

## Construction Laws and Customs: Louisiana

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

### Prompt Payment Acts and Retainage

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

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

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

- The Louisiana Public Works Act (La. R.S. 38:2191).
- For the Louisiana Department of Transportation and Development (La. R.S. 48:251.5).
- The Louisiana General Prompt Payment Law (La. R.S. 9:2784).

### Payments by Owners

#### Louisiana Public Works Act

The Louisiana Public Works Act requires that public entities promptly pay obligations, including approved change orders, arising under:

- Public contracts, as the obligations become due and payable under the contract.
- Progressive stage payments and final payments, as the obligations become due and payable under the contract.

(La. R.S. 38:2191(A).)

#### Louisiana Department of Transportation and Development Contracts

Specific payment laws for contracts with the [Louisiana Department of Transportation and Development](#) (LADOTD) require the LADOTD to pay:

- All obligations arising under public contracts within 30 days of the date the obligations become due and payable under the contract.
- Progressive stage payments and final payments as the obligations become due and payable under the contract.

(La. R.S. 48:251.5(A).)

### Payment by Prime Contractors

#### Louisiana General Prompt Payment Law

A contractor must promptly pay to each subcontractor and supplier the funds it receives from an owner for improvements to an immovable. The contractor must make the payment:

- When the contractor receives a payment from the owner after the architect or engineer issues a certificate of payment.
- When the contractor receives a payment from the owner (if there is no architect or engineer on the job).
- In proportion to the percentage of work completed by the subcontractor or supplier at the time:
  - the architect or engineer issues certificate of payment; or
  - the contractor receives the funds from the owner (if there is no architect or engineer on the job).

(La. R.S. 9:2784(A).)

If a contractor receives less than full payment from the owner, the contractor must disburse a prorated portion of the funds (based on the amount due on the payment) to:

- The contractor.
- The subcontractors.
- The suppliers.

(La. R.S. 9:2784(B).)

When a subcontractor receives a payment from a contractor, the subcontractor must pay promptly the funds it receives to each sub-subcontractor and supplier in proportion to the work completed (La. R.S. 9:2784(A)).

The prompt payment provisions are not applicable to improvements made to an immovable that is used for residential purposes (La. R.S. 9:2784(D)).

### Penalties for Failure to Comply

#### Louisiana Public Works Act

A public entity is liable for reasonable attorneys' fees and interest of 0.5% accumulated daily and capped at 15% if, without reasonable cause, it fails to pay the prime contractor:

- Any progressive stage payment within 45 days after it receives a certified request for payment.
- Any final payments:
  - after formal final acceptance; and
  - within 45 days after receiving a clear lien certificate.

(La. R.S. 38:2191(B).)

### Louisiana Department of Transportation and Development Contracts

The LADOTD is liable for:

- Legal interest on the balance due the contractor if the LADOTD fails to make any final payment within 100 days after its receipt of the clear lien certificate (La. R.S. 48:251.5(B)(2)).
- The contractors' attorneys' fees if the contractor must bring a mandamus action to compel payment and the LADOTD either:
  - failed to make final payment within 100 days after its receipt of the clear lien certificate; or
  - neglected to promptly ascertain the final estimated quantities under the contract in bad faith.

(La. R.S. 48:251.5(B)(3).)

### Louisiana General Prompt Payment Law

If, without reasonable cause, a contractor or subcontractor fails to make a payment to a subcontractor, sub-subcontractor, or supplier within 14 days of receipt of payment from the owner, the contractor or subcontractor must pay:

- The payment.
- A penalty of 0.5% of the amount due, per day, from the expiration of the 14-day period, capped at 15% of the total outstanding amount.
- Attorneys' fees.

(La. R.S. 9:2784(C).)

### Right to Stop Work

The prompt payment statutes do not address the right of a contractor, subcontractor, or supplier to stop work in the event of nonpayment.

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

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

The following Louisiana statutes govern times for payment on privately owned or financed projects:

- The Louisiana General Prompt Payment Law (La. R.S. 9:2784).
- The Louisiana Private Works Act (La. R.S. 9:4856).

### Payments by Owners

The prompt payment statutes do not specifically address the timing of payments by private owners.

### Payment by Prime Contractors

#### Louisiana General Prompt Payment Law

A contractor must promptly pay to each subcontractor and supplier the funds it receives from an owner for improvements to an immovable. The contractor must make the payment:

- When the contractor receives a payment from the owner after the architect or engineer issues a certificate of payment.
- When the contractor receives a payment from the owner (when no architect or engineer is on the job).
- In proportion to the percentage of work completed by the subcontractor or supplier at the time:
  - the architect or engineer issues the certificate of payment; or
  - the contractor receives the funds from the owner (when no architect or engineer is on the job).

(La. R.S. 9:2784(A).)

If a contractor receives less than full payment from the owner, the contractor must disburse a prorated portion of the funds (based on the amount due on the payment) to:

- The contractor.
- The subcontractors.
- The suppliers.

(La. R.S. 9:2784(B).)

When a subcontractor receives payment from a contractor, the subcontractor must pay promptly the funds it receives to each sub-subcontractor and supplier in proportion to the work completed (La. R.S. 9:2784(A)).

### Louisiana Private Works Act

A contractor, subcontractor, or an agent of a contractor or subcontractor is liable for damages, costs, attorneys' fees, and civil penalties if it:

- Receives money on account of a contract for the construction, erection, or repair of a building, structure, or other improvement.
- Knowingly fails to apply the money as necessary to settle claims due for the construction or under the contract to:
  - sellers of movables; or
  - laborers.

(La. R.S. 9:4856(A).)

### Penalties for Failure to Comply

#### Louisiana General Prompt Payment Law

If, without reasonable cause, a contractor or subcontractor fails to make a payment to a subcontractor, sub-subcontractor, or supplier within 14 days of receipt of payment from the owner, the contractor or subcontractor must pay:

- The payment.
- A penalty of 0.5% of the amount due, per day, from the expiration of the 14-day period, capped at 15% of the total outstanding amount of the payment.

- Attorneys' fees.

(La. R.S. 9:2784(C).)

### Louisiana Private Works Act

The Louisiana Private Works Act prompt payment statute provides for the following penalties:

- When the amount misapplied is \$1,000 or less, the civil penalties must not be less than \$250 or more than \$750 (La. R.S. 9:4856(B)).
- When the amount misapplied is greater than \$1,000, the civil penalties must not be less than \$500 or more than \$1,000 for each \$1,000 in misapplied funds (La. R.S. 9:4856(C)).
- If the court finds the contractor, subcontractor, or their agent knowingly failed to apply construction contract payments, they must pay:
  - the penalties provided above;
  - the amount due to settle the claim; and
  - reasonable attorneys' fees and costs.(La. R.S. 9:4856(D).)

### Right to Stop Work

The prompt payment statutes do not address a contractor's right to stop work in the event of nonpayment.

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

- Timing of payments by owners to prime contractors?
- Timing of payment by prime contractors to subcontractors?
- Payment of interest on late payments?
- A contractor's right to stop work for failure to receive a payment?

### Payments by Owners

Louisiana's prompt payment laws governing public contracts provide for the timing of payments by owners to prime contractors on public construction projects (see Question 1).

However, those laws do not address the timing of payments by owners to prime contractors on private contracts. The typical practice in Louisiana is that the owner pays progress and final payments to the contractor as provided in the construction contract.

### Payment by Prime Contractors

Louisiana's prompt payment laws set out the requirements for payments by prime contractors on both public and private construction projects (see Questions 1 and 2).

### Penalties

Louisiana's prompt payment laws set out the penalties for late payments by prime contractors on both public and private construction projects (see Questions 1 and 2).

### Right to Stop Work

The prompt payment statutes do not address a contractor's right to stop work in the event of nonpayment on either public or private construction projects. The contractor's right to stop work for failure to receive a payment is typically governed by the parties' contract or general contract law.

#### 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?

Louisiana has prompt payment laws that regulate the timing of payment to subcontractors for public and private construction projects (see Questions 1 and 2).

Courts applying Louisiana law have enforced properly drafted "pay-if-paid" and "pay-when-paid" clauses (see, for example, *Vector Elec. & Controls, Inc. v. JE Merit Constructors, Inc.*, 2006 WL 3208462, at \*3 (La. Ct. App. Nov. 8, 2006); *Imagine Constr., Inc. v. Centex Landis Constr. Co., Inc.*, 707 So. 2d 500, 501-03 (La. Ct. App. 1998)).

Under Louisiana law, the determinative factor in interpreting whether a payment provision is a paid-when-paid clause (a term of payment) or a pay-if-paid clause (a suspensive condition) is the language in the contract (*Tymeless Flooring, Inc. v. Rotolo Consultants, Inc.*, 172 So. 3d 145, 152 (La. Ct. App. 2015)). Louisiana state and federal courts have consistently held that clauses specifically stating that upstream payments from an owner, contractor, or subcontractor are a condition precedent to payments to the party seeking compensation are "pay-if-paid" clauses (see, for example, *Lambert Elec. Co. v. HCB Contractors*, 1987 WL 16349, at \*2 (E.D. La. 1987); *Tymeless*, 172 So. 3d at 152-53).

### 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 Louisiana statutes regulate the withholding of retainage on publicly owned or financed construction projects:

- For public works, La R.S. 38:2248.
- For the [Louisiana Department of Transportation and Development \(LADOTD\)](#), La. R.S. 48:256.1.

#### Amount of Retainage

A public owner cannot retain more than:

- 10% of the contract price on projects of less than \$500,000.
- 5% of the contract price on projects of \$500,000 or more.

(La. R.S. 38:2248(A).)

The LADOTD cannot retain more than:

- 10% of the contract price on projects of less than \$500,000.
- 5% of the contract price on projects of \$500,000 or more.

(La. R.S. 48:256.1(A)(1).)

#### Partial Release of Retainage

Louisiana retainage statutes do not address partial release or reduction of retainage.

#### Final Release of Retainage

A public owner must release retainage (minus the estimated cost of outstanding punch list items) 45 days after the recordation of either:

- The formal acceptance of the project.
- A notice of default by a contractor or subcontractor.

(La. R.S. 38:2248(A).)

The LADOTD must release final retainage after both:

- The secretary of the LADOTD has certified the completion and acceptance of the project.
- 45 days have lapsed since the recordation of the formal acceptance of the project.

(La. R.S. 48:256.1(A)(2).)

#### Penalties

Louisiana retainage statutes do not address penalties specific to the untimely release of retainage. The prompt payment statutes provide penalties for late payments (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?

In Louisiana, La. R.S. 9:4857 regulates the withholding of retainage on privately-owned construction projects. The statute:

- Provides that retainage withheld on a contract of \$50,000 or more must be deposited into an interest bearing escrow account.
- Does not apply to a contract for a single or double family residence or to a contract for the construction or improvement of certain industrial facilities.

(La. R.S. 9:4857(A).)

#### Amount of Retainage

The statute does not regulate the amount of retainage that can be withheld.

### Partial Release of Retainage

The statute does not address partial release or reduction of retainage.

### Final Release of Retainage

If there are no existing claims by the owner, final retainage, including interest in the escrow account, must be released to the contractor within three business days of the escrow agent's receipt of a written release signed by the contractor and owner (La. R.S. 9:4857(C)(1)).

If a dispute does exist, the escrow agent must release undisputed amounts within three business days of receiving a notarized request from the contractor (La. R.S. 9:4857(C)(2)(a), (3)(a)). The agent must release disputed amounts to the contractor or owner in accordance with a final order of a court or arbitrator within three business days of receiving the order (La. R.S. 9:4857(C)(2)(b), (3)(b)).

### Penalties

The statute does not provide for penalties.

#### 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 Louisiana, private parties are free to negotiate the amount of retainage withheld from progress payments. The percentage withheld often ranges from 5% to 10% of the amount of each progress payment depending on factors such as:

- The dollar amount and complexity of the project.
- Other forms of security given by the contractor, such as a payment or performance bond.
- The requirements of an owner's construction loan.

### Partial and Final Retainage

The parties sometimes negotiate contract terms that require a reduction or a release of a portion of retainage when the contractor achieves specific performance milestones.

In Louisiana, retainage is typically held until either:

- Final payment is made.
- A clear lien and privilege certificate is issued after the expiration of the applicable lien period showing no liens have been filed on the project. The applicable lien period is generally 30 days, 60 days, 70 days, 6 months, or 7 months after:
  - substantial completion of the project;
  - abandonment of the project; or
  - a notice of termination of the work is filed in the public record.

### Project Delivery Systems and Contract Forms

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

Design-bid-build is the traditional and most commonly used project delivery system in Louisiana. However, in recent years, there has been an increase in the use of design-build and construction manager at risk project delivery systems.

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

- Budget.
- Schedule.
- Design.
- Risk allocation to the contracting parties.
- Owner's expertise and desired level of control over project phases.

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

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

### Design-Build

Generally, Louisiana law prohibits public owners from using design-build contracts (La. R.S. 38:2225.2).

However, specific public entities may use design-build contracts for the construction or repair of any public building or structure:

- That has been destroyed or damaged by Hurricane Katrina, Hurricane Rita, or both.
- To meet a homeland security or criminal justice need under a hurricane recovery plan.

(La. R.S. 38:2225.2.1(A)(1).)

The [Louisiana Department of Transportation and Development](#) (LADOTD) can also use the design-build delivery system if approved by the secretary of the LADOTD (La. R.S. 48:250.2(A)).

### Construction Manager at Risk

Louisiana law allows the Construction Manager at Risk (CMAR) project delivery method for public projects that meet certain requirements (La. R.S. 38:2225.2.4(A)(1)). A public entity may award a contract using the CMAR delivery method to construct public works when it is:

- In the public interest.
- Beneficial to the owner.
- In accordance with the procedures contained in the statute.

(La. R.S. 38:2225.2.4(A)(2).)

CMAR is defined as a delivery method by which the owner uses a design professional who is engaged by the owner for professional predesign services, design services, or both. The owner contracts separately with a CMAR contractor to engage in the preconstruction phase. The same CMAR contractor may also provide construction services to build the project. (La. R.S. 38:2225.2.4(B)(1).)

The [Louisiana attorney general](#) has held that a construction manager is a “contractor” under the

contractors’ licensing laws and is required to be licensed for “building construction” to perform the work. The construction manager is required to be licensed even if it only oversees a project for a public entity and is not performing any construction work. ([La. Atty. Gen. Op. No. 02-0145 \(Nov. 7, 2002\)](#); see also Question 12.)

### 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 parties may use an industry standard form of agreement that is modified to reflect the specific terms and conditions of the particular project, depending on:

- The dollar amount of the project.
- The nature of the project.
- The complexity of the project.

Of the standard industry form agreements, the American Institute of Architects (AIA) forms are most commonly used for private construction projects in Louisiana.

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

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

The most heavily negotiated construction contract terms customarily include those related to:

- Price.
- Scope of work.
- Schedule, including:
  - time for completion of scope work;
  - extensions of time and payment for change order work, owner-caused delays (including no-damages-for-delay provisions), and force majeure; and
  - liquidated damages.
- Pay-when-paid and pay-if-paid provisions.
- Change order procedures.



- Indemnity obligations.
- Consequential damage waivers and limitations of liability.
- Warranties and exclusions and limitations of same.
- Arbitration and mediation provisions.
- Rights of the parties on termination of the contract for cause or convenience.

### 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?

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

- Contractors and Construction Managers (La. R.S. 37:2150 to 37:2165; see Contractors and Construction Managers).
- Professional Engineers and Land Surveyors (La. R.S. 37:681 to 37:703; see Professional Engineers and Land Surveyors).
- Architects (La. R.S. 37:141 to 37:158; see Architects).
- Landscape Architects (La. R.S. 3:3801 to 3:3816; see Landscape Architects).

Other construction trades in Louisiana that require a license or certification include plumbers and gas fitters (La. R.S. 37:1361 to 37:1380). The [State Plumbing Board of Louisiana](#) oversees licensing of plumbers and gas fitters (La. R.S. 37:1361).

#### Contractors and Construction Managers

Louisiana law requires licensure or registration for:

- The following contractors:
  - commercial;
  - residential;
  - home improvement; and
  - mold remediation.(La. R.S. 37:2156.1.)

- Construction managers for projects meeting certain monetary thresholds, and they must hold a contractor license in the relevant classification (La. R.S. 37:2161).

The [Louisiana State Licensing Board for Contractors](#) (LSLBC) oversees contractor and construction manager licensing and registration (La. R.S. 37:2151).

#### Professional Engineers and Land Surveyors

Louisiana requires licensure for professional engineers and land surveyors (La. R.S. 37:681). The [Louisiana Professional Engineering and Land Surveying Board](#) (LAPELS) oversees licensing of engineers and land surveyors (La. R.S. 37:683(A)(1)).

#### Architects

Louisiana requires licensure for architects (La. R.S. 37:141(A)). The [Louisiana State Board of Architectural Examiners](#) (LSBAE) oversees architect licensing (La. R.S. 37:142).

#### Landscape Architects

Louisiana requires licensure for landscape architects (La. R.S. 3:3804(A)(5)). The [Louisiana Horticulture Commission](#) oversees landscape architect licensing (La. R.S. 3:3801(F)).

#### 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?

#### Contractors and Construction Managers

##### Licensing Requirements

For commercial projects of \$50,000 or more, commercial contractors must have a commercial license to:

- Bid.
- Offer to:
  - construct;
  - supervise;
  - superintend;
  - oversee;



- direct; or
- in any manner assume charge of construction.
- Construct.

(La. R.S. 37:2150.1(4)(a)(i).)

For commercial buildings, a license is required for:

- Plumbing, electrical, and mechanical work if the cost of the project exceeds \$10,000.
- Hazardous materials work if the cost of the project exceeds \$1.00.

(La. R.S. 37:2150.1(4)(c), (5), (10).)

For residential buildings, a residential license is required for contractors if the cost of the project exceeds \$75,000 (La. R.S. 37:2150.1(15)).

To be licensed as a contractor, an applicant generally must:

- State the classification of work the applicant wants to perform from a list of major classifications.
- Provide the licensing board with a current financial statement signed by the applicant stating the assets of the applicant and meet a net worth requirement of at least \$10,000. If the applicant does not meet that net worth requirement, the applicant may provide the board with a bond, letter of credit, or other security.
- Designate a legal representative, who then must complete an application and pass any required examination or present any required credential.

(La. R.S. 37:2156.1(A), (C), (D).)

Home improvement contractors must be licensed with the [Louisiana State Licensing Board for Contractors](#) (LSLBC) in the classification of home improvement construction to perform services in an amount between \$7,500 and \$75,000. Licensed commercial and residential contractors are exempt from this requirement. No license is required to perform home improvement projects of less than \$7,500. (LAC 46:XXIX.509(A).)

A mold remediation contractor must have a mold remediation license to conduct mold remediation work when the cost of labor and materials exceeds \$7,500 (La. R.S. 37:2150.1(4)(a)(iv), (11)).

A construction manager must possess a license issued by the LSLBC if the following conditions are met:

- The construction manager performs, attempts to perform, or submits a price, bid, or offer to perform construction management or program management work to an owner.

- The cost of the work exceeds:
  - \$50,000 for a commercial construction project;
  - \$75,000 for a residential construction project; or
  - \$7,500 for a home improvement project.
- The scope of authority and responsibility of the construction management or program management work includes:
  - supervision;
  - oversight;
  - direction; or
  - assuming charge of the construction services in any manner.

The license must be issued by the LSLBC in one of the following major classifications:

- For a commercial construction project:
  - building construction;
  - heavy construction;
  - highway, street, and bridge construction; or
  - municipal and public works construction.
- Residential contractor for a residential construction project.
- Home improvement construction for a home improvement project.

(La. R.S. 37:2161; LAC 46:XXIX.309(A)(1).)

A licensed contractor holding a license in one of the major classifications can bid and perform any project specified for construction management or program management work within the scope of the classification held by the contractor.

A construction or program manager does not need a contractor's license if:

- The scope of authority and responsibility of the construction management or program management work does not include:
  - supervision;
  - oversight;
  - direction; or
  - assuming charge of the construction services in any manner.
- It does not subcontract actual construction work.

(LAC 46:XXIX.309(A)(2).)

Licenses expire on the anniversary of the date on which the license was originally issued and must be renewed every one, two, or three years, depending on what renewal term the licensee selected (La. R.S. 37:2156(H); see [LSLBC: License Types and Information](#)).

### Continuing Education Requirements

A residential building contractor must complete a minimum of six hours of continuing education annually by a LSLBC-approved provider.

The residential building contractor is exempt from the continuing education requirement if they also hold a valid, current commercial license in one of the following major classifications:

- Building construction.
- Highway, street, and bridge construction.
- Heavy construction.
- Municipal and public works construction.

(LAC 46:XXIX.513(B).)

There are no continuing education requirements for commercial contractors.

## Professional Engineers and Land Surveyors

### Licensing Requirements

Professional engineers and professional surveyors that practice or offer to practice professional engineering or professional land surveying in Louisiana must:

- Submit evidence they are qualified to practice.
- Be licensed by the [Louisiana Professional Engineering and Land Surveying Board](#) (LAPELS).

(La. R.S. 37:681.)

The licensing requirements apply to both:

- Individuals in a public or private capacity.
- Foreign or domestic firms.

(La. R.S. 37:681.)

A professional engineer must be either:

- An engineer intern or an individual who meets the qualifications to be an engineer intern who:
  - has met the requirements for progressive engineering experience in work acceptable to the board;
  - is of good character and reputation;

- has passed the examinations required by the board; and
- has satisfied the requirements of La. R.S. 37:694.
- An individual who is licensed to practice engineering by another state, territory, or possession of the United States, or the District of Columbia, based on requirements that do not conflict with Louisiana licensing requirements and that were of a standard not lower than that specified in the applicable licensure laws in effect in Louisiana at the time the license was issued and:
  - who is of good character and reputation;
  - who has satisfied the requirements of La. R.S. 37:694; and
  - the state, territory, or possession, or the District of Columbia, in which the engineer is licensed will accept the license issued by LAPELS on a reciprocal basis.
- A graduate of an accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing who:
  - has 20 years or more of progressive engineering experience in work acceptable to the board;
  - is of good character and reputation;
  - has passed the examinations required by the board; and
  - has satisfied the requirements of La. R.S. 37:694.

(La. R.S. 37:693(B)(2).)

A professional land surveyor must be either:

- A land surveyor intern or an individual who meets the qualifications of a land surveyor intern who:
  - has had at least four years or more combined office and field experience in land surveying, including two years or more of progressive experience on land surveying projects under the supervision of a professional land surveyor;
  - is of good character and reputation;
  - has passed the oral and written examinations required by the board; and
  - has satisfied the requirements of La. R.S. 37:694.
- An individual who is licensed to practice land surveying in another state, territory, or possession of the United States, or the District of Columbia, based

on requirements that do not conflict with Louisiana licensing requirements and that were of a standard not lower than that specified in the applicable licensure laws in effect in Louisiana at the time the license was issued and:

- who has passed an examination on the laws, procedures, and practices pertaining to land surveying in Louisiana;
- who is of good character and reputation;
- who has satisfied the requirements of La. R.S. 37:694; and
- the state, territory, or possession, or the District of Columbia, in which the land surveyor is licensed will accept the licenses issued by LAPELS on a reciprocal basis.

(La. R.S. 37:693(B)(4).)

Licenses expire at a time specified by LAPELS. LAPELS also sets the renewal fee. (La. R.S. 37:697.)

### Continuing Education Requirements

For each biennial licensure renewal period beginning after January 1, 2017, every professional engineer licensee must obtain:

- 15 professional development hours in engineering related activities.
- A minimum of one professional development hour in professional ethics.
- A minimum of four professional development hours in Life Safety Code, building codes, or Americans with Disabilities Act Accessibility Guidelines, if the professional engineer licensee does the following in Louisiana during the calendar year:
  - designs buildings or building systems; or
  - reviews or approves plans for buildings or building systems.

(LAC 46:LXI.3105(A).)

For each biennial licensure renewal period beginning after January 1, 2017, every professional land surveyor licensee must obtain:

- Eight professional development hours in land surveying related activities.
- A minimum of one professional development hour in professional ethics.

- A minimum of one professional development hour in the standards of practice for boundary surveys in Louisiana.

(LAC 46:LXI.3105(B).)

For each biennial licensure renewal period beginning after January 1, 2017, each dual licensee must obtain:

- 15 professional development hours, at least one-third of which must be obtained separately for each profession.
- A minimum of one professional development hour in professional ethics.
- A minimum of one professional development hour in the standards of practice for boundary surveys in Louisiana.
- A minimum of four professional development hours in Life Safety Code, building codes, or Americans with Disabilities Act Accessibility Guidelines, if the professional engineer does the following in Louisiana during the calendar year:
  - designs buildings or building systems; or
  - reviews or approves plans for buildings or building systems.

(LAC 46:LXI.3105(C).)

## Architects

### Licensing Requirements

A person must secure a certificate of registration and license from the [Louisiana State Board of Architectural Examiners](#) (LSBAE) and comply with the provisions of Louisiana law governing the registration and licensing of architects to:

- Practice architecture in Louisiana.
- Use the title “architect” or any related term.
- Display or use any title, sign, advertisement, or other device to indicate that a person:
  - practices or offers to practice architecture;
  - renders architectural services; or
  - is an architect.

(La. R.S. 37:145.)

To obtain an initial license to practice architecture in Louisiana, an applicant must present satisfactory evidence to the board of practical experience of training or

experience in the field of architecture. The experience may only be demonstrated by either:

- Satisfactory completion of the training requirements set out by the National Council of Architectural Registration Boards (NCARB) in the Intern Development Program.
- A certificate record certified by the NCARB that the applicant is currently registered to practice architecture in another state.

(La. R.S. 37:146.1.)

To receive a certificate from the NCARB, an applicant must:

- Pay all required fees.
- Pass the required examination.
- Be of good moral character.
- Have paid their debt to society if they have been convicted of a felony.
- Hold a professional degree from a school whose curriculum has been accredited by the National Architectural Accrediting Board.
- Be enrolled in the Intern Development Program administered by the NCARB.

(LAC 46:1.701.)

Licenses for individual architects expire on December 31 of each year, and on June 30 of each year for entities. Licenses must be renewed before the expiration. The fee to renew is:

- \$90 for an individual architect domiciled in Louisiana.
- \$175 for an individual architect domiciled outside Louisiana.
- \$75 for entities in Louisiana.
- \$150 for entities located outside Louisiana.

(LAC 46:1.1301 and 46:1.1701; [LSBAE: Licensure.](#))

### Continuing Education Requirements

Generally, an architect must complete a minimum of 12 continuing education hours each calendar year. Continuing education hours must be completed in health, safety, and welfare subjects. (LAC 46:1.1315(D).)

## Landscape Architects

### Licensing Requirements

To engage in, advertise, or solicit business as a landscape architect for a fee, a person must either:

- Hold a valid appropriate license issued by a commissioner of the [Louisiana Horticulture Commission](#).
- Have a regular employee who holds a valid appropriate license.
- Be employed by or work under the direct supervision of a person who holds a valid appropriate license.

(La. R.S. 3:3804(C).)

A licensed landscape architect must:

- Pass an examination (La. R.S. 3:3807).
- Pay the applicable fee (La. R.S. 3:3806).

Landscape architecture licenses expire on January 31 of each year and must be renewed annually (La. R.S. 3:3808(M)). The fee to renew is set by the commission and must be at least \$75 but not more than \$150 per license (La. R.S. 3:3806(B)).

### Continuing Education Requirements

A licensed landscape architect must attend, or complete an approved substitute for attendance, at least eight credit hours of continuing education each calendar year (LAC 7:XXIX.117(B)(4)(c)).

## Plumbers and Gas Fitters

### Licensing Requirements

A tradesman plumber must have:

- A current apprentice registration certificate issued by the [State Plumbing Board of Louisiana](#) (SPBLA).
- Worked at least 4,000 hours at the manual labor of plumbing under the direct, constant, on-the-job supervision of a licensed journeyman or master plumber.
- Successfully completed any educational requirements established by the SPBLA.
- Passed any written or manual examination required by the SPBLA.
- Paid the fees established by the SPBLA.

(La. R.S. 37:1368(A)(1).)

A journeyman plumber must:

- Qualify under the SPBLA's regulations.
- Pass a written and manual journeyman plumber's examination given by the SPBLA.
- Pay the fees established by the SPBLA.

(La. R.S. 37:1368(A)(2).)

A master plumber must:

- Be licensed as a journeyman plumber or otherwise qualify under the SPBLA's regulations.
- Pass a written master plumber's examination.
- Pay the fees established by the SPBLA.
- Satisfy the provisions of La. R.S. 37:1367(B), which requires a master plumber to designate an employing entity and to notify the SPBLA of any change in employment status.
- Provide proof to the SPBLA that the designated employing entity is insured by an insurer authorized to do business in Louisiana with the coverage required under La. R.S. 37:1380.

(La. R.S. 37:1368(B)(1) and 37:1380.)

A gas fitter must:

- Pass a written and manual examination administered either by the SPBLA or by a recognized third-party certifier.
- Comply with all requirements of the applicable provisions of La. R.S. 37:1361 to 37:1380 and all requirements imposed by any SPBLA rules and regulations.

(La. R.S. 37:1368(J)(1).)

A master gas fitter must:

- Qualify under the SPBLA's regulations.
- Pass a written examination given by the SPBLA.
- Pay the fees established by the SPBLA.
- Designate an employing entity and notify the SPBLA of any change in employment status.

(LAC 46:LV.301(P).)

Licenses must be renewed annually. The SPBLA sets the renewal fee. (La. R.S. 37:1370.)

### Continuing Education Requirements

For each annual renewal period:

- A tradesman plumber and journeyman plumber licensee must obtain three and a half hours in curriculum approved by the SPBLA, of which:
  - one hour is in the subjects of health, consumer, or environmental protection;
  - half an hour is on La. R.S. 37:1361 to 37:1380 and LAC 46:LV; and

- two hours covers current industry practices and codes, and subjects from a list approved and published by the SPBLA.

(LAC 46:LV.1001(A)(1)-(2), (B)(2).)

- A master plumber licensee must obtain five hours in curriculum approved by the SPBLA, of which:

- one hour is in the subjects of health, consumer, or environmental protection;
- half an hour is on La. R.S. 37:1361 to 37:1380 and LAC 46:LV;
- two hours covers current industry practices and codes, and subjects from a list approved and published by the SPBLA; and
- one and a half hours is on business topics approved by the SPBLA.

(LAC 46:LV.1001(A)(3), (B)(3).)

- A gas fitter licensee must obtain two and a half hours in curriculum approved by the SPBLA, of which:

- one hour is in the subjects of health, consumer, or environmental protection;
- half an hour is regarding La. R.S. 37:1361 to 37:1380 and LAC 46:LV; and
- one hour covers current industry practices and codes, and subjects from a list approved and published by the SPBLA.

(LAC 46:LV.1002(A)(1), (B)(2).)

- A master gas fitter licensee must obtain four hours in curriculum approved by the SPBLA, of which:

- one hour is in the subjects of health, consumer, or environmental protection;
- half an hour is regarding La. R.S. 37:1361 to 37:1380 and LAC 46:LV;
- one hour covers current industry practices and codes, and subjects from a list approved and published by the SPBLA; and

- one and a half hours is on business topics approved by the SPBLA.

(LAC 46:LV.1002 (A)(2), (B)(3).)

**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

Each of the following professional boards has an online search index or roster to confirm licensure:

- [Louisiana State Licensing Board for Contractors](#).
- [Louisiana Professional Engineering and Land Surveying Board](#):
  - [Individual Search](#); and
  - [Firm Search](#).
- [Louisiana State Board of Architectural Examiners](#).
- [Louisiana Horticulture Commission](#).
- [State Plumbing Board of Louisiana](#).

### Consequences

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

- Contractors and construction managers (La. R.S. 37:2158, 37:2163, and 37:2164).
- Professional engineers and land surveyors (La. R.S. 37:698 and 37:700).
- Architects (La. R.S. 37:153 and 37:154).
- Landscape architects (La. R.S. 3:3810 to 3:3810.3).
- Plumbers and gas fitters (La. R.S. 37:1373, 37:1374, and 37:1378).

### Warranties

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

Under La. Civ. Code Ann. art. 2762, a designer or builder is liable for defects in buildings caused by deficient workmanship when the defect occurs within:

- Ten years of the construction of stone or brick buildings. (However, see Question 23 regarding application of five-year peremptive period.)
- Five years of the construction of wood buildings or those with frames filled with bricks.

Louisiana courts, including the Louisiana Supreme Court, have consistently held that Article 2762 creates an implied

warranty in every building contract “that the work of the contractor is to be performed in a good, workmanlike manner, free from defects in either materials or workmanship” (*Bourgeois v. Arrow Fence Co., Inc.*, 592 So. 2d 445, 448 (La. Ct. App. 1991); see *Orleans Parish Sch. Bd. v. Pittman Constr. Co.*, 260 So. 2d 661, 677 (La. 1972)). The implied warranty likely includes that the construction is fit for its intended purpose (see *Tristar Constr. Co., Inc. v. Housing Auth. of New Orleans*, 833 So. 2d 556, 559 (La. Ct. App. 2002), *rev'd on other grounds*, 842 So. 2d 388 (La. 2003)).

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

American Institute of Architects (AIA) forms are most commonly used for private construction contracts in Louisiana. The warranties contained in Section 3.5 of the [AIA A201-2017 General Conditions of the Contract for Construction](#) are often found in Louisiana construction contracts.

In Section 3.5, the contractor warrants that:

- Materials and equipment furnished under the contract will be of good quality and new (unless the contract documents require or permit otherwise).
- The work will:
  - conform to the requirements of the contract documents; and
  - be free from defects (except for those defects inherent in the quality of the work the contract documents require or permit).

The contractor’s warranty excludes remedy for damage or defect caused by:

- Abuse.
- Alterations to the work not executed by the contractor.
- Improper or insufficient maintenance.
- Improper operation.
- Normal wear and tear.
- Normal usage.

Louisiana law requires that all warranty periods for construction contracts begin on the date of substantial completion or the date the owner beneficially uses the work, whichever occurs first (La. R.S. 9:2774(A)).



### 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

Louisiana's New Home Warranty Act governs warranties for new residential construction (La. R.S. 9:3141 to 9:3150).

Under the Act, a home is defined as a new structure designed and used only for residential use:

- Including all attached and unattached structures.
- Constructed by the builder, whether or not the land was purchased from the builder.
- Including structures containing multiple family dwellings or residences.

(La. R.S. 9:3143(3).)

### Time Period

The length of the warranty periods applicable for any defect due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards are:

- One year following the warranty commencement date for defects in the entire home.
- Two years following the warranty commencement date for defects in plumbing, electrical, heating, cooling, and ventilating systems exclusive of any appliance, fixture, and equipment.
- Five years following the warranty commencement date for major structural defects.

(La. R.S. 9:3144(A).)

Any warranty imposed under these provisions automatically transfers to a subsequent owner who acquires title to the home. However, any transfer of the home does not extend the duration of the relevant warranties. (La. R.S. 9:3148.)

### Restrictions

There are several exclusions to this warranty, including, among others:

- Fencing.
- Landscaping.
- Driveways.
- Walkways.
- Insect damage.
- Mold and mold damage.
- Consequential damages.

(La. R.S. 9:3144(B).)

The owner must give notice to the builder within one year after knowledge of the defect advising the builder of the defect and giving a reasonable opportunity to remedy the defect before instituting an action for breach of warranty (La. R.S. 9:3145(A)).

Any action to enforce any warranty under this act is subject to a peremptive period of 30 days after the expiration of the appropriate time period (La. R.S. 9:3146).

### 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?

Louisiana has a Little Miller Act, known as the Public Works Act, which is codified in La. R.S. 38:2241 to 38:2249.

Louisiana also has similar provisions specific to roads, bridges, and ferries and other [Louisiana Department of Transportation and Development \(LADOTD\)](#) projects (La. R.S. 48:255).



### Minimum Requirements

For contracts exceeding \$25,000, the Public Works Act requires a payment bond of at least 50% of the contract price (La. R.S. 38:2241(A)(2)).

For LADOTD projects exceeding \$50,000, the law requires a bond equal to the contract bid cost (La. R.S. 48:255(D)(1)).

### Security

The bond must be recorded:

- With the construction contract in the office of the recorder of mortgages in the parish where the work is to be done.
- Not later than 30 days after the work has begun.

(La. R.S. 38:2241(A)(2).)

#### 19. What is the mechanism for making a claim or filing a lawsuit against the security? Specifically:

- Are there any statutory notices for making claims against the security?
- What is the statute of limitations for making a claim against the security? For filing a lawsuit?
- Are there any other requirements associated with collection of funds against the security?

### Statutory Notices

A claimant (as defined in La. R.S. 38:2242(A)) may file a sworn statement of the amount due with the governing authority having the work done and record the sworn statement in the mortgage records for the parish in which the work was done both:

- After the maturity of the claim.
- Within 45 days after the recordation of either the acceptance of the work by the governing authority or a notice of default of the contractor or subcontractor.

(La. R.S. 38:2242(B).)

A claimant that has a direct contact with a subcontractor (but not the contractor) must also give written notice to the contractor within 45 days from either the recordation of:

- The acceptance of the work by the governing authority having the work done.

- Notice by the owner of default.

(La. R.S. 38:2247.)

The written notice must state with substantial accuracy:

- The amount claimed.
- The name of the party:
  - to whom the material was furnished or supplied; or
  - for whom the labor or service was done or performed.

(La. R.S. 38:2247.)

The Public Works Act contains additional notice requirements for lessors of movables and materialmen (La. R.S. 38:2242(C), (F)).

### Statute of Limitations

There is a 45-day deadline for filing a sworn statement of claim (La. R.S. 38:2242(B)). A plaintiff must bring its lawsuit against the surety or the contractor or both within one year from the recordation of either:

- Acceptance of the work.
- Notice of default.

(La. R.S. 38:2247.)

### Additional Requirements

A recorded statement of claim or privilege is invalid as to third parties unless a notice of lis pendens identifying the suit is filed within one year after the filing of the claim or privilege. In addition of the requirements of La. Code Civ. Proc. Ann. art. 3752, the notice of lis pendens must contain either:

- A reference to the notice of contract (if a notice of contract is filed).
- A reference to the recorded statement of claim or privilege (if a notice of contract is not filed).

(La. R.S. 38:2242.1(F).)

#### 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?

Whether payment or performance bonds are required on private projects depends on several factors, such as:

- The cost and nature of the project.
- The contractor's financial stability.
- The contractor's track record for project completion and claims.

### 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?

In Louisiana, statutes of limitations are referred to as prescription periods and statutes of repose are referred to as preemption periods.

The following prescription periods apply to claims in Louisiana:

- For tort and negligence actions, one year from:
  - for damage to immovables, the time the owner knew or should have known of the damage (La. Civ. Code Ann. art. 3493); and
  - for all other actions, the date of the injury or damage (La. Civ. Code Ann. art. 3492).
- For violations of building restrictions, a period of two years (La. Civ. Code Ann. art. 781).
- For actions to remove buildings encroaching on a public way, a period of two years (La. R.S. 9:5627).
- For all contractual actions, a period of ten years unless altered by statute (La. Civ. Code Ann. art. 3499). However, there are specific preemptive periods for actions against owners, contractors, architects, and engineers, which generally reduce the period for claims related to construction to five years (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

Louisiana law does not require an affidavit of merit for filing a professional malpractice claim against a design professional.

#### Proof of Licensure

There is no requirement that a party allege or attach proof of licensure. However, construction contracts made with an unlicensed contractor can be null and void in Louisiana. The lack of a license may limit the contractor's right to payment for work performed. (*Tradewinds Env't Restoration, Inc. v. St. Tammany Park, LLC*, 578 F.3d 255, 259-60 (5th Cir. 2009).)

#### Special Requirements

There are no special requirements for lawsuits alleging damages resulting from latent design or construction defects.

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

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

#### Period of Limitations

In Louisiana, statutes of limitations are referred to as prescription periods. Statutes of repose are referred to as preemptive periods.

A right of action, except for fraud claims, against contractors for actions relating to deficiencies in the construction of a building is preempted and extinguished:

- Five years after the date of registry in the mortgage office of acceptance of the work by the owner, unless:
  - no acceptance is recorded within six months from the date the owner has occupied or taken possession of the improvement, in whole or in part, in which case the period is five years after the owner has actually occupied the improvement; or
  - within 90 days of the expiration of the five-year preemptive period, a claim is brought against any person or entity included within the provisions of the statute, then the person or entity has 90 days from the date of service of the main demand or, in the case of a third-party defendant, within 90 days from service of process of the third-party demand, to file a claim for contribution, indemnity, or a third-party claim against any other party.
- If the person performing or furnishing the land surveying services does not render the services preparatory to construction, or does not perform any inspection of the work, more than five years after the person has completed the surveying or the design and planning with regard to actions against that person.

(La. R.S. 9:2772(A).)

A right of action, except fraud claims, against professional engineers, surveyors, professional interior designers, architects, and real estate developers extinguishes after five years from either:

- The date of registry in the mortgage office of acceptance of the work by owner.
- The date the owner occupied or took possession of the improvement, in whole or in part, if no acceptance is recorded.
- The date the person furnishing the services completed the services with regard to actions against that person, if the person performing or furnishing the services, does not render the services preparatory to construction, or if the person furnishes those services preparatory to construction but does not perform any inspection of the work.

(La. R.S. 9:5607(A).)

Any action to enforce any warranty under the New Home Warranty Act is subject to a preemptive period of 30 days after the expiration of the appropriate time period (La. R.S. 9:3146).

Any action against the contractor on the contract or on the bond, or against the contractor or the surety or both on the bond furnished by the contractor, in connection with the construction, alteration, or repair of any public works let by Louisiana or any of its agencies, boards, or subdivisions extinguishes five years from either:

- The substantial completion (as defined in La. R.S. 38:2241.1) or acceptance of the work, whichever occurs first.
- Notice of default of the contractor.

(La. R.S. 38:2189.)

Any action by the contractor on the contract or the bond or by the contractor or the surety or both on the bond furnished by the contractor against Louisiana or any of its agencies, boards, or subdivisions, in connection with the construction, alteration, or repair of any public works let by Louisiana or any of its agencies, boards, or subdivisions extinguishes five years from either:

- The completion, substantial completion (as defined in La. R.S. 38:2241.1), or acceptance of the work, whichever occurs first.
- Notice of default of the contractor.
- Other termination of the contract.

(La. R.S. 38:2189.1.)

Any action against a contractor on a contract or on the bond furnished by the contractor, or against a contractor or the surety or both on the bond furnished by the contractor, in connection with the construction or maintenance of any public works let by the [Louisiana Department of Transportation and Development \(LADOTD\)](#) extinguishes five years from recordation of acceptance of the work or notice of default of the contractor, whichever occurs first (La. R.S. 48:251.2).

Any action arising out of or related to a LADOTD contract or on the bond furnished by a contractor extinguishes five years from recordation of the acceptance of the contract, notice of default of the contractor, or other termination of the contract, whichever occurs first (La. R.S. 48:251.3).

### Types of Claims Allowed

The preemption period under La. R.S. 9:2772 applies to every action, including for a failure to warn, recover on a contract, or for damages arising out of an engagement of planning, construction, design, or building immovable or movable property. This includes consulting, investigation, evaluating, measuring, and administration related to any building, construction, demolition, or work.

### Notice or Conditions Precedent

There are no special requirements for notice or conditions precedent to file suit beyond those related to suits under the New Home Warranty Act, the Public Works Act, the Private Works Act, or suits against a surety bond.

#### 24. Are the following contractual provisions enforceable in your state:

- Liquidated damages?
- Limitations on liability?
- No-damages-for-delay clause?
- Choice of law or forum?

### Liquidated Damages

Liquidated damages are generally enforceable under Louisiana law. Parties may stipulate the damages to be recovered in case of nonperformance, defective performance, or delay in performance of an obligation (La. Civ. Code Ann. art. 2005).

An obligee under a stipulated damages clause is not required to prove actual damages caused by the obligor's:

- Nonperformance.
- Defective performance.
- Delay in performance.

(La. Civ. Code Ann. art. 2009.)

The court may not modify stipulated damages unless they are so manifestly unreasonable as to be contrary to public policy (La. Civ. Code Ann. art. 2012; *Lombardo v. Deshotel*, 647 So. 2d 1086, 1090 (La. 1994)).

The Louisiana Supreme Court has held that courts will not inquire whether the actual damage that was suffered equaled or approximated the agreed amount where the parties:

- Have the capacity to stipulate for liquidated damages.
- Have agreed to stipulate for liquidated damages.

(*Maloney v. Oak Builders, Inc.*, 235 So. 2d 386, 390 (La. 1970) (quoting *Lama v. Manale*, 50 So. 2d 15 (La. 1950)).

### Limitations of Liability

Limitation of liability provisions are generally enforceable in Louisiana (see, for example, *Rosenblath's, Inc. v. Baker Indus., Inc.*, 634 So. 2d 969, 974 (La. Ct. App. 1994)).

Parties may contractually exclude liability for negligence, but that intent must be clear in the agreement (*Banner Chevrolet v. Wells Fargo Guard Servs.*, 508 So. 2d 966, 967 (La. Ct. App. 1987)). However, any provision that excludes or limits liability of one party for intentional or gross fault that causes damage or physical injury to the other party is null (La. Civ. Code Ann. art. 2004).

### No-Damages-for-Delay Clause

No-damages-for-delay clauses in private construction contracts are generally enforceable under Louisiana law (see *Freeman v. Dep't of Highways*, 217 So. 2d 166, 177 (La. 1968)).

No-damages-for-delay clauses in public construction contracts are unenforceable (La. R.S. 38:2216(H)). The statutory prohibition on no-damages-for-delay clauses in public construction contracts cannot be waived (La. R.S. 38:2216(J)).

### Choice of Law

Louisiana courts generally uphold choice of law provisions in contracts unless doing so would violate public policy (*Ranger Steel Servs., LP v. Orleans Materials & Equip., Co.*, 2010 WL 3488236, at \*2 (E.D. La. Aug. 27, 2010)).

For construction contracts, La. R.S. 9:2778 and 9:2779 govern the enforceability of choice-of-law and choice-of-forum clauses.

For public contracts involving the state or a political subdivision of the state, provisions requiring disputes to be resolved in a forum outside of Louisiana or requiring their interpretation be governed by the laws of another jurisdiction are inequitable and against the public policy of Louisiana (La. R.S. 9:2778(A) and 38:2196(A)).

Contract provisions contained in public contracts entered into on or after June 30, 1992, are void, unenforceable, and against public policy if they require either:

- A suit or arbitration proceeding to be brought in a forum or jurisdiction outside of Louisiana.
- Interpretation of the agreement according to the laws of another jurisdiction.

(La. R.S. 9:2778(B), (C) and 38:2196(B).)

These limitations apply only to contracts directly between the state or a political subdivision and the contractor or subcontractor. The statute is inapplicable to a contract between a contractor on a Louisiana public construction project and the contractor's subcontractors or suppliers.

## Construction Laws and Customs: Louisiana

(*Historical Arts & Casting, Inc. v. Favalora Constructors, Inc.*, 862 So. 2d 221, 223 (La. Ct. App. 2003).)

For public contracts for work to be done in Louisiana or services or materials to be provided in Louisiana, the governing authority of the state or a political subdivision may waive the prohibition on enforceability of provisions in these contracts requiring disputes arising under the contracts to be resolved in a forum outside of Louisiana or requiring their interpretation to be governed by the laws of another jurisdiction if it determines that doing so would be in the best interest of the state or political subdivision (La. R.S. 38:2196(D)).

Contracts for privately-owned construction are inequitable and against public policy if:

- One of the parties is domiciled in Louisiana.
- The work, equipment, and material to be supplied involve construction projects in Louisiana.
- The contract contains provisions that require:
  - disputes to be resolved in a forum outside of Louisiana; or
  - the contract interpretation to be governed by the laws of another jurisdiction.

(La. R.S. 9:2779(A).)

Contract provisions in private contracts entered into on or after September 6, 1991, are void, unenforceable, and against public policy if they require:

- A suit or arbitration proceeding to be brought in a forum or jurisdiction outside of Louisiana.
- Interpretation of the agreement according to the laws of another jurisdiction.

(La. R.S. 9:2779(B), (C).)

However, these limitations do not apply to negotiated labor contracts (La. R.S. 9:2779(D)).

The Federal Arbitration Act preempts the prohibition on out-of-state choice-of-law and choice-of-venue provisions (*OPE Int'l LP v. Chet Morrison Contractors, Inc.*, 258 F.3d 443, 447-48 (5th Cir. 2001); *Historical Arts*, 862 So. 2d at 224).

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