

Construction Laws and Customs: New Jersey

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

Prompt Payment Acts and Retainage

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

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

The following New Jersey statutes and regulations govern times for payment on publicly owned or financed projects:

- The New Jersey Prompt Payment Act (N.J.S.A. 2A:30A-1 and 2A:30A-2).
- N.J.S.A. 52:32-2 (state contracts).

- N.J.S.A. 18A:18A-18 (board of education contracts).
- N.J.S.A. 27:7-34 (state transportation projects).
- N.J.S.A. 40A:11-16.2 (municipal contracts).
- N.J.A.C. 7:14-2.8 (wastewater treatment facilities contracts).

Payments by Owners

A public owner must pay a prime contractor within 30 days after the billing date. If the owner has an objection to the bill, it must, within 20 days after receiving the bill, provide both:

- A written statement of the amount withheld.
- The reason for withholding.

(N.J.S.A. 2A:30A-2(a).)

The time limit does not apply if, in the bid specifications and contract documents, a public or governmental entity included a requirement that its governing body vote on the authorizations for payment. In this case, the amount due may be approved and certified at the next scheduled public meeting of the entity’s governing body and paid during the entity’s next payment cycle. (N.J.S.A. 2A:30A-2(a).)

On the contractor's certification of the amount owed to a subcontractor, the public owner may make payments directly to the subcontractor under either:

- A state contract (N.J.S.A. 52:32-2(c)).
- A board of education contract (N.J.S.A. 18A:18A-18(c)).

For state contracts, the owner must pay:

- 60 days from the date specified in the contract.
- 60 days from the later of the following if no date is specified in the contract:
 - the receipt of an invoice; or
 - the receipt of the goods or services.

(N.J.S.A. 52:32-34(b).)

For state transportation projects, contracts must provide for partial payments either:

- At least once each month.
- From time to time as the work progresses.

(N.J.S.A. 27:7-34.)

For municipal contracts, partial progress payments must be made at least monthly for contracts over \$100,000 (N.J.S.A. 40A:11-16.2).

Under a contract for wastewater treatment facilities, a contractor must submit a partial payment estimate no more than once a month (N.J.A.C. 7:14-2.8(a)). The owner must pay the contractor within five days after approving the estimate (N.J.A.C. 7:14-2.8(b)).

Payment by Prime Contractors

A contractor must pay its subcontractors within ten days after receiving payment if:

- The subcontractor has performed in accordance with the provisions of its contract.
- The work has been accepted by the owner, the owner's approving agent, or the prime contractor.
- The parties have not agreed otherwise in writing.

(N.J.S.A. 2A:30A-2(b).)

This time limit also applies to subcontractor payments to sub-subcontractors (N.J.S.A. 2A:30A-2(b)).

For state contracts, a contractor must pay its subcontractors within ten days after receiving payment for completed work if no valid basis exists for withholding payment (N.J.S.A. 52:32-41(c)).

Penalties for Failure to Comply

If any payment to a contractor is delayed, the public owner must pay interest at a rate equal to the prime rate plus 1% (N.J.S.A. 2A:30A-2(c) and N.J.S.A. 52:32-41(c)). The prime rate is the base rate on corporate loans at large US money center commercial banks (N.J.S.A. 2A:30A-1).

Interest is due for the period beginning on the day after the payment was due and ending on the date on which the check for payment has been drawn (N.J.S.A. 2A:30A-2(c)). For state contracts, interest begins to accrue on the tenth calendar day after receipt of payment by the prime contractor (N.J.S.A. 52:32-41(c)).

In a civil action brought to collect payment under the Prompt Payment Act, the prevailing party is awarded reasonable costs and attorneys' fees (N.J.S.A. 2A:30A-2(f); see *Aire Enters, Inc. v. Warren Cnty.*, 2014 WL 5419568, at *2 (N.J. Super. Ct. App. Div. Oct. 27, 2014)).

Right to Stop Work

A prime contractor or subcontractor may, after providing seven calendar days' written notice, suspend performance of a construction contract without penalty for breach of contract if all of the following apply:

- The prime contractor or subcontractor is:
 - not paid as required by N.J.S.A. 2A:30A-2; and
 - not provided with a written statement of the amount withheld and the reason for the withholding.
- The payor is not engaged in a good faith effort to resolve the reason for the withholding.

(N.J.S.A. 2A:30A-2(d).)

However, the contractor may not stop work if:

- The project is a transportation project that receives federal funding.
- Stopping work would jeopardize the project's federal funding.

(N.J.S.A. 2A:30A-2(d) and 27:1B-3.)

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

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

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

New Jersey's Prompt Payment Act (N.J.S.A. 2A:30A-1 and 2A:30A-2) governs the timing of payments on privately owned or financed construction projects.

Payments by Owners

A private owner must pay a prime contractor within 30 days after the billing date. If the owner has an objection to the bill, it must, within 20 days after receiving the bill, provide both:

- A written statement of the amount withheld.
- The reason for withholding.

(N.J.S.A. 2A:30A-2(a).)

Payment by Prime Contractors

A contractor must pay subcontractors within ten days after receiving payment if:

- The subcontractor has performed in accordance with the provisions of its contract.
- The work has been accepted by the owner, the owner's approving agent, or the prime contractor.
- The parties have not agreed otherwise in writing.

(N.J.S.A. 2A:30A-2(b).)

This time limit also applies to subcontractor payments to sub-subcontractors (N.J.S.A. 2A:30A-2(b)).

Penalties for Failure to Comply

If any payment to a contractor is delayed after the date due, the private owner must pay interest at a rate

equal to the prime rate plus 1% (N.J.S.A. 2A:30A-2(c)). The prime rate is the base rate on corporate loans at large US money center commercial banks (N.J.S.A. 2A:30A-1).

Interest is due for the period beginning on the day after the payment was due and ending on the date the check for payment has been drawn (N.J.S.A. 2A:30A-2(c)).

In any civil action brought to collect payment under the Prompt Payment Act, the prevailing party is awarded reasonable costs and attorneys' fees (N.J.S.A. 2A:30A-2(f); see *Aire Enters., Inc.*, 2014 WL 5419568, at *2).

Right to Stop Work

A prime contractor or subcontractor may, after providing seven calendar days' written notice, suspend performance of a construction contract without penalty for breach of contract if all of the following apply:

- The prime contractor or subcontractor is:
 - not paid as required by N.J.S.A. 2A:30A-2; and
 - not provided with a written statement of the amount withheld and the reason for the withholding.
- The payor is not engaged in a good faith effort to resolve the reason for the withholding.

(N.J.S.A. 2A:30A-2(d).)

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

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

- Timing of payment 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?

New Jersey has a prompt payment act that sets out the requirements for payments and interest on both public and private construction projects (see Questions 1 and 2).

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

New Jersey has a prompt payment act that sets out the timing of payments to subcontractors for both public and private construction projects (see Questions 1 and 2).

New Jersey does not prohibit “pay-if-paid” or “pay-when-paid” clauses.

Pay-If-Paid

Under a pay-if-paid clause, a subcontractor is paid only if the contractor receives payment from the owner. A pay-if-paid clause shifts the risk of nonpayment from the contractor to the subcontractor. Pay-if-paid clauses are enforceable where there is express contractual language that clearly demonstrates the intention of the parties to shift the risk of payment. (*Fixture Specialists, Inc. v. Glob. Constr., LLC*, 2009 WL 904031, at *4-6 (D.N.J. Mar. 30, 2009) (citing *MidAmerica Constr. Mgmt. Co. v. MasTec N. Am. Inc.*, 436 F.3d 1257 (10th Cir. 2006)).)

Pay-When-Paid

Under a pay-when-paid clause, a contractor must pay a subcontractor on receipt of payment from the owner. This clause suspends the contractor’s obligation to make payment for a reasonable amount of time to allow the contractor to receive payment from the owner. However, this type of clause does not create a condition precedent to the obligation to make payment. It also does not shift the risk of the owner’s nonpayment to the subcontractor. (*Fixture Specialists, Inc.*, 2009 WL 904031, at *4-6.)

For more information on these provisions, see [Practice Note, Pay-If-Paid vs. Pay-When-Paid in Construction Contracts](#).

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

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

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

- N.J.S.A. 40A:11-16.3 (local public contracts).
- N.J.S.A. 27:7-34 (state highway contracts).
- N.J.S.A. 18A:18A-40.3 (board of education contracts).
- N.J.A.C. 7:14-2.8 (wastewater treatment facilities contracts).

Amount of Retainage

Public owners generally must withhold 2% of the amount due on each partial payment to the contractor pending completion of the contract (N.J.S.A. 27:7-34 and 40A:11-16.3(a)).

For state transportation projects, if the work is not progressing, as defined by the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, the commissioner may increase the withholding to 4% of the payment due at the commissioner’s discretion (N.J.S.A. 27:7-34).

For wastewater treatment facilities contracts, public owners may retain up to 2% of the amount of each payment claimed (N.J.A.C. 7:14-2.8(b)).

Board of education contracts must provide for 5% retainage for a contractor that does not have a performance bond. If the contractor has a performance bond, the board of education must withhold:

- 2% of the amount due on each partial payment when the outstanding balance of the contract exceeds \$500,000.
- 5% of the amount due on each partial payment when the outstanding balance is \$500,000 or less.

(N.J.S.A. 18A:18A-40.3.)

Partial Release of Retainage

There is no New Jersey statute governing the partial release of retainage on public contracts generally.

On substantial completion of a project, the amount of retainage is reduced:

- To 1% under a state highway contract (N.J.S.A. 27:7-34).
- Below 2% but not less than twice the current market value of the work to be completed under a contract related to a wastewater treatment facility (N.J.A.C. 7:14-2.8(c)).

Final Release of Retainage

If the work is completed as indicated, retainage for a local public contract generally must be released and paid in full to the contractor within 45 days after the final acceptance date agreed on by the contractor and the contracting party (N.J.S.A. 40A:11-16.3(b)).

Other public contract statutes control the timing of payment of the final contract balance, which customarily includes any remaining retainage held (see Question 1).

Penalties

New Jersey statutes do not specifically address the obligation to pay interest on late payment of retainage. Late payments to contractors, generally, are subject to the interest rate of the prime rate plus 1% (N.J.S.A. 2A:30A-2(c); see Question 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?

Amount of Retainage

New Jersey has no statute governing the amount of retainage that can be withheld on privately owned or financed construction projects.

Partial Release of Retainage

New Jersey has no statute governing the partial release of retainage in privately owned or financed construction projects.

Final Release of Retainage

An owner must release the final retainage 30 days after the billing date (N.J.S.A. 2A:30A-2(a)).

Contractors must release the final retainage within ten days of receipt of payment (N.J.S.A. 2A:30A-2(b)).

Penalties

An owner or contractor who does not comply with the statute is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1% (N.J.S.A. 2A:30A-2(c)).

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

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

Amount of Retainage

In New Jersey, the contract generally governs the amount of retainage. Typically, the percentage ranges from 5% to 10% of the amount of each progress payment.

Partial Release of Retainage

Any partial release of retainage is typically contracted for by the parties. It is common for certain trades, such as demolition or specialty subcontractors having limited impact on the overall project (such as construction of a tennis court or swimming pool as part of construction of a new residential development) to have an early release of retention.

Final Release of Retainage

The New Jersey Prompt Payment Act governs the final release of retainage on privately owned construction projects (see Question 6).

Project Delivery Systems and Contract Forms

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

The following project delivery systems are used in New Jersey:

- Design-bid-build.
- Design-build.
- Construction manager at risk.
- Integrated project delivery (IPD).
- Engineer-procurement-construction (EPC).

Design-bid-build contracts are most common in private construction contracts. Design-build contracts are used for large-scale private construction contracts.

Design-build contracts have become increasingly popular for public works projects because they are less expensive and more efficient than traditional project delivery systems.

The selection of a project delivery system depends on several factors, including:

- Design.
- Type of project.
- Budget.
- Schedule.
- Owner expertise.
- Risk tolerance.

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

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

The following New Jersey statutes and regulations specifically relate to design-build construction projects:

- N.J.A.C. 13:27-7A.1 to 13:27-7A.6. These regulations provide specific provisions that must be included in all design-build contracts, private and public.
- N.J.A.C. 19:36-1.1 to 19:36-9.3 and N.J.S.A. 18A:7G-1 to 18A:7G-48. These laws govern design-build contracts involving property owned by a board of education.

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

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

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

Examples of standard industry form agreements include:

- [American Institute of Architects](#) forms. These forms are the most commonly used.
- [Engineers Joint Contract Documents Committee](#) forms. These forms are used when the engineer is the lead design professional on the project.
- [ConsensusDOCS](#). These are not generally used in New Jersey.
- [Design-Build Institute of America](#) forms. These forms have been gaining popularity with design-build projects.

For more information on industry form agreements, see [Practice Note, Standard Construction Industry Documents: Overview](#).

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

The most commonly negotiated terms in New Jersey construction contracts are:

- Scope of work.
- Price.
- Materials price escalation (in fixed price contracts).
- Time frame for completion of the work.
- Indemnification obligations.
- Limitations of liability.

- Dispute resolution, including arbitration and choice of law provisions.
- Insurance and bonds.

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?

New Jersey requires licensure for the following construction professionals:

- Architects (N.J.S.A. 45:3-1.1; see Architects).
- Landscape architects (N.J.S.A. 45:3A-2; see Landscape Architects).
- Engineers (N.J.S.A. 45:8-28; see Engineers).
- Land surveyors (N.J.S.A. 45:8-28; see Land Surveyors).

New Jersey also requires licensure, registration, or both for:

- Electrical contractors (N.J.S.A. 45:5A-1 to 45:5A-38).
- Landscape irrigation contractors (N.J.S.A. 45:5AA-1 to 45:5AA-11).
- Plumbers (N.J.S.A. 45:14C-1 to 45:14C-27).
- HVACR contractors (N.J.S.A. 45:16A-1 to 45:16A-28).
- Home improvement contractors (N.J.A.C. 13:45A-17.1 to 13:45A-17.14).

Architects

New Jersey requires an individual to have an architect's license to practice architecture (N.J.S.A. 45:3-5).

The practice of architecture is the rendering of services in connection with designing, constructing, enlarging, or altering a building or a group of buildings and the space within or surrounding those buildings, with the principal purpose of human use or habitation. Architectural services include:

- Site planning.
- Providing preliminary studies.
- Architectural designs.
- Drawings, specifications, and other technical documentation.
- Administration of construction for the purpose of determining compliance with drawings and specifications.

(N.J.S.A. 45:3-11(k).)

The [New Jersey State Board of Architects](#) oversees the licensing and regulation of architects. The board consists of 13 members who are appointed by the governor. (N.J.S.A. 45:3-1; N.J.A.C. 13:27-1.1 to 13:27-9.17.)

Landscape Architects

New Jersey requires an individual to have a landscape architect's license to practice landscape architecture (N.J.S.A. 45:3A-1).

The practice of landscape architecture is any service in which the principles and methodology of landscape architecture are applied in consultation, evaluation, planning, and design. This includes the preparation and filing of sketches, drawings, plans, and specifications for review and approval by governmental agencies, and responsible administration of contracts to the extent that the primary purpose of the contractual services is:

- Preserving, enhancing, or determining:
 - proper land uses;
 - natural land features;
 - ground cover and planting;
 - naturalistic and aesthetic values;
 - settings and approaches, or environment for structures or other improvements;
 - grading of land and water forms; or
 - natural drainage.
- Determining related impacts, assessments, and problems of land disturbance, including erosion and sedimentation, blight, or other hazards.

(N.J.S.A. 45:3A-2(b).)

The New Jersey State Board of Architects oversees the licensing and regulation of landscape architects.

The board consists of 13 members who are appointed by the governor. (N.J.S.A. 45:3A-17; N.J.A.C. 13:27-1.1 to 13:27-8.22.)

Engineers

New Jersey requires an individual to have an engineer's license to practice engineering (N.J.S.A. 45:8-27).

The practice of engineering includes any service or creative work, the adequate performance of which requires:

- Engineering education, training, and experience.
- Applying special knowledge of the mathematical, physical, and engineering sciences in connection with any engineering project, services, or creative work, including:
 - consulting;
 - investigating;
 - evaluating;
 - planning and design of engineering works and systems;
 - planning the use of land and water;
 - engineering studies; or
 - administering construction to determine compliance with drawings and specifications.

(N.J.S.A. 45:8-28(b).)

The [New Jersey State Board of Professional Engineers and Land Surveyors](#) oversees the licensing and regulation of engineers. The board consists of ten members who are appointed by the governor. (N.J.S.A. 45:8-30; N.J.A.C. 13:40-1.1 to 13:40-15.22.)

Land Surveyors

New Jersey requires an individual to have a land surveyor's license to practice land surveying (N.J.S.A. 45:8-27).

The practice of land surveying includes:

- Any service or work, the adequate performance of which involves applying special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law to certain measurements for:

- monumenting property boundaries;
- platting and laying out lands and their subdivisions; or
- preparing and perpetuating maps, record plats, field notes, records, and property descriptions in manual and computer-coded form.
- Establishing and maintaining the base mapping and related control for land information systems developed from the above definition.

(N.J.S.A. 45:8-28(e).)

The New Jersey State Board of Professional Engineers and Land Surveyors oversees the licensing and regulation of land surveyors. The board consists of ten members who are appointed by the governor. (N.J.S.A. 45:8-30; N.J.A.C. 13:40-1.1 to 13:40-15.22.)

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 New Jersey, an applicant for licensure as an architect must:

- Have completed either:
 - a bachelor's or master's degree from a university, college, or technical school in an architecture program accredited by the [National Architectural Accrediting Board](#); or
 - an educational program that the Board deems equivalent to an accredited full course in architecture.
- Have three or more years of experience related to architecture.
- Pass an exam established by the [New Jersey State Board of Architects](#).
- Be at least 18 years old.
- Have good moral character.

(N.J.S.A. 45:3-5 and N.J.A.C. 13:27-4.1.)

Architect licenses expire every two years (N.J.S.A. 45:1-7). The fee to renew is \$160 (N.J.A.C. 13:27-4.11).

Continuing Education Requirements

Architects must complete 24 hours of continuing education (CE) every two years. At least eight hours per year, or 16 hours per two-year period, must be in courses or programs addressing health, safety, and welfare. (N.J.A.C. 13:27-4A.2(a).)

Up to 12 hours of additional CE, including eight hours of health, safety, and welfare programs or courses, earned in the last six months of a renewal period may be carried into the next renewal period (N.J.A.C. 13:27-4A.2(d)).

Landscape Architects

Licensing Requirements

An applicant for licensure as a landscape architect must:

- Have good moral character.
- Have a bachelor's or higher degree from a college or university in a landscape architecture program approved by the Board of Architects.
- Have at least eight years of experience in landscape architectural work, including both education and practical experience.
- Pass an exam established by the Board of Architects.

(N.J.S.A. 45:3A-7, 45:3A-8(a), and 45:3A-10.)

Landscape architect licenses expire every two years (N.J.S.A. 45:1-7). The fee to renew is \$160 (N.J.A.C. 13:27-8.21).

Continuing Education Requirements

Landscape architects must complete 24 hours of CE every two years. An architect licensed to practice both architecture and landscape architecture must complete 12 hours of continuing education in landscape architecture. (N.J.S.A. 45:3A-15(a), (b); N.J.A.C. 13:27-8.14(a).)

No CE hours may be carried over into another renewal period (N.J.A.C. 13:27-8.14(b)).

Engineers

Licensing Requirements

An applicant for licensure as an engineer must fulfill one of the following sets of requirements:

- Graduate from a board-approved curriculum in engineering of four years or more and:
 - have a specific record of four or more years of experience in satisfactory engineering work; and
 - pass all parts of the written examination.
- Graduate from a board-approved curriculum in engineering technology of four years or more and:
 - have a specific record of six or more years of experience in satisfactory engineering work; and
 - pass all parts of the written examination.
- Graduate from a board-approved curriculum in engineering or engineering technology of four years or more and:
 - have a specific record of 15 or more years of experience in satisfactory engineering work; and
 - pass the specialized portion of the written examination designated as Part P.
- Have a certificate of registration issued by any US state or territory, if:
 - the state or territory has the same minimum requirements as those listed above; and
 - the applicant has not failed any portion of a nationally administered two-day examination required by the board that was taken to receive licensure by the issuing agency.

(N.J.S.A. 45:8-35(1).)

The applicant must also submit five references, at least three or more of whom are licensed professional engineers having personal knowledge of the applicant's engineering experience (N.J.S.A. 45:8-35).

Engineers must renew their licenses every two years, on or before April 30 (N.J.S.A. 45:1-7 and 45:8-37). The fee to renew is \$80 (N.J.A.C. 13:40-6.1).

Continuing Education Requirements

Engineers must complete 15 continuing professional competency credits every two years. At least two

credits must be in professional practice ethics. (N.J.A.C. 13:40-13.1(b).)

Land Surveyors

Licensing Requirements

An applicant for licensure as a land surveyor must fulfill one of the following sets of requirements:

- Graduate from a board-approved curriculum in surveying of four or more years and:
 - have three or more years of experience in satisfactory land surveying work; and
 - pass all parts of the examination, including the New Jersey State-specific portion.
- Have a certificate of registration issued by any US state or territory, if:
 - the state or territory has minimum requirements comparable to those in effect in New Jersey at the time;
 - the issuing agency attests to the licensing criteria at the time of the applicant's original licensure in that jurisdiction; and
 - the applicant receives a passing grade on the New Jersey State-specific portion of the current land surveying examination and any portions of a nationally administered two-day examination required by the board that the applicant has not already passed.

(N.J.S.A. 45:8-35(2).)

The applicant must also submit five references, at least three or more of whom are licensed land surveyors having personal knowledge of the applicant's land surveying experience (N.J.S.A. 45:8-35).

Land surveyors must renew their licenses every two years, on or before April 30 (N.J.S.A. 45:1-7 and 45:8-37). The fee to renew is \$80 (N.J.A.C. 13:40-6.1).

Continuing Education Requirements

Land surveyors must complete 24 credits of continuing professional competency every two years (N.J.A.C. 13:40-11.3(a)). A maximum of eight credits may be carried over into the next renewal period (N.J.A.C. 13:40-11.3(b)). Additional requirements apply

to those holding dual licenses in land surveying and engineering (N.J.A.C. 13:40-11.3(c), (d)).

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

License Confirmation

The best way to confirm that an architect, landscape architect, engineer, land surveyor, or any trade contractor is properly licensed in New Jersey is by searching the New Jersey Division of Consumer Affairs [verification database](#).

Consequences of Violation

Courts generally do not enforce a contract for payment if a professional is unlicensed. New Jersey courts have consistently held that public policy precludes enforcement of contracts that violate a licensing statute. (*Accountemps Div. of Robert Half of Phila., Inc. v. Birch Tree Grp., Ltd.*, 115 N.J. 614, 626, 560 A.2d 663, 669 (1989).)

Any person, firm, or corporation, not being duly authorized, who engages in business as one of the following licensed professionals, may be subject to various fines and penalties:

- Architects and landscape architects (N.J.S.A. 45:3-23).
- Professional engineers and surveyors (N.J.S.A. 45:8-39).

(N.J.S.A. 45:1-18.2, 45:1-25, 45:4B-2, and 45:4B-14.)

Unlicensed trade contractors are also guilty of a fourth-degree crime (N.J.S.A. 56:8-138(a) and 56:8-146; N.J.A.C. 13:32A-2.4, 13:32A-3.1(g), and 13:32A-5.5).

Warranties

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

New Jersey law recognizes an implied warranty of reasonable workmanship and habitability for new construction for both commercial and residential construction projects (*Hodgson v. Chin*, 168 N.J. Super. 549, 553-55, 403 A.2d 942, 944-45 (App. Div. 1979)).

These warranties protect both:

- Initial buyers of a new building from a builder or vendor (*McDonald v. Mianeki*, 79 N.J. 275, 277-78, 398 A.2d 1283, 1284 (1979) (applying workmanship and habitability implied warranties to houses with non-potable water)).
- Subsequent home buyers (*Aronsohn v. Mandara*, 98 N.J. 92, 100-03, 484 A.2d 675, 679-81 (1984) (applying only implied warranty of workmanship to defective patio because house not inhabitable)).

The parties may include contractual provisions to the contrary, provided that they are not against public policy.

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

Most construction contracts in New Jersey generally include an express warranty providing that the following must conform to good quality standards and the contract's requirements:

- Materials.
- Equipment.
- Workmanship.

This warranty is in addition to any warranty issued by product manufacturers.

Warranties typically begin on the date of substantial completion of the project or of the applicable area (for example, the roof).

Contracts often require the contractor to repair or correct defective or deficient work for one year after substantial completion of the contract. This requirement is separate from the express warranty.

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?

New Jersey's New Home Warranty and Builder's Registration Act (HOW Act) governs warranties for new residential construction (N.J.S.A. 46:3B-1 to 46:3B-20).

Building Structures and Systems

The HOW Act applies to any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease (N.J.S.A. 46:3B-2(d)).

Time Period

The HOW Act provides the following warranty periods:

- One year for defects caused by faulty workmanship or defective materials due to noncompliance with building standards.
- Two years for defects caused by faulty installation of plumbing, electrical, heating, and cooling delivery systems. However, in the case of appliances, the warranty does not exceed the length and scope of the warranty offered by the manufacturer.
- Ten years for major construction defects. A major construction defect is any actual damage to the load-bearing portion of the home, including damage due to subsidence, expansion, or lateral movement of the soil, that affects its load-bearing function and that vitally affects or is imminently likely to vitally affect use of the home for residential purposes (N.J.S.A. 46:3B-2(g)).

(N.J.S.A. 46:3B-3(b).)

Restrictions

Before making a claim against New Jersey's new home warranty security fund for a defect in a new home covered by the HOW Act, an owner must notify the builder of the defect and allow a reasonable time period for its repair. If the builder does not make the repairs within a reasonable time or if they are not

satisfactory to the owner, the owner may file a claim against New Jersey's new home warranty security fund in the form and manner prescribed by New Jersey's Commissioner of Community Affairs. The Department of Community Affairs reviews claims through a conciliation or arbitration procedure. If a claim is found to be valid, and the builder willfully refuses to correct the identified defect, the new home security fund pays the owner an amount sufficient to cure the problem. (N.J.S.A. 46:3B-7(c).)

Under implementing regulations, written notice of a written warranty defect must be received not later than seven calendar days after the warranty against that defect expires (N.J.A.C. 5:25-3.3(d)).

The maximum liability under the new home warranty is limited to either:

- The home's purchase price in the first good-faith sale of it.
- If there has been no good-faith sale of the home, the fair market value of the home on its completion date.

(N.J.A.C. 5:25-3.8.)

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

Payment and Performance Bonds

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

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

New Jersey has a Little Miller Act, which is codified in N.J.S.A. 2A:44-143 to 2A:44-147.

Minimum Requirements

A payment and performance bond is required on all public construction projects (N.J.S.A. 2A:44-143). Generally, the surety issuing the payment

and performance bond must have the minimum surplus and capital stock or net cash assets required by N.J.S.A. 17:17-6 or 17:17-7 at the time the invitation to bid is issued. (N.J.S.A. 2A:44-143(a)(1)(a).) The surety must meet additional requirements when:

- The amount of the bond is at least \$850,000 but less than \$3.5 million.
- The amount of the bond exceeds \$3.5 million.
- The contract is for the state.
- The project is a school project.

(N.J.S.A. 2A:44-143(a)(1)(b), (a)(2), (3).)

The payment and performance bond must be:

- In an amount equal to 100% of the contract price.
- Conditioned for the payment by the contractor of all indebtedness that may accrue to any person, firm, or corporation designated as a “beneficiary” under N.J.S.A. 2A:44-143 in an amount not exceeding the sum specified in the bond, on account of any labor performed or materials supplied for the construction, erection, alteration, or repair of the public work.

(N.J.S.A. 2A:44-144.)

Security

A payment and performance bond may be posted as security. The language of the payment and performance bond must comply with the specific language provided in N.J.S.A. 2A:44-147.

The security is posted with and held by the respective board, officer, or agent acting on behalf of the state, contracting unit, or school district (N.J.S.A. 2A:44-144).

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

Under New Jersey law, a beneficiary of a payment bond who does not have a direct contract with the contractor furnishing the bond must serve written notice on the contractor that it is a beneficiary of the bond before work commences. If the beneficiary fails to do so, it only has rights under the bond from the date of notice. (N.J.S.A. 2A:44-145.)

Statute of Limitations

The statute of limitations is one year from the date the beneficiary last worked on, or delivered materials to, the project (N.J.S.A. 2A:44-145 and 2A:44-146).

Additional Requirements

No claimant may bring an action on the bond until at least 90 days after that claimant provided their statement of the amount due to the surety and the contractor (N.J.S.A. 2A:44-145 and 2A:44-146).

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?

In New Jersey, private owners generally do not require payment or performance bonds or other types of security. Bonds may be difficult or costly for contractors to obtain and contractors generally either resist posting them or pass along the premium to the owner. As a result, bonds are usually only obtained on very large or complex projects.

Instead of a performance bond or other security, an owner may seek additional protection through an increase in the percentage of retainage held in its contracts.

Litigation Concerns

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

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

The following statutes of limitations apply to claims in New Jersey:

- **Breach of contract.** The statute of limitations is:
 - six years from the date the plaintiff discovered or should have discovered the breach, for non-sales contracts (N.J.S.A. 2A:14-1; *The Palisades at Fort Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC*, 230 N.J. 427, 435, 169 A.3d 473, 478 (2017)); or
 - four years from the date of the breach, for sales contracts under the Uniform Commercial Code (UCC) (N.J.S.A. 12A:2-725(1), (2)).
- **Breach of warranty.** The statute of limitations is:
 - six years from the date the plaintiff discovered or should have discovered the breach, for common law warranties (N.J.S.A. 2A:14-1; *Terrace Condo. Ass'n v. Midlantic Nat'l Bank*, 268 N.J. Super. 488, 502, 633 A.2d 1060, 1067 (Law Div. 1993));
 - four years from the date of breach under the UCC (N.J.S.A. 12A:2-725(1));
 - one year for defects caused by faulty workmanship or defective materials under the New Jersey Home Warranty and Builder's Registration Act (HOW Act) (N.J.S.A. 46:3B-3(b));
 - two years for defects caused by faulty installation of plumbing, electrical, heating, and cooling delivery systems, under the HOW Act (N.J.S.A. 46:3B-3(b)); and
 - ten years for major construction defects, under the HOW Act (N.J.S.A. 46:3B-3(b)).
- Negligence resulting in bodily injury or property damage. The statute of limitations is:

- two years for personal injury claims (N.J.S.A. 2A:14-2(a)); or
- six years for property damage claims (N.J.S.A. 2A:14-1).

- **Professional malpractice by a design professional.** The statute of limitations is six years (N.J.S.A. 2A:14-1; *Fraser v. Bovino*, 317 N.J. Super. 23, 34, 721 A.2d 20, 25 (App. Div. 1998)).
- **Latent defects in design or construction.** The statute of limitations is six years from the date on which the defect is discovered or should have been discovered (N.J.S.A. 2A:14-1; *Hermes v. Staiano*, 181 N.J. Super. 424, 429-32, 437 A.2d 925, 928-29 (Law Div. 1981)). A ten-year statute of repose also applies to latent defects in construction (N.J.S.A. 2A:14-1; 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

A plaintiff must file an affidavit of merit for professional malpractice cases in New Jersey. The affidavit must:

- Be provided by an appropriate licensed professional.
- Provide that the work that is the subject of the complaint did not meet acceptable professional standards.
- Be filed within 60 days after the answer is filed.

(N.J.S.A. 2A:53A-27.)

A court may grant an additional 60-day time period for good cause (N.J.S.A. 2A:53A-27).

Proof of Licensure

A construction professional required to be licensed customarily alleges in the complaint or counterclaim that it holds the required license.

Special Requirements

New Jersey does not have additional special requirements to allege causes of action related to latent design or construction defects.

However, under the Tort Claims Act (N.J.S.A. 59:8-1 to 59:8-11), which applies to construction defect actions, plaintiffs must provide advance notice to government entities before filing a lawsuit. The notice of claim must be filed with the appropriate government entity within 90 days of the date the claim accrued (N.J.S.A. 59:8-8).

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

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

Period of Repose

In New Jersey, any action to recover damages arising out of the defective or unsafe condition of an improvement to real property must be commenced within ten years of the date on which the improvement was completed (N.J.S.A. 2A:14-1.1(a)).

The ten-year repose period generally begins:

- For developers and builders, one day after issuance of the certificate of substantial completion for the project (*State v. Perini Corp.*, 221 N.J. 412, 427, 113 A.3d 1199, 1208 (2015)).
- For contractors and design professionals, when their work reaches substantial completion (*Russo Farms, Inc. v. Vineland Bd. of Educ.*, 144 N.J. 84, 114-19, 675 A.2d 1077, 1092-94 (1996)).

Types of Claims Allowed

New Jersey's statute of repose applies to actions:

- Based on contract or tort, where the defendant was responsible for performing or furnishing the design, planning, surveying, supervision of construction, or construction of an improvement to real property, seeking damages for:
 - any deficiency in the design, planning, surveying, supervision, or construction of the improvement; or
 - any injury to real or personal property, personal or bodily injury, or wrongful death arising out

of the defective and unsafe condition of the improvement.

- For the contribution or indemnity for damages sustained on account of any of the above injuries.

(N.J.S.A. 2A:14-1.1(a).)

The statute of repose does not apply to actions against a person in actual possession and control of the improvement as an owner, tenant, or otherwise, at the time that the defective and unsafe condition of the improvement constitutes the proximate cause of the injury or damage for which the action is brought (N.J.S.A. 2A:14-1.1(a)).

Notice or Conditions Precedent

New Jersey's statute of repose does not have any special notice requirements.

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

New Jersey courts generally enforce a liquidated damages clause, if the liquidated damages are not a penalty. A liquidated damages clause is enforceable if:

- The amount is a reasonable forecast of the harm caused by the breach.
- The harm caused by the breach is difficult to estimate accurately.

(*Wasserman's Inc. v. Twp. of Middletown*, 137 N.J. 238, 247-51, 645 A.2d 100, 105-07 (1994).)

Limitations of Liability

New Jersey courts generally enforce clearly written limitations-of-liability clauses. However, a court may strike a provision that is either:

- Unconscionable.
- In violation of public policy.

(*Lucier v. Williams*, 366 N.J. Super. 485, 491, 841 A.2d 907, 911 (App. Div. 2004).)

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Courts generally examine the parties' bargaining power when evaluating the validity of a limitation-of-liability clause (see *Lucier*, 366 N.J. Super. at 491-94, 841 A.2d at 911-12).

A provision of a construction contract is void and unenforceable if it seeks to indemnify or hold harmless a party against liability caused by or resulting from its own or its agents' or employees' sole negligence. However, this does not affect the validity of any insurance contract, workers' compensation, or agreement issued by an insurer. (N.J.S.A. 2A:40A-1.)

For more information, see [Construction Anti-Indemnity Statutes: State Comparison Chart](#).

No-Damages-for-Delay Clause

New Jersey courts generally enforce no-damages-for-delay clauses in contracts for private projects (*Broadway Maint. Corp. v. Rutgers*, 90 N.J. 253, 267-70, 447 A.2d 906, 913-14 (1982)).

However, no-damages-for-delay clauses are generally unenforceable in contracts for public projects, as they are considered to be against public policy (N.J.S.A. 2A:58B-3(b) (state contracts), N.J.S.A. 18A:18A-41 (school contracts), and N.J.S.A. 40A:11-19 (municipal and county contracts)).

Choice of Law or Forum

New Jersey courts generally enforce choice of law provisions unless either:

- The chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice.
- Application of the law of the chosen state would be contrary to a fundamental policy of New Jersey,

and New Jersey has a materially greater interest than the chosen state in the determination of the particular issue.

(*Grandvue Manor, LLC v. Cornerstone Contracting Corp.*, 471 N.J. Super. 135, 142, 272 A.3d 36, 41 (App. Div. 2022).)

In the absence of a contractual provision, New Jersey courts determine the appropriate law to apply by evaluating the following factors:

- The interests of interstate comity.
- The interests of the parties.
- The interests underlying the contract law.
- The interests of judicial administration.
- The competing interests of the relevant states.

(*Erny v. Est. of Merola*, 171 N.J. 86, 101-02, 792 A.2d 1208, 1217 (2002).)

Courts generally enforce forum selection clauses unless the clause:

- Is unreasonable.
- Contravenes a strong public policy of the forum where the suit is brought.

(See *Kubis & Perszyk Assocs., Inc. v. Sun Microsystems, Inc.*, 146 N.J. 176, 186-88, 680 A.2d 618, 623-24 (1996).)

New Jersey's Prompt Payment Act specifies that any civil action to collect payments under the act must be conducted in New Jersey (N.J.S.A. 2A:30A-2(f)).

For more information, see [Choice of Law and Forum Selection in Construction Contracts: State Comparison Chart](#).

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