

Construction Laws and Customs: VIRGINIA

by John Marshall Cook, Fox Rothschild LLP, with Practical Law Real Estate

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A Q&A guide to construction projects in Virginia. 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 including 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 Virginia Public Procurement Act (VPPA), Va. Code Ann. §§ 2.2-4347 to 2.2-4356, contains provisions for payments on publicly owned or financed projects.

Beginning January 1, 2023, Virginia law will make pay-if-paid and pay-when-paid clauses in **any** public or private contract unenforceable (Va. Code Ann. § 11-4.6(B), (C)).

Payments by Owners

Public owners in the Commonwealth of Virginia have prompt payment obligations. Under Va. Code Ann.

§ 2.2-4350(A), Commonwealth agencies doing business with private entities must promptly pay for completely delivered goods or services by the required payment date. While there is no guidance on what qualifies as prompt payment for Virginia agencies, the law is more specific when it relates to municipalities.

Under Va. Code Ann. § 2.2-4352, municipalities in Virginia must make payment by either:

- The date payment is due under the contract.
- If the contract is silent on the date, the later of:
 - within 45 days of receipt of the goods or services; or
 - receipt of the invoice.

(Va. Code Ann. § 2.2-4352.)

Payment by Prime Contractors

Virginia law requires public bodies to insert a contract provision in all prime contracts requiring the prime contractor:

- To pay its subcontractors within seven days after the contractor's receipt of payment amounts from the Virginia agency or local government unless the contractor notifies the public body of a reason for not making the payment.
- To be liable for the entire amount owed to any subcontractor with which it contracts except for amounts attributable to the subcontractor's

noncompliance with the terms of the contract, if the contractor notifies the subcontractor in writing of:

- their intention to withhold all or a part of the subcontractor’s payment; and
- the reason for nonpayment.

(Va. Code Ann. § 2.2-4354(1), (2).)

A subcontractor may not make payment from its contracting entity a condition precedent to the payment of its lower-tier subcontractor, regardless of that contractor receiving payment for amounts owed to that contractor. Any provision in a contract contrary to this section is unenforceable (Va. Code Ann. § 2.2-4354(1)).

Payment by Owners, Prime Contractors, and Higher-Tier Contractors on Private and Public Projects

Effective January 1, 2023, **any** contract between an owner and higher-tier contractor or general contractor must include a provision requiring the owner to pay the general contractor or higher-tier contractor within 60 days of receipt of an invoice following satisfactory completion of the portion of the work for which the general contractor has invoiced unless the owner both:

- Is withholding payment.
- Has notified the general contractor or higher-tier contractor in writing of:
 - their intention to withhold; and
 - the reason for nonpayment.

(Va. Code Ann. § 11-4.6(B).)

Similarly, in any contract between at least one general contractor and one subcontractor, Virginia law will be treated as if it includes a provision requiring the general contractor or higher-tier contractor to pay the lower-tier subcontractor for work performed by the subcontractor under the contract within the earlier of:

- 60 days of the satisfactory completion of the portion of the work for which the subcontractor has invoiced, or
- Seven days after receipt of amounts paid:
 - by the owner to the general contractor; or
 - by the higher-tier contractor to the lower-tier contractor.

(Va. Code Ann. § 11-4.6(C).)

Penalties for Failure to Comply

A local government in Virginia that fails to make prompt payment must pay the contractor any finance charges

assessed by the contractor’s supplier. The charges cannot exceed 1% per month unless the contract between the parties provides for it. (Va. Code Ann. § 2.2-4352.)

Prime contractors who fail to make payment to subcontractors within seven days of their receipt of payment must pay interest of 1% per month on the amount owed unless:

- The prime contract specifies a different amount.
- The contractor has a valid reason for nonpayment.

(Va. Code Ann. § 2.2-4354.)

Right to Stop Work

The VPPA does not contain a provision granting the right to stop work for lack of prompt payment. Some local governments do have standard contract provisions that grant the rights by contract.

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?

Effective January 1, 2023, in Virginia any pay-if-paid or paid-when-paid provisions in a public or private construction contract will be unenforceable (Va. Code Ann. § 11-4.6(C)).

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?

Effective January 1, 2023, Virginia Code Section 11-4.6 will require prompt payment by any owner to its general

or higher-tier contractors and by the general and higher-tier contractors to their subcontractors unless the paying party notifies the general or higher-tier contractor or a subcontractor in writing of its reason for nonpayment.

Payments by Owners

The contract determines the payment terms between the owner and contractor. Payment terms vary depending on the nature and value of any given construction project and the relationship of the contracting parties in Virginia. After January 1, 2023, however, owners will no longer be permitted to include payment terms that exceed 60 days following receipt of an invoice. In broad terms, 30-day payment is the most common term for payments from owners to contractors.

Payment by Prime Contractors

The terms of payment between contractors and subcontractors are determined by contract. The use of pay-when-paid or pay-if-paid provisions will be deemed void after January 1, 2023. Instead, all contracts will be deemed to include a payment provision which will require the prime contractor to pay its subcontractors for work performed by a subcontractor under the terms of the contract within the earlier of:

- 60 days of the satisfactory completion of the portion of the work for which the subcontractor has invoiced.
- Seven days after receipt of amounts paid:
 - by the owner to the general contractor; or
 - by the higher-tier contractor to the lower-tier contractor.

(Va. Code Ann. § 11-4.6(C).)

Penalties

Penalties are determined by contract. There is no prevailing trend.

Right to Stop Work

Virginia has no statute that addresses a contractor's right to stop work. The right to stop work for non-payment and other payment provisions are some of the most heavily negotiated contract clauses. On balance, contractors and subcontractors retain the right to stop work more often than they release it (see Question 11).

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?

Currently, there are no prohibitions on "pay-if-paid" or "pay-when-paid" clauses in Virginia. The Virginia Supreme Court has held both types of clauses are enforceable. (*Galloway Corp. v. S.B. Ballard Const. Co.*, 464 S.E.2d 349, 501-02 (1995).) For a detailed discussion of these provisions, see [Practice Note, Pay-if-Paid vs. Pay-when-Paid in Construction Contracts](#).

Following the passage of VA S.B. 550 in May 2022, Sections 2.2-4354 and 11.46 of the Code of Virginia have been amended and, effective January 1, 2023, will prohibit the use of both types of clauses in any public or private construction project.

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 Virginia Public Procurement Act (VPPA) addresses retainage on public projects in Virginia (Va. Code Ann. § 2.2-4333).

Amount of Retainage

The VPPA limits retainage to no more than 5% of the contract value (Va. Code Ann. § 2.2-4333(A)).

Partial Release of Retainage

The VPPA does not address the partial release of, or reduction in, retainage.

Final Release of Retainage

The VPPA does not address the final release of retainage.

Penalties

The VPPA does not explicitly provide for penalties in the statute.

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?

Virginia does not have a statute governing retainage on private construction projects.

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

While retainage amounts in Virginia vary from project to project, retainage commonly ranges from 5% to 10% and is typically deducted across both labor and material. Factors impacting the amount of retainage include:

- The overall value of the contract.
- The complexity of the work.
- Any unique testing and commissioning requirements.

Partial Retainage

In Virginia, it is relatively common practice to reduce the retainage on the occurrence of milestones later in the project, for example, substantial completion or testing and commissioning. While this does not represent most projects, it does occur with some frequency.

Final Retainage

Final release of retainage typically comes with final completion of work including all punch-list work. It is often dependent on:

- Providing all warranties and documents.
- Conducting training.
- Completing all project closeout activities.

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?

Virginia contractors use various project delivery methods. Design-Bid-Build is the predominant project delivery system in the Commonwealth, but Design-Build and Construction Management are also common.

Public-Private Partnerships (PPP) are permitted under Virginia law and are not uncommon, but not nearly as frequent. PPP projects are used most often for transportation projects, but the Virginia Office of Public-Private Partnership has initiatives to expand the use of PPPs. (For more information, see [State Q&A, Public Private Partnership Legislation: Virginia](#); and the Virginia Office of Public-Private Partnerships [website](#).)

Integrated Project Delivery is rarely seen in Virginia.

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?

Virginia Code Sections 2.2-4301, 2.2-4303, and 2.2-4378 to 2.2-4383 authorize public bodies to use construction management on building projects, transportation projects, and water and utility infrastructure projects.

Virginia encourages the use of Design-Build and Construction Management project delivery methods. The relevant statutes specifically authorize the use of both delivery methods on public projects and both systems are commonly used in the Commonwealth.

There are no statutes restricting the use of design-build or construction management on private construction 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?

The use of standard-form construction contracts is common in Virginia. The contract documents used vary depending on the size, complexity, and nature of the project. Larger and more complex projects are far more likely to tailor project-specific contracts.

[AIA](#), [ConsensusDocs](#), [DBIA](#), and others are commonly used on the mid-range projects. AIA documents are likely the most prevalent for owner-contractor agreements in the Design-Bid-Build context. ConsensusDocs are also widely respected and well used for a wide variety of project delivery methods. Individual contracts and document bundles are available on the websites for the [AIA](#), [ConsensusDocs](#), and [DBIA](#) behind a paywall. Several large contractors have created adaptations of the forms that are prevalent for contractor-subagreements in Virginia.

For more information, 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 nature of the contract negotiations in Virginia depends on the type and size of the project and the sophistication of the parties. The following terms are typically subject to negotiation or discussion:

- Payment provisions.
- Scope-of-Work definitions.
- Scheduling provisions.
- Indemnification provisions and limitations of liability.
- Warranty provisions.
- Insurance requirements.
- Performance and payment bond requirements.
- Liquidated damages clauses.
- Warranty provisions.
- Claims and Disputes provisions.

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?

Licensed Professionals

Virginia requires the following construction professionals to be licensed to practice:

- Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90 to 10-20-150; see Question 12: Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90 to 10-20-150)).
- Professional Engineers (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90; see Question 12: Engineers (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-160 to 10-20-270)).
- Landscape Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90; see Question 12: Landscape Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-400 to 10-20-450)).
- Land Surveyors (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90; see Question 12: Land Surveyors (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-280 to 10-20-395)).
- Contractors and Specialty Contractors (Va. Code Ann. §§ 54.1-1100 to 54.1-1116; 18 Va. Admin. Code 10-20-90;

18 Va. Admin. Code 50-22-10 to 50-22-350; 18 Va. Admin. Code 50-30-10 to 50-30-260; see Question 12: Contractors (Va. Code Ann. §§ 54.1-1100 to 54.1-1116; 18 Va. Admin. Code 50-22-10 to 50-22-350 and 50-30-10 to 50-30-260)).

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

- Asbestos, lead, and home inspection contractors (Va. Code Ann. §§ 54.1-500 to 54.1-517.2:1).
- Electricians (Va. Code Ann. §§ 54.1-1100 to 54.1-1117; 18 Va. Admin. Code 50-30-10 to 260).
- HVAC contractors (Va. Code Ann. §§ 54.1-1100 to 54.1-1117; 18 Va. Admin. Code 50-30-10 to 260).
- Plumbers and gas fitters (Va. Code Ann. §§ 54.1-1100 to 54.1-1117; 18 Va. Admin. Code 50-30-10 to 260).

Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90 to 10-20-150)

The practice of architecture is defined as any service applying the principles and methods of architecture, including:

- Consultation.
- Investigation.
- Evaluation.
- Planning and design.
- Responsible administration of construction contracts, in connection with:
 - any private or public buildings, structures, or projects; or
 - the related equipment or accessories.

(Va. Code Ann. § 54.1-400.)

An architect is a person who, by reason of their knowledge of the mathematical and physical sciences and the principles of architecture and architectural design acquired by professional education, practical experience, or both:

- Is qualified to engage in the practice of architecture.
- Has had their competence attested to by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA Board) by licensure as an architect.

(Va. Code Ann. § 54.1-400.)

Architects must hold a valid license from the APELSCIDLA Board before engaging in the practice of architecture (Va. Code Ann. § 54.1-406(A)).

Limited exemptions apply for specific situations, including:

- Non-residents and new residents licensed as architects in other states.
- Certain other licensed professionals engaging in limited architectural services incidental to the performance of their services.
- Certain employees of the United States.
- Those engaging in the practice of architecture as an employee under a licensed architect if the practice does not include responsibility for design or supervision.

(Va. Code Ann. § 54.1-401(3).)

Services of a registered architect are required on all buildings. Some exceptions apply, including for:

- Single- and two-family homes, townhouses, and multifamily dwellings.
- Buildings on farms.
- Buildings and structures classified with respect to use as business and mercantile and churches with an occupant load of 100 or less, if the building or structure does not exceed 5,000 square feet in total area.
- Additions, remodeling, or interior design without:
 - a change in occupancy or occupancy load; and
 - modification to the structural system or a change in access or exit patterns or increase in fire hazard.

(Va. Code Ann. §§ 54.1-401 and 54.1-402(A).)

Engineers (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-160 to 10-20-270)

The practice of engineering is any service where the principles and methods of engineering are applied to areas including:

- Consultation.
- Investigation.
- Evaluation.
- Planning and design, including responsible administration of construction contracts, of:
 - public or private utilities;

- structures;
- machines;
- equipment;
- processes;
- transportation systems; and
- work systems.

(Va. Code Ann. § 54.1-400.)

Engineering does not include the service or maintenance of existing electrical or mechanical systems (Va. Code Ann. § 54.1-400).

An engineer is defined as a person:

- Who is qualified to practice engineering by reason of their special knowledge and use of:
 - mathematical, physical, and engineering sciences; and
 - the principles and methods of engineering analysis and design acquired by engineering education and experience.
- Whose competence has been attested by the APELSCIDLA Board by licensing as a professional engineer.

(Va. Code Ann. § 54.1-400.)

Engineers must hold a valid license from the APELSCIDLA Board before engaging in the practice of engineering (Va. Code Ann. § 54.1-406(A)).

Limited exemptions apply for specific situations, including:

- Non-residents and new residents licensed as engineers in other states.
- Certain employees of the United States.

(Va. Code Ann. §§ 54.1-401 and 54.1-402(A).)

- Individuals engaging in the practice of engineering as an employee under a licensed engineer if the practice does not include responsibility for charge of design or supervision.

(Va. Code Ann. § 54.1-401(3).)

The exemption continues until the APELSCIDLA Board has had enough time to consider the application and grant or deny licensure or certification (Va. Code Ann. § 54.1-401(3)).

The services of a licensed engineer are required to prepare plans, specifications, documents, or designs for:

- Any unique design of structural elements for:

- floors;
- walls;
- roofs; or
- foundations.

- Any building or structure classified as high-hazard use.

(Va. Code Ann. § 54.1-402(C).)

A licensed architect is not required to also hold a license for the practice of engineering when the practice is incidental to an architectural project (Va. Code Ann. § 54.1-401).

Landscape Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-400 to 10-20-450)

The practice of landscape architecture is defined as providing any service where the principles and methodology of landscape architecture are applied to projects principally directed at the functional and aesthetic use of land using:

- Consultation.
- Evaluation.
- Planning, including the preparation and filing of:
 - sketches;
 - drawings;
 - plans; and
 - specifications.
- Responsible supervision or administration of contracts relative to the project.

(Va. Code Ann. § 54.1-400.)

A landscape architect is a person:

- Who by professional education, practical experience, or both has acquired special knowledge of:
 - natural, physical, and mathematical sciences; and
 - the principles and methodology of landscape architecture and landscape architectural design.
- Whose competence has been attested by the APELSCIDLA Board by licensure as a landscape architect.

(Va. Code Ann. § 54.1-400.)

Landscape architects must hold a valid license from the APELSCIDLA Board before engaging in the practice of landscape architecture (Va. Code Ann. § 54.1-409(A)).

A license is not required to practice as a landscape architect in Virginia if a person is not a Virginia resident and has no established place of business, or is a recent resident of Virginia, if the person:

- Both:
 - is otherwise qualified as a landscape architect in another state or country with the same qualifications as Virginia; and
 - before beginning their practice files an application for licensure as a landscape architect and pays the required fee.
- Engages in the practice of landscape architecture as an employee under a licensed landscape architect if the practice does not include responsibility for charge of design or supervision.

(Va. Code Ann. § 54.1-401.)

The exemption continues until the APELSCIDLA Board has had enough time to consider the application and grant or deny licensure or certification (Va. Code Ann. § 54.1-401(3)).

Land Surveyors (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-280 to 10-20-395)

The practice of land surveying includes surveying of areas for:

- A description.
- The determination of topography, contours, or location of physical improvements.
- The planning of land and subdivisions based on existing Commonwealth or local standards including the preparation of incidental plans and profiles for:
 - roads, streets, and sidewalks;
 - grading and drainage on the surface;
 - culverts; and
 - erosion control measures.
- The establishment or reestablishment of internal and external land boundaries.

- A determination or correction.

(Va. Code Ann. § 54.1-400.)

A land surveyor is a person who:

- Has knowledge of the several sciences and of the principles of land surveying and of the planning and

design of land developments acquired by practical experience and formal education.

- Is qualified to engage in the practice of land surveying because of their knowledge.
- Has obtained a license by the APELSCIDLA Board as a land surveyor.

(Va. Code Ann. § 54.1-400.)

Land surveyors must hold a valid license from the APELSCIDLA Board before engaging in the practice of surveying (Va. Code Ann. § 54.1-409(A)).

A land surveyor need not hold a license from the APELSCIDLA Board if they are engaging in the practice of land surveying:

- As an employee under a licensed land surveyor if that practice does not include responsibility for design or supervision.

- Solely as an employee of the United States.

- Using photogrammetric methods or similar remote sensing technology:

- to determine topography or contours or to depict physical improvements if the maps or other documents are not to be used for the design, modification, or construction of improvements to real property or for flood plain determination; or
- to graphically show existing property lines and boundaries on maps or other documents if the depicted property lines and boundaries are to be used only for general information.

(Va. Code Ann. §§ 54.1-401 and 54.1-402.)

- Engaging in the practice of surveying as an employee under a licensed surveyor if the practice does not include responsibility for charge of design or supervision.

(Va. Code Ann. § 54.1-401(3).)

A licensed professional engineer is not required to hold a license for the practice of land surveying when the practice is incidental to an engineering project (Va. Code Ann. § 54.1-401).

Contractors (Va. Code Ann. §§ 54.1-1100 to 54.1-1116; 18 Va. Admin. Code 50-22-10 to 50-22-350 and 50-30-10 to 50-30-260)

A contractor is a person who, for payment, bids on or agrees to a contract to perform, manage, or superintend, in whole or in part, the construction, removal, repair, or improvement of any building or structure permanently

annexed to real property owned, controlled, or leased by them or another person or any other improvements to the real property (Va. Code Ann. § 54.1-1100).

Improvements include:

- Remediation, cleanup, or containment of premises to remove contaminants.
- Site work necessary to make certain real property usable for human occupancy according to the guidelines established under Virginia Code Section 32.1-11.7.

(Va. Code Ann. § 54.1-1100.)

The Virginia Board for Contractors (Contractors' Board) licenses contractors (Va. Code Ann. § 54.1-1100).

The Code provides that the Contractors' Board may grant Class A, Class B, and Class C licenses in eight different classifications (Va. Code Ann. §§ 54.1-1106(F), 54.1-1108(F), and 54.1-1108.2(B)). The Contractors' Board's regulations provide detailed definitions for most of those classifications, including:

- **Residential building contractors** who are those individuals whose contracts include construction of dwellings and townhouses on real property owned, controlled, or leased by another person.
- **Commercial building contractors** who are those individuals whose contracts include construction of commercial, industrial, institutional, governmental, residential (single-family, two-family, or multifamily), and accessory-use buildings or structures on real property owned, controlled, or leased by another person.
- **Highway or heavy contractors** who are those individuals whose contracts include construction, repair, improvement, or demolition of:
 - bridges;
 - dams and drainage systems;
 - foundations;
 - parking lots, public transit systems, and railroads;
 - roads, runways, and streets;
 - structural signs and lights; and
 - tanks.
- **Electrical contractors** who are those individuals whose contracts include the construction, repair, maintenance, alteration, or removal of electrical systems.
- **Plumbing contractors** who are those individuals whose contracts include the installation, maintenance,

extension or alteration, or removal of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

- backflow prevention devices;
 - boilers, hot water baseboard heating systems, hot water heaters, or hydronic systems;
 - process piping;
 - public and private water supply systems;
 - sanitary or storm drainage facilities,
 - steam-heating systems or storage tanks incidental to the installation of related systems; and
 - venting systems related to plumbing.
- **Heating, ventilation, and air conditioning (HVAC) contractors** who are those individuals whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heaters, heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks incidental to the system.
 - **Fire sprinkler contractors** who are contractors that provide for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. The Contractors' Board's regulations have not yet been updated to include a definition of a fire sprinkler contractor.
 - **Specialty contractors** who are those individuals whose contracts are for specialty services that do not fall within the scope of any other classification.

(18 Va. Admin. Code 50-22-20.)

The regulations identify and define 49 specialty services, which specialties vary widely and range from "alternative energy system contracting" to "blast and explosive contracting" to "fire alarm systems contracting" (18 Va. Admin. Code 50-22-30).

A license is not required for:

- Any governmental agency performing work with its own workers.
- Work bid on or undertaken for:
 - the US Armed Services under the Armed Services Procurement Act;
 - the US government on land under the exclusive jurisdiction of the federal government; or

- the Department of Transportation on the construction, reconstruction, repair, or improvement of any highway or bridge.
 - Persons specifically excluded by other laws, but only to the extent those laws provide.
 - Any material supplier who renders advice concerning use of products sold and who does not provide construction or installation services.
 - A person performing or supervising the construction, removal, repair, or improvement of no more than one primary residence they own and for their own use during any 24-month period.
 - Any person who performs or supervises the construction, removal, repair, or improvement of a house on their own real property:
 - for their own use; or
 - as a bona fide gift to a member of their immediate family if the member lives in the house.
 - Any person who performs work under the direct supervision of a licensed contractor and is:
 - a student in good standing and enrolled in a public or private institution of higher education;
 - a student enrolled in a career training or technical education program; or
 - an apprentice.
- (Va. Code Ann. § 54.1-1101(A).)

State Departments

The Contractors' Board in the Virginia Department of Professional and Occupational Regulation (DPOR) oversees the licensing of construction professionals.

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?

General Entry Requirements Common to Architects, Landscape Architects, Engineers, and Land Surveyors

Forms and applications for licensing as a professional engineer, architect, landscape architect, and land surveyor are available on the Virginia Department of Professional and Occupational Regulation's (DPOR's) [website](#). All

applicants for licensure as an architect, landscape architect, engineer, or land surveyor must comply with certain basic requirements, and must:

- Follow all instructions for and achieve a passing score on the required exam covering the regulations and statutes relevant to the application (18 Va. Admin. Code 10-20-75 and 10-20-85).
 - Be of good moral character (18 Va. Admin. Code 10-20-20(A)).
 - Complete the application on time and as required (18 Va. Admin. Code 10-20-20(B)).
 - Meet all educational, experience, and other requirements when the application is made by submitting proof of training or experience as required:
 - on board-approved forms; and
 - based on the applicant having worked at least 30 hours per week.(18 Va. Admin. Code 10-20-20(D) and 10-20-35.)
 - Provide the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA Board) with:
 - all required documents (18 Va. Admin. Code 10-20-20(E)); and
 - references up to one year old given by persons who have known the applicant at least one year within the past five years (18 Va. Admin. Code 10-20-25).
 - Pay the appropriate application fees, currently:
 - \$30 for engineers-in-training, \$60 for professional engineers, including by comity, and \$80 for renewal (18 Va. Admin. Code 10-20-170);
 - \$75 for architects, including applications by comity and \$55 for renewal (18 Va. Admin. Code 10-20-90);
 - \$125 for landscape architects and \$110 for renewal (18 Va. Admin. Code 10-20-400); and
 - \$90 for surveyors and \$90 for renewal (18 Va. Admin. Code 10-20-280).
 - If currently licensed in another jurisdiction, be in good standing in each jurisdiction where licensed or registered (18 Va. Admin. Code 10-20-40).
 - Be able to read and write English to the satisfaction of the APELSCIDLA Board (18 Va. Admin. Code 10-20-55).
 - Respond to any further inquiries with respect to the applicant's qualifications.
- (18 Va. Admin. Code 10-20-20, 10-20-25.)

All applicants must provide references:

- On a board-approved form.
- That are up to a year old.
- From individuals who have known the applicant for at least one year in the past five years.

(18 Va. Admin. Code 10-20-25.)

The APELSCIDLA Board, in place of examinations, may accept satisfactory evidence of licensing or certification in another state, country, or the District of Columbia if:

- The qualifications for that licensure or certification are equal to the qualifications required by Virginia on the date of application.
- The applicant holds that license or certificate in good standing.
- The applicant can fulfill all other licensing requirements.

(Va. Code Ann. 54.1-406.)

Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90 to 10-20-150)

Licensing Requirements

In addition to the general requirements shown in Question 13: General Entry Requirements Common to Architects, Landscape Architects, Engineers, and Land Surveyors, applicants for licensure as an architect must complete the following:

- **Examination.** An applicant for original licensure must take the required National Council of Architectural Registration Boards (NCARB) examination and receive a passing score.
- **Education.** The applicant must, among other things, hold a professional degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB). The degree program must have been accredited by NAAB no later than two years after the date of the applicant's graduation from the program. (18 Va. Admin. Code 10-20-110(A).) Non-NAAB accredited programs may be accepted on a showing that the degree or coursework is equivalent to a NAAB-accredited professional degree in architecture by NAAB's evaluation service (18 Va. Admin. Code 10-20-110(B)).
- **Experience.** First-time applicants must successfully complete the NCARB-administered architectural experience program as set out in 18 Va. Admin. Code 10-20-35 (18 Va. Admin. Code 10-20-120(A)).

- **References.** Applicants must submit three references with their application from currently licensed architects. The references must have personal knowledge of the applicant's architectural experience that demonstrates the applicant's competence and integrity. (18 Va. Admin. Code 10-20-130.) For additional requirements for references, see Question 13: General Entry Requirements Common to Architects, Landscape Architects, Engineers, and Land Surveyors

Reciprocity

Applicants holding a valid license in another jurisdiction may be granted a license by comity if that jurisdiction is part of a mutual recognition agreement that has been:

- Executed between that jurisdiction and NCARB.
- Accepted by the APELSCIDLA.

(18 Va. Admin. Code 10-20-150.)

Continuing Education Requirements

Architects must attest to completion of 16 hours of continuing education to renew or reinstate their licenses (Va. Code Ann. § 54.1-404.2; 18 Va. Admin. Code 10-20-683).

Professional Engineers (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-160 to 10-20-270)

Licensing Requirements

In addition to the general requirements shown in Question 13: General Entry Requirements Common to Architects, Landscape Architects, Engineers, and Land Surveyors, applicants for licensure as a professional engineer must complete the following:

- Fulfill the educational requirements.
- Pass the Principles and Practice of Engineering (PE) exam.
- Meet all the requirements of Chapter 20 of Title 18 in the Virginia Administrative Code, including:
 - submitting three references from professional engineers currently licensed in a state or other jurisdiction of the US with personal knowledge of the applicant's competence and integrity relative to their engineering experience; and
 - completing the Professional Engineer's Experience Verification Form documenting their engineering experience.
- Apply to and be approved by the APELSCIDLA Board.

(18 Va. Admin. Code 10-20-210.)

To receive a license as an engineer-in-training, an applicant must:

- Apply.
- Either:
 - graduate from an engineering program of four or more years or an engineering master's program; or
 - meet the requirements of the National Council of Examiners for Engineering and Surveying Engineering Education Standard.

(18 Va. Admin. Code 10-20-200.)

- Submit references from either:
 - a professional engineer;
 - the dean or their designee from the school attended by the applicant; or
 - an immediate work supervisor.

(18 Va. Admin. Code 10-20-220.)

Continuing Education Requirements

Engineers must attest to completion of 16 hours of continuing education to renew or reinstate their licenses (Va. Code Ann. § 54.1-404.2; 18 Va. Admin. Code 10-20-683).

Landscape Architects (Va. Code Ann. §§ 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90)

Licensing Requirements

In addition to the general requirements shown in Question 13: General Entry Requirements Common to Architects, Landscape Architects, Engineers, and Land Surveyors, applicants for licensure as a landscape architect must complete the following:

- **Examination.** An applicant for original licensure must take the required Council of Landscape Architectural Registration Board (CLARB)-prepared exam and receive a passing score (18 Va. Admin. Code 10-20-420(1)(b), 10-20-440).
- **Education.** Applicants must have either:
 - graduated from a landscape architecture program accredited by the Landscape Architectural Accreditation Board; or
 - obtained a minimum of eight years of combined education and work experience in as set out in Title 18 of the Virginia Administrative Code 10-20-420(2).

- **Experience.** Obtained total experience of either:

- A minimum of 36 months as a combination of 12 months under the direct control and personal supervision of a licensed or certified landscape architect and 24 months of experience under the direct control and personal supervision of a licensed or certified landscape architect or a licensed architect, professional engineer, or land surveyor under the Landscape Architects Experience Credit Table.

- A minimum of 48 months of experience under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor.

(18 Va. Admin. Code 10-20-420 and 10-20-430.)

- **References.** Applicants must submit three references with their application from at least one currently licensed landscape architect from a state or jurisdiction within the US. The additional references must be from licensed professional engineers, architects, land surveyors, or landscape architects who have personal knowledge of the applicant's landscape architecture experience that demonstrates the applicant's competence and integrity. (18 Va. Admin. Code 10-20-425.)

Reciprocity

Applicants holding a valid license in another jurisdiction that is part of a mutual recognition agreement may be granted a license by comity (18 Va. Admin. Code 10-20-150).

Continuing Education Requirements

Landscape architects must complete 16 hours of continuing education to renew or reinstate their licenses (Va. Code Ann. § 54.1-404.2; 18 Va. Admin. Code 10-20-683).

Land Surveyors (Va. Code Ann. §§ 54.1-407, 54.1-408; Va. Admin. Code 54.1-400 to 54.1-411; 18 Va. Admin. Code 10-20-90)

Licensing Requirements

In addition to the general requirements shown in Question 13: General Entry Requirements Common to Architects, Landscape Architects, Engineers, and Land Surveyors, applicants for licensure as a land surveyor must complete the following:

- Fulfill the educational requirements.
- Pay the appropriate fee:

- \$60 for surveyor-in-training;
- \$90 for an initial license and license by comity; and
- \$90 for renewal.

(18 Va. Admin. Code 10-20-280.)

- Pass the Principles and Practice of Engineering (PE) exam.
- Meet all the requirements of Chapter 20 of Title 18 in the Virginia Administrative Code, including:
 - submitting three references from professional engineers currently licensed in a state or other jurisdiction of the US with personal knowledge of the applicant's competence and integrity relative to their engineering experience; and
 - completing the Professional Engineer's Experience Verification Form documenting their engineering experience.
- Apply to and be approved by the APELSCIDLA Board.

(18 Va. Admin. Code 10-20-210.)

Continuing Education Requirements

Land Surveyors must complete 16 hours of continuing education to renew or reinstate their licenses (Va. Code Ann. § 54.1-404.2; 18 Va. Admin. Code 10-20-683).

Contractors (Va. Code Ann. §§ 54.1-1100 to 54.1-1115.1)

The Board of Contractors (Contractors' Board) under the Virginia Department of Professional and Occupational Regulation issues licenses for contractors in two ways. The first is by grade, which determines the value of the work that can be done and by classification or specialty, which determines the type of work to be performed.

- Class C contractors may undertake projects with a total value of up to \$10,000.
- Class B contractors may undertake projects with a total value of more than \$10,000 but up to \$120,000.
- Class A contractors may undertake projects with a total value of more than \$120,000.

(Va. Code Ann. § 54.1-1100.)

Licensing Requirements Class A Applications

On an application for a Class A license, a firm that must name a designated employee, at least 18 years old, who both:

- Has passed the examination approved by the Contractors' Board and followed all the rules established regarding conduct at the examination.
- Is either a full-time employee or member of the responsible management of the applicant.

(18 Va. Admin. Code 50-22-60(B).)

For every class or specialty the firm is applying to be licensed in, the firm must name a qualified individual for each classification or specialty who:

- Is at least 18 years old.
- Has at least five years of experience in the classification or specialty for which they are the qualifier.
- Is a full-time employee or member of the responsible management of the applicant;
- Has passed the trade-related examination or has completed an education and training program for the following classifications and specialties:
 - blast and explosive contracting;
 - electrical;
 - fire sprinkler;
 - gas fitting;
 - HVAC;
 - plumbing;
 - radon mitigation; and
 - water-well drilling.
- Has obtained a tradesman license as required for any classifications or specialties.

(18 Va. Admin. Code 50-22-60(C).)

The applicant must submit information on:

- Its financial position stating a net worth of at least \$45,000 (18 Va. Admin. Code 50-22-60(D)).
- Any outstanding past-due debts and judgments for the previous five years.
- Any outstanding tax obligations, defaults on bonds, or pending or past bankruptcies.
- For any of its designated employees, qualified individual or individuals, and all members of the responsible management for the applicant:
 - past-due debts and judgments or defaults on bonds (18 Va. Admin. Code 50-22-60(E));

- any disciplinary actions taken with respect to any other or previous contractor licenses issued in Virginia or any other jurisdictions (18 Va. Admin. Code 50-22-60(F));
- any misdemeanor convictions within the previous three years; and
- any felony convictions during their lifetime.

(18 Va. Admin. Code 50-22-60(G).)

The application fee for a Class A license is \$385.

Licensing Requirements Class B Applications

The procedural and substantive requirements for obtaining a Class B contractor's license are set out in Va. Code Ann. § 54.1-1108 and in the Contractors' Board's regulations at 18 Va. Admin. Code 50-22-50. With a few exceptions, the requirements for obtaining a Class B license are identical to those for obtaining a Class A license. The significant differences are:

- An applicant for a Class B license must provide evidence that it holds a current local license under local ordinances adopted under Va. Code Ann. §§ 54.1-1117 and 54.1-1108(A).
- Va. Code Ann. § 54.1-1117(A) authorizes cities, counties, and towns to adopt ordinances requiring non-Class A contractors, who engage in, or offer to engage in the home improvement business or the business of constructing single or multi-family dwellings in that city, county, or town to obtain a license to do so. Applicants for the licenses may be required to furnish evidence of their ability and proficiency, may be required to complete an examination to determine their qualifications, and may be required to post a bond. (Va. Code Ann. § 54.1-1117(B).)
- A Class B license permits the contractor to engage in contracting only in the cities, counties, and towns where the contractor has complied with all local licensing requirements (Va. Code Ann. § 54.1-1108(E)).
- The qualified individual identified for purposes of obtaining a license for a specific classification or specialty need only have three years of experience in that classification or specialty, in contrast to the five years required for the Class A contractor.
- The information submitted regarding the applicant's financial position must show a net worth of \$15,000, not the \$45,000 for a Class A contractor, and the Class B applicant may be required to submit a financial statement prepared by a CPA (18 Va. Admin. Code 50-22-50(D)).
- The fee is \$370 for a Class B applicant (18 Va. Admin. Code 50-22-100).

Licensing Requirements Class C Applications

Class C applications have essentially equivalent requirements to a Class B license, except they are not required to provide financial verification. The application fee for a Class C license is \$235 (18 Va. Admin. Code 50-22-100).

Continuing Education Requirements

The Contractors' Board does not impose a continuing education requirement on licensed contractors in Virginia. The Contractors' Board does retain the power to require remedial education or testing of a licensed employee who has been the subject of disciplinary action (Va. Code Ann. § 54.1110.1).

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 Virginia Department of Professional and Occupational Regulation has an online [license lookup](#) that provides a comprehensive list of licensed professionals.

Initial licenses expire:

- Two years from the last day of the month where they are issued for individual licenses and certificates.
- On December 31 of the odd-numbered year following issuance for professional corporations, professional limited liability companies, and business entities.
- The last day of February of the even-numbered year following issuance for branch offices.

(18 Va. Admin. Code 10-20-87.)

Consequences

When an architect, professional engineer, land surveyor, or landscape architect is not licensed or registered by the APELSCIDLA Board, the APELSCIDLA Board may issue an order requiring any person to cease and desist (Va. Code Ann. § 54.1-402.2(A)).

If the person fails to cease and desist within 21 days, the APELSCIDLA Board may either or both:

- Refer the matter for enforcement under § 54.1-306.
- Subject the violator to further proceedings before the APELSCIDLA Board and the APELSCIDLA Board may impose a civil penalty not to exceed \$2,500.

(Va. Code Ann. § 54.1-402.2(B), (C).)

Contractors

The Code provides for multiple and severe criminal and civil penalties on contractors that do not comply with the licensing requirements.

The following acts are prohibited and constitute the commission of a Class 1 misdemeanor:

- Contracting for or bidding on the construction, removal, repair, or improvements to or on real property owned, controlled, or leased by another person without a license or certificate, or without the proper class of license (Va. Code Ann. § 54.1-1115(A)(1)).
- Attempting to practice contracting without the appropriate license (Va. Code Ann. § 54.1-1115(A)(2)).
- Using or attempting to use the license of another (Va. Code Ann. § 54.1-1115(A)(3)).
- Giving false or forged information to the Contractors' Board when applying for the issuance or renewal of a license (Va. Code Ann. § 54.1-1115(A)(4)).
- Impersonating another or using an expired or revoked license (Va. Code Ann. § 54.1-1115(A)(5)).
- Receiving a bid from anyone the awarding authority knows is not properly licensed or certified. Every awarding authority must require all bidders to submit their license or certificate before considering a bid. (Va. Code Ann. § 54.1-1115(A)(6).)

A Class 1 misdemeanor is punishable by either or both:

- Confinement in jail for up to 12 months.
- A fine up to \$2,500.

(Va. Code Ann. § 18.2-11.)

Undertaking work without a proper license can be fined at a rate of \$500 per day for each day of the violation (Va. Code Ann. § 54.1-1115(B)).

If there are three or more violations during a 36-month period, the contractor is guilty of a Class 6 felony (Va. Code Ann. § 54.1-111(B)). A Class 6 felony is punishable by either or both:

- Imprisonment of one to five years.
- A fine of up to \$2,500.

(Va. Code Ann. § 18.2-10.)

If the contractor undertakes work in a consumer transaction without a valid Virginia contractor's license when a license is required, the work constitutes a per se "prohibited practice" under the Virginia Consumer Protection Act (Va. Code Ann. §§ 59.1-200 to 59.1-207).

The violation is punishable under the enforcement provisions of that Act (Va. Code Ann. § 54.1-1115(B)).

If a contractor is unlicensed when executing a contract for construction, the contract is unenforceable by the contractor unless the contractor:

- Gives substantial performance within the terms of the contract in good faith.
- Was without actual knowledge that a license or certification was required.

(Va. Code Ann. § 54.1-1115(C).)

An unlicensed or improperly licensed contractor also cannot file a valid mechanics lien claim (Va. Code Ann. § 43-3(D)).

Warranties

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

Common-Law Implied Warranties

Virginia construction contracts contain an implied warranty that the work is to be performed in a reasonably good and workmanlike manner (*Mann v. Clowser*, 59 S.E.2d 78, 84 (Va. 1950)). "Workmanlike manner" is considered work performed under good usage and accepted practices in the community where the work is done (*Mann*, 59 S.E.2d at 84).

The implied warranty of workmanship extends to the furnishing of defective materials. (*Clevert v. Jeff W. Soden, Inc.*, 400 S.E.2d 181, 183 (Va. 1991)).

Mann v. Clowser also held that a contractor impliedly warrants that the structure, when completed, is reasonably fit for its intended purpose (*Mann*, 59 S.E.2d at 84).

A breach of implied warranties in a construction contract is a breach of contract (*Clevert*, 400 S.E.2d at 183). A negligent failure to observe any of the obligations of skillful and workmanlike performance can give rise to a cause of action in tort and a breach of contract (*Colodny v. Wines Const., Inc.*, 1994 WL 1031115 (Va. Cir. Mar. 29, 1994)).

There is no implied warranty in the sale of a newly constructed home by a builder-vendor, except the applicable statutory warranties on new homes (*Colodny*, 1994 WL 1031115 at *4; see Question 15). If an express

warranty provision states that it is “in lieu of all other warranties express or implied,” no other warranties are implied (*Greenland Dev. Corp. v. Allied Heating Prods. Co.*, 35 S.E.2d 801, 805 (Va. 1945)). Absent limiting language, only implied warranties that are inconsistent with the express warranty are excluded (*Greenland Dev. Corp.*, 35 S.E.2d 801 at 805).

For instance, a limitation on the duration of an express warranty against defective workmanship is not inconsistent with the implied warranty of fitness and good workmanship, and so the implied warranty also applies (*Bd. of Dirs. of Council of Co-Owners of Hawthorne Village v. Beautyguard of Greater Wash., Inc.*, 1994 WL 1031071 (Va. Cir. Mar. 2, 1994)).

In keeping with the principle of freedom of contract, parties can always expressly waive any implied common law warranties (Va. Code Ann. § 8.2-316).

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

The express warranties included in Virginia construction contracts vary widely based on the nature of the project, but common warranties include:

- A warranty of workmanship.
- A warranty that goods and materials are to be:
 - new;
 - of good quality; and
 - free from defects.
- A warranty that the work conforms to the requirements of the contract.

The customary warranty period is one year, with exceptions for more complex systems (for example, HVAC), roofing products, and other unique features.

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

In early Virginia common law, there were no implied warranties in the sale of a new home (*Bruce Farms, Inc. v. Coupe*, 247 S.E.2d 400, 403 (Va. 1978)). The doctrine of caveat emptor was the rule.

New Homes

In 1979, the General Assembly enacted the Implied Warranties on New Homes law (Va. Code Ann. § 55.1-357(C)). The law provides that the seller warrant the sale of a new dwelling if they are in the business of building or selling those types of dwellings. At the earlier of the time of transfer of record title or the vendee’s taking possession, the warranty provides the dwelling, together with all its fixtures, is:

- Free from structural defects, to pass without objection in the trade.
- Constructed in a workmanlike manner, to pass without objection in the trade.
- Fit for habitation.

(Va. Code Ann. § 55.1-357.)

The law defines structural defects as defects that either:

- Reduce the stability or safety of the structure below accepted standards.
- Restrict the normal use of the structure.

(Va. Code Ann. § 55.1-357(A).)

The law does not apply to defects in grading and landscaping because they are not part of the dwelling or its fixtures (*Seabright v. Nesselrodt*, 4 Va. Cir. 322, 1985 WL 306831 (July 3, 1985); Va. Code Ann. § 55.1-357(B), (C)).

A contract for sale may waive, modify, or exclude any and all express and implied warranties and sell a new home “as is” if:

- The language:
 - is conspicuous.
 - appears on the face of the contract; and
 - uses capital letters at least two font size larger than the rest of the contract.
- The words used specifically state that the warranty is being waived, modified, or excluded.

(Va. Code Ann. § 55.1-357(D).)

Condominiums

The statutory implied warranty on new dwellings does not apply to new condominiums or condominium units. (*Grogg v. Massey & Leonard Const., Inc.*, 1996 WL 1065589 (Va. Cir. Aug. 13, 1996)). Instead, Virginia's Condominium Act statutorily imposes implied warranties on the sale of new condominiums. The law requires the declarant to warrant:

- Each of the units and all the common elements against structural defects for two years from the date each is conveyed.
- That each unit is:
 - fit for habitation if it is a residential unit; and
 - constructed in a workmanlike manner to pass without objection in the trade.

The law applies to any person or group of persons acting in concert, including a builder and developer, that:

- Offers to dispose of its interest in a condominium unit not previously disposed of, including some institutional lenders.
- Reserves or succeeds to any special declarant right.
- Applies for registration of the condominium.

(Va. Code Ann. § 55.1-1900.)

Virginia's condominium laws define a structural defect as a defect in the components constituting any unit or common element that reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and that require repair, renovation, restoration, or replacement. A declarant is not responsible for maintenance items. (Va. Code Ann. § 55.1-1955(B).)

Unlike other common law or statutory implied warranties, condominium warranties cannot be varied by agreement and cannot be waived (Va. Code Ann. § 55.1-1902).

Time Period

New Homes

The statutory warranty for new homes runs for a year beginning on the earlier of:

- The date of transfer of record title.
- The buyer's taking possession.

(Va. Code Ann. § 55.1-357(F).)

Structural defects in the foundation of the new dwelling are covered for five years (Va. Code Ann. § 55.1-357(F)).

If the seller fails to remedy the defects, the buyer has two years from the breach to bring suit (Va. Code Ann. § 55.1-357(F)). As a condition precedent to filing a suit, the buyer first must:

- Give the seller written notice stating the nature of the warranty claims.
- Allow the seller a reasonable period, up to six months from the notice, to cure the warranty items.

(Va. Code Ann. § 55.1-357(E).)

For claims arising on or after January 1, 2009, sending the notice tolls the statute of limitations for six months (Va. Code Ann. § 55.1-357(F)).

Condominiums

The warranty period under Virginia's Condominium Act sets out the period during which a cause of action can accrue if a breach occurs. Assuming the breach occurs within the two-year warranty period, suit must be brought within five years after the date the warranty period began. (Va. Code Ann. § 55.1-1955(C).)

Va. Code Section 55.1-1955(C) provides that no action for breach of warranty can be brought against the declarant unless the declarant is given written notice of the alleged defect at least six months before beginning the action to give the declarant an opportunity to cure the alleged defect within a reasonable time. Giving notice tolls the statute of limitations for filing suit for breach of warranty for a period not to exceed six months. (Va. Code Ann. § 55.1-1955(C).)

Restrictions

New Homes

There are no statewide Virginia laws that restrict warranties for new residential construction.

Condominiums

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

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?

Virginia has a Little Miller Act (Va. Code Ann. § 2.2-4337).

Minimum Requirements

The Virginia Public Procurement Act (VPPA) requires a contractor to furnish a payment bond on award of any:

- Non-transportation construction contract exceeding \$500,000 awarded to any prime contractor.
- Transportation-related project exceeding \$350,000 that is partially or wholly funded by the Commonwealth.

(Va. Code Ann. § 2.2-4337.)

Security

Although Section 2.2-4337 requires a “payment bond,” instead of the bond, Section 2.2-4338 of the Virginia Code allows a contractor to furnish a certified check or cash escrow in the face amount required for the bond. Section 2.2-4338.B permits other specified forms of payment security if approved by the attorney general or the attorney for the political subdivision as affording protection equivalent to a corporate surety’s bond. Payment bonds, however, are the only form of payment security permitted on Virginia Department of Transportation contracts (Va. Code Ann. § 2.2-4338).

The security must be filed with the public body that awarded the contract, or a designated office or official thereof (Va. Code Ann. § 2.2-4337).

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

For Virginia public contracts, Va. Code Ann. § 2.2-4341 requires lower-tier claimants to give notice to the contractor within 90 days from the day on which the claimant either:

- Performed the last of the labor.
- Furnished the last of the materials for which they claim payment.

(Va. Code Ann. § 2.2-4341.)

Claims for sums withheld as retainage are not subject to this time limit (Va. Code Ann. § 2.2-4341). A subcontractor who is current on payments does not need to give notice for retainage that has been withheld for a time approaching 180 days. They can wait until the end of the job to claim all unpaid retainage.

Statute of Limitations

The limitations period is one year and one day for claims arising out of the Virginia Public Payment Act (VPPA). The statute under the VPPA at begins to run the day on which the person bringing the action last performed labor or supplied materials. (Va. Code Ann. § 2.2-4341.)

The Supreme Court of Appeals of Virginia has held that this period cannot be lengthened and that the statutory period governs over a longer period stated in a bond (*Joseph F. Hughes & Co. v. George H. Robinson Corp.*, 175 S.E.2d 413 (Va. 1970); see also *Southside Utils., Inc. v. Abante Corp.*, 2000 WL 33595090 (Va. Cir. Ct. Dec. 22, 2000) (noting that wording of the current statute has not significantly changed from that in *Hughes* to warrant a different interpretation)).

If a bond issued under the VPPA does not contain a time limit for bringing suit, the requirements of subsection C of Va. Code Section 2.2-4341 apply (*APAC-Atl., Inc. v. Gen. Ins. Co. of Am.*, 643 S.E.2d 483, 485 (Va. 2007)).

Additional Requirements

The VPPA does not require first-tier subcontractors or suppliers to give notice of claims (Va. Code Ann. § 2.2-4341). Virginia Code Ann. § 2.2-4341, subsection B does require claimants who have a direct contractual relationship with any subcontractor, but not with the contractor, to give written notice, served by registered or certified mail, to the contractor stating with substantial accuracy both:

- The amount claimed.
- The person for whom:
 - the work was performed; or
 - the materials were furnished.

(Va. Code Ann. § 2.2-4341.)

Notice is given under the Little Miller Act when the contractor receives it, not when it is mailed (*R.T. Atkison Bldg. Corp. v. Archer Western Const., LLC*, 2015 WL 10521463 (Va. Cir. Ct. May 15, 2015)). A claimant may bring an action on the contractor's payment bond only if any required notice has been properly and timely given (Va. Code Ann. § 2.2-4341).

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 Virginia on projects of sufficient size typically require payment bonds. Other forms of security are accepted in certain circumstances, but bonds are the predominant form of security. There are no statutory limitations on the types of security that private projects can use.

Litigation Concerns

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

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

The following statutes of limitation apply to claims in Virginia:

- **Breach of Contract.** The statute of limitations is five years. The cause of action accrues when the breach or wrongful act occurs regardless of when the breach is

discovered. (Va. Code Ann. §§ 8.01-246(2), 8.01-230, 8.01-233, 8.1-245, 8.01-249, and 8.01-250 (prescribing the time of accrual in different types of actions.))

- **Breach of Warranty.** The statute of limitations for causes of actions arising from contracts for the sale of goods governed by the Virginia Uniform Commercial Code is four years (Va. Code Ann. § 8.2-725(1)). Practitioners should be aware that a construction contract can, and typically does, reduce the period for bringing warranty claims to one year. Statutory warranty claims related to new dwellings provide for a one-year warranty, except for claims related to the foundation of a dwelling which is five years. (Va. Code Ann. § 55.1-357.)
- **Negligence.** The statute of limitations for actions alleging negligence is two years. This includes claims for professional negligence (Va. Code Ann. § 8.01-243).
- **Professional Malpractice by a Design Professional.** The statute of limitations for professional negligence actions is typically five years (written contract) or three years (oral contract) because claims of professional malpractice by a design professional are contract actions, not tort actions. (*Blake Constr. Co., Inc. v. Alley*, 353 S.E.2d 724, 727 (Va. 1987)). This is because most actions for professional negligence have their genesis in a contract, whether written or oral, between the client and the professional. (Va. Code Ann. § 8.01-246(2), (4).)

For a discussion of certain claims barred by a five-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

Virginia does not require the filing of a certificate or affidavit of merit when suing design or construction professionals.

Proof of Licensure

If a contractor is unlicensed when executing a contract for construction, that contract is rendered unenforceable by the contractor unless the contractor:

- Gives substantial performance within the terms of the contract in good faith.
- Was without actual knowledge that a license or certification was required.

(Va. Code Ann. § 54.1-1115(C).)

Virginia has no specific requirements regarding licensure as a precursor to filing a legal action in construction case. However, a contractor who is not properly licensed cannot file a valid mechanics' lien claim. (Va. Code Ann. § 43-3(D).)

Special Requirements

There are no special requirements for filing construction defect actions in Virginia.

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

Virginia law includes a five-year statute of repose barring certain claims (Va. Code Ann. § 8.01-250).

Types of Claims Allowed

The statute of repose covers actions arising out of the defective and unsafe condition of an improvement to real property:

- To recover for any injury:
 - to real or personal property;
 - for bodily injury; or
 - wrongful death.
- For contribution or indemnity for damages sustained because of the injury.

(Va. Code Ann. § 8.01-250.)

The statute does not apply to contract actions.

Notice or Conditions Precedent

No notice is required to file 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

Virginia follows the general rule that liquidated damages clauses are enforceable unless the amount would either:

- Be a penalty.
- Create a forfeiture.

The Virginia Supreme Court has held that parties to a contract may agree in advance about the amount to be paid as compensation for loss or injury which may result from a breach of the contract if the actual damages contemplated when the agreement was reached were uncertain and difficult to determine with exactness and when the amount fixed is not out of all proportion to the probable loss. (*Taylor v. Sanders*, 353 S.E.2d 745, 746-47 (Va. 1987); accord *Crawford v. Heatwole & Hedrick*, 66 S.E. 46, 47-48 (Va. 1909).)

Courts usually construe an agreement to be an unenforceable penalty if either:

- The damages resulting from the breach are susceptible of definite measurement.
- The agreed amount would grossly exceed actual damages.

(*Taylor*, 353 S.E.2d at 747; *Crawford*, 66 S.E. at 47. For more information, see *301 Dahlgren Ltd. P'ship v. Bd. of Supervisors of King George Cnty. ex rel. Dahlgren Sanitary Dist.*, 396 S.E.2d 651, 653 (Va. 1990); *Estate of Taylor v. Flair Prop. Assocs.*, 448 S.E.2d 413 (Va. 1994) (parties to a contract may agree in advance to an amount of liquidated damages which can be enforced if it does not constitute a penalty).)

A liquidated damages clause may be an unenforceable penalty when the amount agreed on is out of all proportion to the probable loss or grossly exceeds actual damages (*Gordonsville Energy, L.P. v. Virginia Elec. & Power Co.*, 512 S.E.2d 811 (Va. 1999); *O'Brian v. Langley Sch.*, 507

S.E.2d 363 (Va. 1998); *Brooks v. Bankson*, 445 S.E.2d 473 (Va. 1994)).

Limitations of Liability

Virginia does not have restrictions on the use of limitation of liability clauses, except if the clause would violate public policy (see *All Bus. Sols., Inc. v. NationsLine, Inc.*, 629 F. Supp. 2d 553, 559 (W.D. Va. 2009)).

No-Damages-for-Delay Clause

No-damages-for-delay clauses are commonly enforceable in private construction projects. The law is not well developed regarding potential exceptions to enforceability.

The Virginia Public Procurement Act prohibits public entities from enforcing no-damages-for-delay provisions in public contracts (Va. Code Ann. § 2.2-4335(a)).

Choice of Law

Virginia does not have choice of law provisions specific to construction contracts, but Virginia law does address venue. The law provides that where a party has its principal place of business in Virginia, a contract for construction services on a project physically located in Virginia cannot mandate that litigation or arbitration take place outside of the Commonwealth. The provision is void and unenforceable under Virginia law.

Venue must be either:

- In the county where the project is located.
- In another county as agreed to by the parties within the Commonwealth.

(Va. Code Ann. § 8.01-262.1.)

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