

Construction Laws and Customs: Maryland

by Anthony Pagano and David A. Levie, Venable LLP, with Practical Law Real Estate

Status: Law stated as of 18 Mar 2022 | Jurisdiction: Maryland, United States

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/w-031-3929

Request a free trial and demonstration at: us.practicallaw.tr.com/practical-law

A Q&A guide to construction projects in Maryland. 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?

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

- Md. Code Ann., State Fin. & Proc. § 15-103 (Procurement Contract Administration).
- Md. Code Ann., State Fin. & Proc. § 15-226; COMAR 21.07.02.05-2 (The Prompt Payment of Subcontractors Act).

Payments by Owners

The state must pay prime contractors within 30 days after the later of either:

- The day payment becomes due under the contract.
- Receipt of the contractor's invoice.

(Md. Code Ann., State Fin. & Proc. § 15-103.)

Payment by Prime Contractors

Prime contractors must pay subcontractors undisputed amounts within ten days of receiving a payment (Md. Code Ann., State Fin. & Proc. § 15-226(c)(1); COMAR 21.10.08.03(A)). An undisputed amount is any amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld (Md. Code Ann., State Fin. & Proc. § 15-226(a)). If a contractor withholds payment, the contractor must:

- Notify the subcontractor of the amount of and reason for withholding:
 - within ten days; and
 - in writing.
- Provide a copy of the notice to the procurement officer.

(Md. Code Ann., State Fin. & Proc. § 15-226(c)(2).)

Penalties for Failure to Comply

Prime contractors may recover interest at 9% per annum on payments that are due but remain unpaid more than 45 days after the state's receipt of the invoice (Md. Code Ann., State Fin. & Proc. § 15-104(a)). Interest begins to accrue 31 days after the later of either:

- The due date for payment under the contract.
- The state's receipt of an invoice.

(Md. Code Ann., State Fin. & Proc. § 15-104(b).)

The state may withhold progress payments from a prime contractor until a subcontractor is paid an undisputed amount and may, in certain circumstances:

- Order that work under the contract be suspended based on the failure of the contractor to meet its contractual obligations.
- Require the contractor to pay a penalty to the subcontractor of up to \$100 per day.

(Md. Code Ann., State Fin. & Proc. § 15-226(f)(4), (6); COMAR 21.10.08.06(A), (C).)

Right to Stop Work

The Maryland Prompt Pay Act does not specifically contemplate the right to stop work for failure to receive payment from a public owner.

The state can order the contractor to stop all or some of the work if it is delinquent in payment after a second meeting between the contractor and subcontractor to determine the contractor's delinquency (Md. Code Ann., State Fin. & Proc. § 15-226(f)(6)(ii); COMAR 21.10.08.06(B), (C)(2)).

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

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

The Maryland Prompt Pay Act (Md. Code Ann., Real Prop. §§ 9-301 to 9-305) governs times for payment on most privately owned or financed projects. Private construction contracts exempt from the Prompt Pay Act include, but are not limited to:

- Contracts for the construction and sale of single-family residential dwellings.

- Home improvement contracts by a contractor licensed under the Maryland Home Improvement Law (Md. Code Ann., Bus. Reg. §§ 8-101 to 8-802).

(Md. Code Ann., Real Prop. § 9-305.)

Payments by Owners

If the contract provides for specific dates or times of payment, the project owner must pay the contractor all undisputed amounts within seven days after the date or time specified (Md. Code Ann., Real Prop. § 9-302(b)(1)(i)(2)). If the contract does not specify a date or time for payment, the owner must pay all undisputed amounts owed under the contract within the earlier of 30 days after either:

- The day the occupancy permit is granted.
- The day the owner or the owner's agent takes possession.

(Md. Code Ann., Real Prop. § 9-302(b)(1)(i)(1), (2).)

Payment by Prime Contractors

The contractor or subcontractor must pay all undisputed amounts to its lower-tier subcontractors within seven days after receipt of each payment received for the lower-tier subcontractors' work or materials (Md. Code Ann., Real Prop. § 9-302(b)(3)).

Penalties for Failure to Comply

In addition to any other remedies allowed by law, a court may award to the prevailing party in any action:

- Equitable relief, including:
 - ordering prompt payment of undisputed amounts; and
 - enjoining further violations.
- Interest from the date the amount owed was due and reasonable costs incurred.
- Attorneys' fees if the owner, contractor, or subcontractor acted in bad faith.

(Md. Code Ann., Real Prop. § 9-303(a), (b).)

Right to Stop Work

The Maryland Prompt Pay Act does not specifically contemplate the right to stop work for failure to receive payment from 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?

Payments by Owners

Maryland has prompt payment acts that set out the requirements for payments on both public and private construction contracts (see Questions 1 and 2).

The custom and practice for those contracts not subject to a prompt pay act is to abide by the terms of the contract applicable to the timing of payments. These are typically 30-day payment cycles based on the progress of the work except in smaller residential projects, where payment installments are frequently used.

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?

Maryland has prompt payment acts that set out the requirements for payments on both public and private construction contracts (see Questions 1 and 2).

Maryland courts allow both "pay-if-paid" and "pay-when-paid" clauses in subcontracts. A properly written pay-if-paid clause completely bars recovery by a subcontractor if the owner does not pay the general contractor. A pay-when-paid clause does not completely bar recovery, but instead is viewed as a timing mechanism, postponing the time for payment until payment is made by the owner or for a reasonable period of time. With a pay-when-paid clause, the contractor ultimately must pay the subcontractor within a reasonable amount of time, regardless of payment by the owner.

In Maryland, use of language that unambiguously shifts the risk of nonpayment to the subcontractor is critical to determining whether a clause is pay-if-paid or pay-when-paid. Maryland courts often interpret these clauses equitably in favor of the subcontractor and find no intent

to shift the risk of nonpayment to the subcontractor unless the clause expressly says so. A pay-if-paid clause must provide that payment by the owner to the general contractor is a condition precedent to payment to the subcontractor. Without this term or similar terms, such as "if" or "provided that," the clause is unlikely to be enforced. (See *Young Elec. Contractors, Inc. v. Dustin Constr., Inc.*, 151 A.3d 32 (Md. Ct. Spec. App. 2016) (pay if paid, applying Virginia law and discussing Maryland law); *Atl. States Constr. Co. v. Drummond & Co.*, 246 A.2d 251 (Md. 1968) (pay when paid); *Gilbane Bldg. Co. v. Brisk Waterproofing Co.*, 585 A.2d 248 (Md. Ct. Spec. App. 1991) (pay if paid).)

On private projects, subcontractors can circumvent an effective pay-if-paid clause by asserting a timely mechanic's lien against the owner or a timely bond claim against the contractor's payment bond, if any (Md. Code Ann., Real Prop. § 9-113). Any contractual provision attempting to abrogate these rights is void as a matter of public policy (Md. Code Ann., Real Prop. § 9-113; *Nat'l Glass, Inc. v. J.C. Penney Props., Inc.*, 650 A.2d 246 (Md. 1994)).

Maryland's Little Miller Act provides a similar protection to subcontractors working on public projects by requiring the general contractor to post a payment bond and prohibiting any contractual waiver of a subcontractor's or supplier's right to sue on the bond (Md. Code Ann., State Fin. & Proc. § 17-108(d)(2); see Question 18).

Maryland courts also recognize the prevention doctrine, which waves a condition precedent to pay if the general contractor's own actions or inaction prevent or hinder the occurrence of the condition precedent (*Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717 (4th Cir. 2000); see *Meson v. GATX Tech. Servs. Corp.*, 507 F.3d 803, 806-07 (4th Cir. 2007) (recognizing Maryland cases applying the prevention doctrine); *Angelozzi v. Nelson*, 156 Md. 558, 563-64 (1929); *Black v. Woodrow*, 39 Md. 194, 215-16 (1874)).

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?

Amount of Retainage

Maryland caps retainage on public construction contracts at 5% of the total amount of the contract if the contractor has furnished 100% payment and performance security (Md. Code Ann., State Fin. & Proc. §§ 13-225(b)(1) and 17-110(b)(1)). Contractors and subcontractors may not withhold retainage from lower-tier subcontractors that exceeds the retainage withheld from them (Md. Code Ann., State Fin. & Proc. §§ 13-225(c)(1), (d)(1) and 17-110(c)(1), (d)(1)). These laws do not limit the public body, contractors, or subcontractors from withholding additional amounts:

- From payments otherwise due.
- That they reasonably believe necessary to protect themselves.

(Md. Code Ann., State Fin. & Proc. §§ 13-225 and 17-110.)

Contractors may require the state to place retainage in an escrow account, unless:

- The project is funded with tax-exempt financing.
- Payment to the escrow agent would jeopardize timely recovery of federal funds involved in the project.
- Retainage is withheld for lack of progress or other violations by the contractor.

(Md. Code Ann., State Fin. & Proc. § 15-108(a), (d).)

The contractor can request the escrow agent to invest the retainage and pay earnings on the investment to the contractor (Md. Code Ann., State Fin. & Proc. § 15-108(e)).

Partial Release of Retainage

Maryland law does not address partial releases of retainage.

Final Release of Retainage

Release of retainage is made at the time of final payment after reduction for claims the state has against the contractor (Md. Code Ann., State Fin. & Proc. §§ 15-108(f)(2) and 15-219(h)).

For contracts under the Little Miller Act, the public body must release retainage to the contractor within 120 days after:

- Satisfactory completion of the construction contract.
- The resolution of the dispute, if there is a dispute concerning satisfactory completion.

(Md. Code Ann., State Fin. & Proc. § 17-110(b)(3), (4).)

Penalties

The statute does not specify penalties for the state's failure to comply. However, the [Board of Contract Appeals](#) may award:

- Interest at the judgment rate (Md. Code Ann., State Fin. & Proc. § 15-222).
- If the state's conduct in processing the contractor's claim is in bad faith or without substantial justification, the reasonable costs of filing and pursuing a claim against the state, including attorneys' fees (Md. Code Ann., State Fin. & Proc. § 15-221.1).

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

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

The Maryland Prompt Pay Act (Md. Code Ann., Real Prop. §§ 9-301 to 9-305) regulates the withholding of retainage on privately owned or financed construction projects.

Amount of Retainage

If a contractor has provided 100% security to guarantee the performance of a contract and to guarantee payment for labor and materials, including leased equipment, the retention proceeds:

- Under the terms of a contract may not exceed 5% of the contract price.
- Of any payment due under the terms of a contract from an owner to a contractor may not exceed 5% of the payment.

The retention proceeds of any payment due from:

- A contractor to a subcontractor may not exceed the percentage of retention proceeds held by the owner from the contractor.

- A subcontractor to another subcontractor may not exceed the percentage of retention proceeds held by the contractor from the subcontractor.

(Md. Code Ann., Real Prop. § 9-304(c).)

Partial Release of Retainage

Maryland law does not address partial release of retainage on private construction projects.

Final Release of Retainage

Owners on private projects must pay all retainage within 90 days after the date of substantial completion (Md. Code Ann., Real Prop. § 9-304(e)).

Penalties

Remedies for payment violations, including retainage that exceeds the amount authorized under the Prompt Pay Act, include:

- Equitable relief for prompt payment, including enjoining further violations.
- Interest and reasonable costs to the prevailing party.
- Attorneys' fees if the court determines the losing party acted in bad faith by failing to pay undisputed amounts.

(Md. Code Ann., Real Prop. § 9-303.)

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?

Retainage on privately owned construction projects in Maryland is regulated under the Maryland Prompt Pay Act (Md. Code Ann., Real Prop. §§ 9-301 to 9-305) (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?

Design-build is the most commonly used delivery system for large-scale commercial construction projects in Maryland.

For more information on private project delivery systems, see [Practice Note, Selecting the Right Private Project Delivery System](#).

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?

Design-Build Statutes on Public Projects

Design-build contracts are authorized for all capital projects by any unit of the state government (Md. Code Ann., State Fin. & Proc. § 3-602(g)(1)). The design-builder must have at least one partner, member, officer, joint venture partner, or subcontractor who is a Maryland-licensed architect or professional engineer (COMAR 21.05.11.03).

Maryland also allows design-build on:

- [Washington Suburban Sanitary Commission](#) projects exceeding \$2 million (Md. Public Util. § 20-104(e)).
- Public school projects, if the local authority has received approval from the Interagency Committee on School Construction (Md. Code Ann., Educ. § 4-126(b); COMAR 23.03.04.07(B)(1)).

Construction Management on Public Projects

Construction management at risk is authorized for state government projects. Agencies may not use construction management at risk for projects estimated at less than \$10 million without prior approval from the [Board of Public Works](#). (COMAR 21.05.10.02(A).)

Construction management is also authorized on public school projects, both as owner's agent and at-risk (Md. Code Ann., Educ. § 4-126(b); COMAR 23.03.01.01(8), (9) and 23.03.04.03). The local authority must provide the Interagency Committee with written notice at least two months before release of the solicitation that it intends to use construction management (COMAR 23.03.04.05(B) and 23.03.04.06(C)).

Private Projects

Maryland does not have specific statutes for design-build or construction management on private projects.

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?

If the parties elect to use industry standard forms, [The American Institute of Architects](#) (AIA) forms are the most commonly used forms.

For more information on industry standard forms, 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?

The most heavily negotiated terms in Maryland construction contracts, which vary by the type of contract as well as the parties involved, include:

- Delays.
- Liquidated Damages.
- Indemnity.
- Waiver of consequential damages.

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?

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

- Architects (Md. Code Ann., Bus. Occ. & Prof. § 3-302; see Architects).
- Landscape Architects (Md. Code Ann., Bus. Occ. & Prof. § 9-301(a); see Landscape Architects).
- Engineers (Md. Code Ann., Bus. Occ. & Prof. § 14-301; see Engineers).
- Land Surveyors (Md. Code Ann., Bus. Occ. & Prof. § 15-301(a); see Land Surveyors).
- Construction Services (Md. Code Ann., Bus. Reg. § 17-602(a); see Construction Services).
- Home Improvement Contractor (Md. Code Ann., Bus. Reg. § 8-301; see Home Improvement Contractor).

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

- Crane Operators (Md. Code Ann., Bus. Occ. & Prof. §§ 9.5-101(b) and 9.5-102).
- Electricians (Md. Code Ann., Bus. Occ. & Prof. § 6-302).
- HVAC and Refrigeration Contractors (Md. Code Ann., Bus. Reg. § 9A-301).
- Plumbers and Gas Fitters (Md. Code Ann., Bus. Occ. & Prof. § 12-301).
- Security Systems Technician (Md. Code Ann. Bus. Occ. & Prof. § 18-301).
- Home Builders (Md. Code Ann., Bus. Reg. §§ 4.5-101(g) and 4.5-301).

Architects

A license is required to practice architecture in Maryland, which means providing any service or creative work in regard to an addition to, alteration of, or construction of a building or an integral part of a building that requires education, training, and experience in architecture, including:

- Architectural design.
- Drafting.
- Consultation.
- Design coordination.
- Evaluation.
- Investigation.
- Planning.

(Md. Code Ann., Bus Occ. & Prof. §§ 3-101(l) and 3-302.)

The [Maryland Board of Architects](#) oversees architect:

- Licensing (Md. Code Ann., Bus. Occ. & Prof. §§ 3-101(c) and 3-304).
- Professional regulation (Md. Code Ann., Bus. Occ. & Prof. § 3-208).
- Code of ethics (Md. Code Ann., Bus. Occ. & Prof. § 3-205).
- Investigations and enforcement (Md. Code Ann., Bus. Occ. & Prof. § 3-206).

Landscape Architects

Maryland requires a license to practice landscape architecture, which is any service or creative work in the analysis or design of land and natural resources that requires training and experience in the application of the biological, physical, mathematical, and social sciences (Md. Code Ann., Bus. Occ. & Prof. § 9-101(j)(1)(i)).

The practice of landscape architecture includes:

- Consultation, research, analysis, assessment, selection, and allocation of land and natural resources.
- Development of criteria to govern the planning and design of land development and construction programs, including development of:
 - master plans;
 - site plans;
 - land development plans;
 - grading and drainage plans;
 - irrigation, erosion, and sediment control systems; and
 - pedestrian and vehicular circulation systems.
- Feasibility and site selection studies.
- Environmental studies.
- Cost estimate reports.
- Preparing and designing stormwater drainage systems in conjunction with site plan preparation.

(Md. Code Ann., Bus. Occ. & Prof. § 9-101(j)(2).)

Individuals may practice landscape architecture without a license if they:

- Are under the supervision of a licensed landscape architect.
- Do not assume responsible charge of design or supervision.

(Md. Code Ann., Bus. Occ. & Prof. § 9-301.)

The [Maryland Board of Examiners of Landscape Architects](#) oversees licensing and regulation of landscape architects (Md. Code Ann., Bus. Occ. & Prof. §§ 9-205 and 9-206).

Engineers

In Maryland, a professional engineer's license is required to practice engineering, which is any service or creative work requiring education, training, and experience in the application of:

- Special knowledge of the mathematical, physical, and engineering sciences.
- The principles and methods of engineering analysis and design.

(Md. Code Ann., Bus. Occ. & Prof. § 14-101(j)(1).)

The practice of engineering includes consultation, design, evaluation, and inspection of construction to ensure compliance with plans, investigation, planning, and design coordination when the service concerns:

- A building or other structure.
- A machine.
- Equipment.
- A process.
- Works.
- A system.
- A project.
- A public or private utility.

It does not include the exclusive and sole performance of nontechnical management activities. (Md. Code Ann., Bus. Occ. & Prof. §§ 14-101(j) and 14-301.)

Individuals may practice engineering without a license if they either:

- Work for a corporation engaged in manufacturing, industrial processes, industrial engineering, or maintaining and repairing structures or equipment used in industrial process or manufacturing and the work relates to the corporation's products or systems (Md. Code Ann., Bus. Occ. & Prof. § 14-302).
- Are the employee or subordinate of a licensee and under the licensee's responsible charge (Md. Code Ann., Bus. Occ. & Prof. § 14-303).

The [Maryland Board for Professional Engineers](#) oversees licensing and regulation of engineers (Md. Code Ann., Bus. Occ. & Prof. §§ 14-206, 14-208, and 14-301(a)).

Land Surveyors

In Maryland, a license is required to practice land surveying, which is any service, work, documentation, or practice requiring the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the requirements of relevant law, as applied to:

- Measuring, platting, and locating lines, angles, elevations, natural or artificial features in the air, on the surface of the earth, in underground work, and on the beds of bodies of water for the purpose of determining and reporting:
 - positions;
 - topography;
 - areas; and
 - volumes.
- The platting, establishing, locating, or setting boundaries of real property, easements, or rights of way.
- Platting, layout, and preparation of surveys, plats, plans, and drawings, including, but not limited to:
 - site plans;
 - subdivision plans; and
 - right-of-way and easement plats.
- Using measurement devices or systems for evaluation or location of boundaries of real property, easements, or rights-of-way.
- Designing and preparing plans for site development or subdivision for:
 - road and street grade projects;
 - sediment and erosion control measures; and
 - certain types of storm drainage and stormwater management systems.
- Laying out proposed construction or platting as-constructed surveys.

(Md. Code Ann., Bus. Occ. & Prof. § 15-101(k)(1).)

Land surveying does not include the design, preparation, or specifications for:

- Community water or wastewater treatment collection or distribution systems.
- Community pumping or lift stations.
- Geotechnical or structural design components of sediment control or stormwater management ponds or basins.

(Md. Code Ann., Bus. Occ. & Prof. § 15-101(k)(2).)

The practice of property line surveying is the same as land surveying, except for the preparation and design of plans for:

- Road and street grades.
- Sediment and erosion control measures.
- Nonpressurized, closed storm drainage and stormwater management systems.
- Open-conduit storm drainage and stormwater management systems.

(Md. Code Ann., Bus. Occ. & Prof. § 15-101(k)(vi), (l).)

Maryland no longer issues property line surveying licenses, but renews licenses issued before July 1, 1990 (Md. Code Ann., Bus. Occ. & Prof. § 15-302).

Individuals may practice land surveying without a license if they are under the direct control and personal direction of a licensee (Md. Code Ann., Bus. Occ. & Prof. § 15-303).

The [Maryland Board for Professional Land Surveyors](#) oversees the licensing and regulation of land surveyors (Md. Code Ann., Bus. Occ. & Prof. §§ 15-208 and 15-301).

Construction Services

In Maryland, a license is required to operate a construction business, which means to agree to:

- Pave or curb a sidewalk, street, or other property.
- Excavate material.
- Do work on or in a building or other structure that requires the use of a building material, including:
 - paint;
 - stone;
 - brick;
 - mortar;
 - wood;
 - cement;
 - structural iron;
 - structural steel;
 - sheet or galvanized iron;
 - metallic piping;
 - tin;
 - lead;

- electric wiring; or
- any other metal.

(Md. Code Ann., Bus. Reg. §§ 17-601(c) and 17-602(a).)

An individual licensed as a home improvement contractor does not need to have a construction business license (Md. Code Ann., Bus. Reg. §§ 8-317 and 17-602(a); see Home Improvement Contractors).

A person or entity incorporated or with a principal office in another state must obtain:

- A nonresident construction license whenever the person or entity does construction business in Maryland (Md. Code Ann., Bus. Reg. § 17-601(d)).
- An additional nonresident construction license for each construction business contract if the gross amount exceeds \$1,000 (Md. Code Ann., Bus. Reg. § 17-602(b)(2)).

However, a nonresident construction license is not required if the contractor's state of incorporation or principal office does not require a similar license for Maryland contractors doing construction business in that state (Md. Code Ann., Bus. Reg. § 17-602(b)(3)).

Both resident and nonresident construction licenses are issued by the clerk of the circuit court for the appropriate county (Md. Code Ann., Bus. Reg. § 17-603). The [Comptroller of Maryland](#) has authority to adopt regulations, appoint inspectors, and enforce construction licensing provisions (Md. Code Ann., Bus. Reg. § 17-202).

Home Improvement Contractors

In Maryland, a license is required to perform or offer or agree to perform a home improvement for:

- A homeowner.
- A tenant.
- Another person contracting for home improvement.

(Md. Code Ann., Bus. Reg. §§ 8-301(a) and 8-101(c), (k).)

A home improvement is any addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place, including:

- A structure adjacent to a residence or dwelling.
- An improvement to land adjacent to a residence or dwelling.

(Md. Code Ann., Bus. Reg. § 8-101(g).)

Covered improvements include:

- Construction of:
 - a driveway;
 - a fence;
 - a garage;
 - landscaping;
 - a deck;
 - a pier;
 - a porch; or
 - a swimming pool.
- Installation or replacement of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines.
- Installation of an awning, fire alarm, or storm window in a covered building or structure.
- Work done on individual condominium units.

(Md. Code Ann. Bus. Reg. § 8-101(g)(2).)

A home improvement construction license is not required for:

- Construction of a new home.
- Work done on apartment buildings that contain four or more single-family units.
- Work done on condominium common areas.
(Md. Code Ann., Bus. Reg. § 8-101(g)(3).)
- Maryland-licensed professionals acting within the scope of their respective profession, including:
 - architects;
 - electricians;
 - plumbers;
 - heating, ventilation, air-conditioning, or refrigeration contractors; and
 - security systems technicians.

(Md. Code Ann., Bus. Reg. § 8-301(c).)

The [Maryland Home Improvement Commission](#) oversees licensing and regulation of home improvement contractors (Md. Code Ann., Bus. Reg. §§ 8-305, 8-306, and 8-207).

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 Maryland, to obtain a license to practice architecture, an individual must:

- Hold a degree in architecture from an accredited school and have practical work experience or additional academic training in architecture (COMAR 09.21.01.04).
- Complete the training requirements of the Architectural Experience Program (COMAR 09.21.01.05).
- Be of good character and reputation.
- Pass the Architect Registration Examination (COMAR 09.21.01.06).
- Submit a license application and pay the:
 - original license application fee, currently \$35; and
 - license fee, currently \$76.

(Md. Code Ann., Bus. Occ. & Prof. § 3-304; COMAR 09.21.01.07; [Maryland Department of Labor: Architect Forms and Fees.](#))

(Md. Code Ann., Bus. Occ. & Prof. § 3-303; COMAR 09.21.01.03.)

The [Maryland Board of Architects](#) may waive the degree requirement based on other practical work experience and training (Md. Code Ann., Bus. Occ. & Prof. § 3-303(c)(2); COMAR 09.21.01.04(B)).

Maryland may issue a reciprocal license to architects of good character who:

- Pay the:
 - reciprocal license application fee, currently \$50; and
 - license fee, currently \$76.

([Maryland Department of Labor: Architect Forms and Fees.](#))

- Are licensed in another jurisdiction and:
 - met requirements that were at least equivalent to those required in Maryland for licensure; or
 - meet the current requirements in Maryland for licensure.

(Md. Code Ann., Bus. Occ. & Prof. § 3-306(b).)

Architects' licenses are generally issued for a two-year term and expire on the first June 30th that comes:

- After the effective date of the license.
- In an even-numbered year.

(Md. Code Ann., Bus. Occ. & Prof. § 3-309(a).)

Continuing Education Requirements

As a condition of license renewal, an architect licensee must complete at least 24 hours of professional development activities, 12 each year, over a two-year period. A licensee may not carry forward professional development credits. (Md. Code Ann., Bus. Occ. & Prof. §§ 3-309(c)(4) and 3-309.1; COMAR 09.21.05.03.)

Landscape Architects

Licensing Requirements

In Maryland, to obtain a license to practice landscape architecture, an individual must:

- Be at least 18 years old.
- Satisfy a combination of education and experience requirements (Md. Code Ann., Bus. Occ. & Prof. § 9-303).
- Pass the Landscape Architect Registration Examination (Md. Code Ann., Bus. Occ. & Prof. § 9-305).
- Submit a license application and pay the:
 - original license application fee, currently \$35; and
 - license fee, currently \$76.

(Md. Code Ann., Bus. Occ. & Prof. § 9-304; [Maryland Department of Labor: Examiners of Landscape Architects Fees.](#))

(Md. Code Ann., Bus. Occ. & Prof. § 9-302.)

The [Maryland Board of Examiners of Landscape Architects](#) may issue a reciprocal landscape architecture license to an applicant who:

- Pays the:
 - reciprocal license application fee, currently \$50; and
 - license fee, currently \$76.

([Maryland Department of Labor: Examiners of Landscape Architects Fees.](#))

- Provides evidence that, at the time the applicant was licensed in another state, the applicant was required to pass an examination and meet qualifications that were substantially equivalent to Maryland's requirements.

Reciprocal licenses are only available to applicants licensed in a state that grants similar exam waivers to Maryland-licensed landscape architects. (Md. Code Ann., Bus. Occ. & Prof. § 9-306.)

Landscape architect licenses are issued for two-year terms and expire on the first June 30th that comes:

- After the effective date of the license.
- In an even-numbered year.

(Md. Code Ann., Bus. Occ. & Prof. § 9-309(a).)

Continuing Education Requirements

As a condition of license renewal, a landscape architect licensee must complete at least 24 hours of professional development activities in a two-year renewal cycle (Md. Code Ann., Bus. Occ. & Prof. § 9-309(f); COMAR 09.28.04.03).

Engineers

Licensing Requirements

In Maryland, to obtain a license to practice professional engineering, an individual must:

- Be of good character and reputation.
- Satisfy a combination of education and experience requirements (Md. Code Ann., Bus. Occ. & Prof. § 14-305).
- Pass the:
 - Fundamentals of Engineering Exam; and
 - Principles and Practice of Engineering Exam.

(Md. Code Ann., Bus. Occ. & Prof. § 14-307; [Maryland Department of Labor: Professional Engineers Exams.](#))

- Submit a license application and pay the:
 - license fee, currently \$76; and
 - exam fee, currently \$50.

(Md. Code Ann., Bus. Occ. & Prof. § 14-306; [Maryland Department of Labor: Professional Engineers Forms and Fees.](#))

(Md. Code Ann., Bus. Occ. & Prof. § 14-304.)

The [Maryland Board for Professional Engineers](#) may issue a reciprocal professional engineering license to engineers of good character who:

- Pay the:

- reciprocal license application fee, currently \$50; and
- license fee, currently \$76.

([Maryland Department of Labor: Professional Engineers Forms and Fees.](#))

- Provide evidence that:
 - at the time the applicant was licensed in another jurisdiction, the applicant met requirements that were equivalent to those then required in Maryland; or
 - the applicant meets the current requirements under Maryland law.

(Md. Code Ann., Bus. Occ. & Prof. § 14-311(b).)

Professional engineer licenses are issued for two-year terms and expire on the first June 30th that comes:

- After the effective date of the license.
- In an even-numbered year.

(Md. Code Ann., Bus. Occ. & Prof. § 14-314(a).)

Continuing Education Requirements

As a condition of license renewal, a professional engineer licensee must complete 16 professional development hours (PDHs) during each two-year renewal term (Md. Code Ann., Bus. Occ. & Prof. § 14-314(f); COMAR 09.23.06.03 and 09.23.06.09). A minimum of one PDH must be earned from a qualifying program with content areas related to either:

- The awareness of ethical concerns and conflicts related to the practice of engineering.
- An enhanced familiarity with the code of conduct for professional engineers.
- An understanding of standards of practice or are related to the practice of engineering.
- Laws and regulations applicable to the practice of engineering in Maryland.

(COMAR 09.23.06.03(B) and 09.23.06.04.)

Licensees may carry forward up to eight PDHs in excess of the required 16 toward the next licensing term (COMAR 09.23.06.03(C)).

Land Surveyors

Licensing Requirements

In Maryland, to obtain a license to practice land surveying, an individual must:

- Be of good character and reputation.
 - Satisfy a combination of education and experience requirements (Md. Code Ann., Bus. Occ. & Prof. § 15-305).
 - Pass the exams for:
 - Fundamentals of Surveying;
 - Principles and Practice of Surveying;
 - Maryland State Law and Ethics; and
 - Maryland Road Grade and Storm Drain/Minor Engineering.
- (Md. Code Ann., Bus. Occ. & Prof. § 15-307; [Maryland Department of Labor: Exams - Professional Land Surveyors.](#))
- Pay the license fee, currently \$76.50 (COMAR 09.13.05.03; [Maryland Department of Labor: Forms and Fees - Professional Land Surveyors.](#))

(Md. Code Ann., Bus. Occ. & Prof. § 15-304.)

The [Maryland Board for Professional Land Surveyors](#) may issue a reciprocal land surveyor license to a land surveyor of good character who:

- Pays the license fee, currently \$76.50 (COMAR 09.13.05.03; [Maryland Department of Labor: Forms and Fees - Professional Land Surveyors.](#))
- Provides evidence that, at the time the applicant was licensed by another state, met requirements that were equivalent to those then required by the laws of Maryland.

(Md. Code Ann., Bus. Occ. & Prof. § 15-311(b).)

An applicant for reciprocal licensure may be required to pass:

- The Maryland-specific part of an exam.
- Any part of a nationally administered exam that the applicant previously failed.

(Md. Code Ann., Bus. Occ. & Prof. § 15-311(c).)

Land surveyor licenses are issued for two-year terms and expire on the first June 30th that comes:

- After the effective date of the license.
- In an odd-numbered year.

(Md. Code Ann., Bus. Occ. & Prof. § 15-314(a).)

Continuing Education Requirements

As a condition of license renewal, a land surveyor licensee must complete 24 continuing professional competency (CPC) units per two-year renewal cycle (COMAR 09.13.08.03(A)). A minimum of four CPC units must be earned from a qualifying activity with content areas related to either:

- Minimum standards of practice.
- Legal cases, commentaries, and other related materials applying the law of land boundaries in Maryland.
- Awareness of ethical concerns and conflicts.
- An enhanced familiarity with the codes of conduct.
- An understanding of standards of practice or care.
- Similar ethical and responsibility courses.

(COMAR 09.13.08.03(B) and 09.13.08.04.)

A licensee may not carry forward CPC units (COMAR 09.13.08.03(C)).

Construction Services

Licensing Requirements

In Maryland, to obtain a construction license, an individual must:

- Submit an application to the clerk, in duplicate, on the form provided by the Circuit Court clerk.
- Submit to the clerk a receipt or certificate for taxes under Md. Code Ann., Bus. Reg. § 17-302(c).
- Pay the license fee, which varies by location (Md. Code Ann., Bus. Reg. § 17-603(a)).

Applicants in Calvert County must also submit a certification that the location of the business is zoned appropriately. (Md. Code Ann., Bus. Reg. § 17-302.)

A construction license is effective:

- Beginning on:
 - May 1; or
 - the first of the month when the applicant begins business under the license.
- Until the first April 30 after its effective date.

(Md. Code Ann., Bus. Reg. § 17-305.)

Continuing Education Requirements

There are no continuing education requirements for a construction license in Maryland.

Home Improvement Contractors

Licensing Requirements

In Maryland, to obtain a home improvement contractor license, an individual must:

- Pass an examination (Md. Code Ann., Bus. Reg. § 8-302; COMAR 09.08.01.06).
- Have at least two years' approved trade experience or comparable educational training (Md. Code Ann., Bus. Reg. § 8-302.2; COMAR 09.08.01.23).
- Maintain at least \$50,000 of general liability insurance (Md. Code Ann., Bus. Reg. § 8-302.1).
- Submit a credit report or pay a fee for the [Maryland Home Improvement Commission](#) to obtain a credit report (Md. Code Ann., Bus. Reg. § 8-303(d)).
- Pay a \$100 fee into the Home Improvement Guaranty Fund (Md. Code Ann., Bus. Reg. § 8-404(a)).

An applicant may also be required to provide, information about the applicant's character, experience, and financial stability. (Md. Code Ann., Bus. Reg. § 8-303.)

A corporation or partnership employing a licensed contractor to act as a home improvement contractor may be subject to additional requirements, including filing a bond or other evidence of financial responsibility (COMAR 09.08.01.04(C)(2)).

Home improvement licenses are issued for two-year terms and expire on:

- The date set by the secretary of labor, if the license terms are staggered.
- The first June 30 that comes after the effective date of the license in an odd-numbered year, if the license terms are not staggered.

(Md. Code Ann., Bus. Reg. § 8-308.)

Continuing Education Requirements

There are no continuing education requirements for a home improvement license in Maryland.

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 Maryland Department of Labor provides a [license search](#) on its [website](#).

Consequences

Architects

Practicing architecture without a license is a misdemeanor, punishable by:

- A fine of up to \$3,000.
- Imprisonment up to one year.
- Both a fine and imprisonment.

The [Maryland Board of Architects](#) may also impose a penalty of up to \$5,000 for each violation. (Md. Code Ann., Bus. Occ. & Prof. § 3-605.)

Landscape Architects

Practicing landscape architecture without a license is a misdemeanor, punishable by:

- A fine of up to \$3,000.
- Imprisonment of up to one year.
- Both a fine and imprisonment.

The [Maryland Board of Examiners of Landscape Architects](#) may also impose a penalty of up to \$5,000 for each violation. (Md. Code Ann., Bus. Occ. & Prof. § 9-605.)

Engineers

Practicing professional engineering without a license is a misdemeanor, punishable by:

- A fine of up to \$500.
- Imprisonment up to six months.
- Both a fine and imprisonment.

The [Maryland Board for Professional Engineers](#) may also impose a penalty of up to \$5,000 for each violation. (Md. Code Ann., Bus. Occ. & Prof. § 14-508.)

Land Surveyors

Practicing land surveying without a license is a misdemeanor, punishable by:

- A fine of up to \$500.
- Imprisonment up to six months.
- Both a fine and imprisonment.

The [Maryland Board for Professional Land Surveyors](#) may also impose a penalty of up to \$5,000 for each violation. (Md. Code Ann., Bus. Occ. & Prof. § 15-610.)

Construction Services

Providing construction services without a license is a misdemeanor, punishable by:

- A fine of up to \$300.
- Imprisonment for up to 30 days.

Each agent or officer of a corporation convicted of violating the law who actually engaged in the unlicensed business is individually subject to the penalties. (Md. Code Ann., Bus. Reg. § 17-2106.)

Home Improvement Contractors

Providing or agreeing to perform a covered home improvement without a license is a misdemeanor, punishable by:

- A fine of up to \$1,000.
- Imprisonment for up to six months.
- Both a fine and imprisonment.

The [Maryland Home Improvement Commission](#) may assess a civil penalty of up to \$5,000 for each violation. (Md. Code Ann., Bus. Reg. §§ 8-620 and 8-623.)

An unlicensed home improvement contractor cannot enforce the contract, including for payment or filing of a mechanic's lien (*Balt. St. Builders v. Stewart*, 975 A.2d 271, 282-83 (Md. Ct. Spec. App. 2009)). A home improvement contractor also may not pay or otherwise compensate another person, such as a subcontractor, for performing a home improvement unless the person to be paid is licensed appropriately (Md. Code Ann., Bus. Reg. §§ 8-315(a) and 8-612).

Warranties

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

Maryland recognizes the following implied warranties:

- The construction complies with the applicable building code (*Hooton v. Kenneth B. Mumaw Plumbing & Heating Co., Inc.*, 318 A.2d 514, 517 (Md. 1974)).
- Ordinary skill and care must be used in constructing a house or performing other work (*Worthington Constr. Corp. v. Moore*, 291 A.2d 466, 467 (Md. 1972)).

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

Construction contracts in Maryland typically include express warranties similar to those found in [the AIA A201-2017 General Conditions of the Contract for Construction](#), including that:

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

One-year warranties are customarily included in construction contracts, but vary depending on negotiated terms.

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

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

Building Structures and Systems

New Private Dwelling

Maryland law provides certain express and implied warranties applicable to every sale of a new private dwelling unit and any fixture or structure which is made a part of it at the time of construction, including that the improvement is:

- Free from faulty materials.
- Constructed according to sound engineering standards.
- Constructed in a workmanlike manner.
- Fit for habitation.
- Reasonably fit for a particular purpose if the purchaser:
 - either expressly or by implication makes known to the vendor that particular purpose; and
 - it appears that the purchaser relies on the vendor's skill and judgment.

These warranties do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed. (Md. Code Ann., Real Prop. §§ 10-201(b) and 10-203.)

Additional implied warranties related to condominiums, which run from the developer to the unit owner, provide that:

- The developer is responsible for correcting any defects in materials or workmanship in the construction of walls, ceilings, floors, and heating and air conditioning systems in the unit.
- The heating and any air conditioning systems have been installed in accordance with acceptable industry standards.

(Md. Code Ann., Real Prop. § 11-131(c)(1), (2); *Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, 729 A.2d 981 (Md. 1999).)

- The heating system will maintain a 70-degree Fahrenheit temperature and the air conditioning system a 78-degree Fahrenheit temperature, with the outdoor temperature and winds at certain design conditions (Md. Code Ann., Real Prop. § 11-131(c)(2)(i), (ii)).
- The common elements are within acceptable industry standards in effect when the building was constructed, with the warranty applicable to the:
 - roof;
 - foundation;
 - external and supporting walls;
 - mechanical, electrical, and plumbing systems; and
 - other structural elements.

(Md. Code Ann., Real Prop. § 11-131(d)(1).)

New Home Warranty Security Plan

Maryland law also requires new home builders to disclose to the buyer whether the builder participates in a new home warranty security plan (Md. Code Ann., Real Prop. § 10-602(a)). A new home:

- Includes every newly constructed private dwelling unit in Maryland and the fixtures and structures that are made a part of the unit at the time of construction (Md. Code Ann., Real Prop. § 10-601(i)(1)).
- Does not include:
 - outbuildings;
 - driveways;

- walkways;
- patios and decks;
- boundary walls;
- retaining walls not necessary for the stability of the home;
- landscaping;
- fences;
- off-site improvements;
- appurtenant recreational facilities; and
- other similar items.

(Md. Code Ann., Real Prop. § 10-601(i)(2).)

The new home warranty security plan must:

- Provide for payment of claims against the builder.
- Be operated by an entity authorized to do business in Maryland.
- Provide a bond or irrevocable letter of credit of at least \$100,000 for the benefit of owners.
- Meet other requirements.

(Md. Code Ann., Real Prop. § 10-606(a).)

If a home is not covered by a new home warranty security plan, the builder must make a statutorily prescribed disclosure to the owner at the time of the purchase or construction contract. Any contract without the required disclosure is voidable by the owner. (Md. Code Ann., Real Prop. § 10-603(a).) The owner:

- Must make an affirmative waiver of coverage at the time of the purchase or construction contract.
- Has the option to rescind the contract in writing within five working days from the date of the owner's acknowledgment that the builder does not participate in the plan.

(Md. Code Ann., Real Prop. § 10-603(b).)

Time Period

New Private Dwelling

If a dwelling is completed at the time of the delivery of the deed to the original purchaser, express and implied warranties expire one year after the earlier of either:

- Delivery of the deed to the original purchaser.
- The original purchaser taking possession.

(Md. Code Ann., Real Prop. § 10-204(b)(1).)

Warranties related to structural defects expire two years after the earlier of either the date of:

- Completion.
- Delivery.
- Taking possession.

(Md. Code Ann., Real Prop. § 10-204(b)(3).)

An express warranty may also continue to run until it otherwise expires despite a later sale by the original purchaser (Md. Code Ann., Real Prop. § 10-204(c)).

Purchasers must commence warranty actions within two years of the earlier of either:

- The date when the defect was discovered or should have been discovered.
- The normal expiration of the warranty.

(Md. Code Ann., Real Prop. § 10-204(d).)

Condominium

The implied warranties from a developer to a unit owner regarding the individual unit and its heating and air conditioning systems run for one year from the transfer of title to the unit owner (Md. Code Ann., Real Prop. § 11-131(c)). Warranties on common elements last for three years (Md. Code Ann., Real Prop. § 11-131(d)(3)).

The warranty commences on:

- The first transfer of title to a unit owner.
- If certain common elements are not completed at the time the first transfer of title to a unit owner occurs, the later of either:
 - the completion of that element; or
 - its availability for use by all unit owners.

(Md. Code Ann., Real Prop. § 11-131(d)(3)(i), (ii).)

The owner must give notice of a defect within the warranty period, and suit must be brought within one year of the warranty period (Md. Code Ann., Real Prop. § 11-131(e)).

New Home Warranty Security Plan

Builders participating in a new home warranty security plan must warrant, at a minimum, that the home is free from any:

- Defects in materials and workmanship for one year.
- Defects in electrical, plumbing, heating, cooling, and ventilation systems for two years.
- Structural defects for five years.

(Md. Code Ann., Real Prop. § 10-604(a).)

The warranty begins running on the earliest of the first day the owner either:

- Occupies the new home.
- Settles on the new home.
- Makes the final contract payment on the new home.
- Obtains an occupancy permit.

(Md. Code Ann., Real Prop. § 10-601(o).)

Restrictions

Words in a contract of sale, deed, or merger of the contract of sale into the deed, cannot exclude or modify any implied warranty (Md. Code Ann., Real Prop. § 10-203(d)). However, an implied warranty may be excluded or modified, wholly or partially, by a written instrument if the contract of sale pertains to a completed improvement and the instrument sets out in detail:

- The warranty to be excluded or modified.
- The consent of the purchaser to the exclusion or modification.
- The terms of the new agreement regarding the modification.

(Md. Code Ann., Real Prop. § 10-203(d).)

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?

Maryland has a Little Miller Act (Md. Code Ann., State Fin. & Proc. §§ 17-101 to 17-111).

Minimum Requirements

The Little Miller Act governs public construction contracts exceeding \$100,000 with the following entities:

- The State of Maryland.
- A county.
- A municipal corporation.

- Another political subdivision.
- A public instrumentality.
- A governmental unit authorized to award a contract.

(Md. Code Ann., State Fin. & Proc. §§ 17-101(d) and 17-103(a)(1).)

Public bodies other than the state or a unit of the state government can also require security for construction contracts exceeding \$50,000 but not exceeding \$100,000 (Md. Code Ann., State Fin. & Proc. § 17-103(b)).

Maryland's Little Miller Act does not restrict a public body from requiring additional performance security (Md. Code Ann., State Fin. & Proc. § 17-102(a)).

Security

Performance and payment security must be posted in an amount that the public body considers adequate for its protection but not less than 50% of the total amount payable under the contract (Md. Code Ann., State Fin. & Proc. § 17-103(a)(2)). The security must be either:

- A bond executed by a surety company authorized to do business in Maryland.
- Cash in an amount equivalent to a bond.
- Other security satisfactory to the public body.

(Md. Code Ann., State Fin. & Proc. § 17-104(a).)

Construction contracts with public bodies other than the State of Maryland or a unit of state government that exceed \$50,000 but do not exceed \$100,000 may also require security of up to 50% of the contract amount (Md. Code Ann., State Fin. & Proc. § 17-103(b)).

Performance security may include granting a mortgage or deed of trust on real property in Maryland if:

- The public body approves.
- The face amount does not exceed 75% of the contractor's equity interest in the property.
- It is recorded in the land records of the county where the real property is located.

(Md. Code Ann., State Fin. & Proc. § 17-104(b).)

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 supplier must give a contractor written notice within 90 days after it last supplied the labor or materials for which it makes the claim (Md. Code Ann., State Fin. & Proc. § 17-108(b)(1)). This date runs from either the date:

- The last work necessary to complete the contract was performed.
- The last materials necessary to complete the contract were furnished.

(*Stauffer Constr. Co. v. Tate Eng'r, Inc.*, 407 A.2d 1191, 1194 (Md. Ct. Spec. App. 1979).)

The notice must:

- State with substantial accuracy the amount claimed and the person the supplier furnished the labor or material to.
- Be sent by certified mail to the contractor at:
 - the contractor's residence; or
 - a place where the contractor has an office or does business.

(Md. Code Ann., State Fin. & Proc. § 17-108(b)(2).)

Statute of Limitations

An action on a payment bond must be filed within one year after the public body finally accepts the work performed under the contract (Md. Code Ann., State Fin. & Proc. § 17-109(b)). Determining final acceptance is a mixed question of law and fact (*Gen'l Fed. Constr., Inc. v. D.R. Thomas, Inc.*, 451 A.2d 1250, 1252 (Md. Ct. Spec. App. 1982)).

The 12-year statute of limitations in Md. Code Ann., Cts. & Jud. Proc. § 5-102(a)(2) applies to actions on performance bonds (*Anne Arundel Cty. v. Fid. & Deposit Co. of Md.*, 648 A.2d 193, 194 n.1, 198 (Md. 1994)).

Additional Requirements

An obligee under a bond or trustee for other security is not liable for any costs related to an action on a payment bond required by Maryland's Little Miller Act (Md. Code Ann., State Fin. & Proc. § 17-109(c)). Venue for an action on a payment bond is in the county where either:

- The contract was executed and performed.
- The contractor has its principal place of business.

(Md. Code Ann., State Fin. & Proc. § 17-109(b).)

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

Private owners in Maryland can require contractors to provide payment and performance bonds. Requirements vary from project to project. Other types of security are not commonly required by private owners in Maryland.

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 limitations apply to claims in Maryland:

- **Breach of contract.** The statute of limitations is three years from accrual (Md. Code Ann., Cts. & Jud. Proc. § 5-101; *DeGroot v. Lancaster Silo Co., Inc.*, 527 A.2d 1316, 1324 (Md. Ct. Spec. App. 1987)).

- **Negligence resulting in bodily injury or property damage.** Tort actions must be commenced within three years from accrual (Md. Code Ann., Cts. & Jud. Proc. § 5-101; *Hilliard & Bartko Joint Venture v. Fedco Sys., Inc.*, 522 A.2d 961, 970 (Md. 1987)).
- **Professional malpractice by a design professional.** Professional malpractice actions must be commenced within three years of the moment of discovery (Md. Code Ann., Cts. & Jud. Proc. § 5-101; *Sisters of Mercy v. Gaudreau, Inc.*, 423 A.2d 585, 588 (Md. Ct. Spec. App. 1980)).
- **Latent defects in design or construction.** An action for latent defects in design or construction must be commenced within three years of the date of discovery (Md. Code Ann., Cts. & Jud. Proc. § 5-101; *Poffenberger v. Risser*, 431 A.2d 677, 679 (Md. 1981)).

Maryland applies the discovery rule under which a cause of action does not accrue until the claimant in fact knew or reasonably should have known of the wrong (*Poffenberger*, 431 A.2d at 680). A plaintiff "should have known" when the plaintiff had actual knowledge of facts sufficient to put an ordinarily prudent person on inquiry (*DeGroot*, 527 A.2d at 1324).

Constructive knowledge does not constitute the requisite knowledge for notice purposes (*Poffenberger*, 431 A.2d at 681). Whether a plaintiff is on notice and what is a reasonably diligent investigation under the circumstances are questions of fact (*O'Hara v. Kovens*, 503 A.2d 1313, 1320, 1323 (Md. 1986)).

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

Maryland requires a claimant to file a certificate of a qualified expert with the court:

- When making a claim against a licensed professional, including an architect, landscape architect, professional engineer, or land surveyor.

- Within 90 days after the claim is filed.
- Containing a statement from the qualified expert that the licensed professional failed to meet an applicable standard of professional care.

(Md. Code Ann., Cts. & Jud. Proc. § 3-2C-02(a), (c)).

A qualified expert:

- Means a Maryland licensed professional or one comparably licensed under the laws of another jurisdiction, knowledgeable in the accepted standard of care in the same discipline as the licensed professional the claim is filed against (Md. Code Ann., Cts. & Jud. Proc. § 3-2C-01(d)(1)).
- Does not include:
 - a party to the claim;
 - an employee or partner of a party; or
 - a person having a financial interest in the outcome of the claim.

(Md. Code Ann., Cts. & Jud. Proc. § 3-2C-01(d)(2).)

Proof of Licensure

Other than the certificate of a qualified expert, Maryland does not require a licensed party to attach proof of licensure to a suit.

Special Requirements

Maryland does not have any special requirements to allege causes of action 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

Maryland's statute of repose bars claims occurring more than ten years after the date an entire improvement becomes available for its intended use:

- Against architects, professional engineers, or contractors.

- For damages resulting:
 - from the defective and unsafe condition of an improvement to real property; and
 - for wrongful death, personal injury, or injury to real or personal property.

(Md. Code Ann., Cts. & Jud. Proc. § 5-108(b); *Georgetown College v. Madden*, 505 F. Supp. 557, 575 (D. Md. 1980).)

The ten-year statute of repose also applies to subcontractors (*Hartford Ins. Co. v. Am. Automatic Sprinkler Sys.*, 23 F. Supp. 2d 623, 629 (D. Md. 1998), *aff'd*, 201 F.3d 538, 541-43 (4th Cir. 2000)). Claims against others for the same damages are subject to a 20-year repose period (Md. Code Ann., Cts. & Jud. Proc. § 5-108(a)).

The statute of repose specifically acknowledges application of the discovery rule to the statute of limitations, by allowing any cause of action that accrues during the repose period to be commenced within three years of accrual. (Md. Code Ann., Cts. & Jud. Proc. § 5-108(c); *Georgetown College v. Madden*, 505 F. Supp. 557, 575 (D. Md. 1980).)

Types of Claims Allowed

The repose period applies to claims for damages incurred when wrongful death, personal injury, or injury to real or personal property results from the defective and unsafe condition of an improvement to real property. Claims for indemnity or contribution are barred. (Md. Code Ann., Cts. & Jud. Proc. § 5-108(a), (b).)

The statute of repose does not apply to:

- Defendants in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
- Asbestos-related injuries.
(Md. Code Ann., Cts. & Jud. Proc. § 5-108(d).)
- Construction-related damages not specifically enumerated (see *College of Notre Dame of Md., Inc. v. Morabito Consultants, Inc.*, 752 A.2d 265, 272 (Md. Ct. Spec. App. 2000)).

Notice or Conditions Precedent

Maryland law imposes no unique notice requirements or conditions precedent regarding the statute of repose when filing a lawsuit.

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 clauses are enforceable in Maryland if they are not a penalty on the breaching party (*Smelkinson SYSCO v. Harrell*, 875 A.2d 188, 194 (Md. Ct. Spec. App. 2005)). A liquidated damages clause must contain:

- Clear and unambiguous language providing for “a certain sum.”
- Stipulated damages that represent reasonable compensation for the damages anticipated from the breach, measured prospectively at the time of the contract rather than in hindsight at the time of the breach.
- A mandatory, binding agreement before the fact, which may not be altered to correspond to actual damages determined after the fact.

(*Richard F. Kline, Inc. v. Shook Excavating & Hauling Inc.*, 885 A.2d 381, 392 (Md. Ct. Spec. App. 2005).)

Limitations of Liability

Maryland courts enforce contractual limitations of liability, including for negligence, unless the limitations are against public policy (see *Baker v. Roy H. Hass Assocs.*, 629 A.2d 1317, 1320 (Md. Ct. Spec. App. 1992); *Wolf v. Ford*, 644 A.2d 522, 526-27 (Md. 1994)). However, Maryland prohibits agreements in, related to, or collateral to a contract:

- Relating to:

- architectural, engineering, inspecting, or surveying services; or
- construction, alteration, repair, or maintenance of a building.
- Purporting to indemnify the promisee against liability for damages arising out of bodily injury to any person or damage to property caused by or resulting from the sole negligence of:
 - the promisee or indemnitee; or
 - the agents or employees of the promisee or indemnitee.

This provision does not affect the validity of any insurance contract. (Md. Code Ann., Cts. & Jud. Proc. § 5-401(a)(1), (3).)

No-Damages-for-Delay Clause

No-damages-for-delay clauses are enforceable in Maryland. Maryland courts have held provisions limiting liability for delay:

- Inapplicable where there is:
 - intentional wrongdoing or gross negligence; or
 - fraud or misrepresentation.

(See *State Highway Admin. v. Greiner Eng'g Scis., Inc.*, 577 A.2d 363, 372 (Md. Ct. Spec. App. 1990).)

- Enforceable in public construction contracts where delay damages were not caused by a contractor's reliance on the public owner's faulty plan specifications, but from delays not contemplated by the parties (*Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 130 A.3d 1024, 1042 n.14 (Md. Ct. Spec. App. 2016)).

Choice of Law

Maryland enforces choice-of-law provisions in contracts (*Gen. Ins. Co. of Am. v. Interstate Serv. Co.*, 701 A.2d 1213, 1219 (Md. Ct. Spec. App. 1997); *Nat'l Glass*, 650 A.2d at 248; Restatement (Second) Conflict of Laws § 187).

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.