that waive remedies for delays are deemed void and unenforceable as against public policy if the delay is a proximate result of the owner's act or failure to act (R.C. 4113.62(C)(1)).

## Choice of Law

Ohio's Fairness in Contracting Act requires that disputes concerning Ohio construction projects must be litigated in Ohio and are subject to Ohio law, regardless of the choice of law provision or forum selection clause in the contract. Any provision in a construction contract that subjects disputes to the laws of another state is void and unenforceable as against public policy. (R.C. 4113.62(D)(1), (2).)

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