

Construction Laws and Customs: Alabama

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A Q&A guide to construction projects in Alabama. 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 Alabama statutes govern times for payment on publicly owned or financed projects:

- Ala. Code § 41-16-3 (where the state of Alabama is the contracting party).
- Ala. Code § 39-2-12 (where other public entities are the contracting party).

Payments by Owners

Where the state of Alabama is the contracting party, an owner must make payments to the contractor 30 days after work is completed and a proper invoice is submitted (Ala. Code § 41-16-3(a)).

Where other public entities such as municipalities and counties are the contracting party, payments must be made at the end of each calendar month, but no later than 35 days after the awarding authority accepts that the estimate and terms providing for partial payment have been fulfilled (Ala. Code § 39-2-12). An awarding authority includes any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties, and municipalities (Ala. Code § 39-2-1(1)).

Payments by Prime Contractors

A prime contractor must pay subcontractors according to the agreed-on payment terms. If there are none, the prime contractor must pay subcontractors within seven days after receipt of payment from the owner. This includes interest, at the legal amount currently charged by the owner. (Ala. Code § 41-16-3(a).)

Penalties

If the owner does not make timely payments, the owner is charged interest at the following rates:

- Where the state of Alabama is the contracting party, the legal amount currently charged by the state (Ala. Code § 41-16-3(a)).
- Where other public entities are the contracting party, the rate assessed for underpayment of taxes under Ala. Code § 40-1-44(a) (Ala. Code § 39-2-12(b)(2)).

In any action against a public entity other than the state of Alabama to recover payment due, the court must award the prevailing party:

- Reasonable attorneys' fees.
- Court costs.
- Reasonable expenses.

(Ala. Code § 39-2-12(i)(3).)

Right to Stop Work

None of Alabama's prompt payment statutes specifically address a contractor's right to stop work in the event of nonpayment by the owner.

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?

Alabama has a prompt payment act that applies to privately owned projects (Ala. Code § 8-29-3). The act does **not** apply to:

- Residential homebuilders.
- Improvements to real property intended for residential purposes which consist of 16 or fewer residential units.
- Contracts, subcontracts, or sub-subcontracts in the amount of \$10,000 or less.

(Ala. Code § 8-29-7.)

Payments by Owners

An owner must make payments to the contractor according to the agreed-on payment terms. If there are none, the owner must pay the contractor within 30 days after receipt of the pay request or invoice (Ala. Code § 8-29-3(a)).

Payment by Prime Contractors

A prime contractor must pay a subcontractor according to the agreed-on payment terms. If there are none, the contractor must pay the subcontractor within seven days of receipt of payment from the owner (Ala. Code § 8-29-3(b)).

The same requirements apply to a subcontractor's obligation to pay its lower-tier subcontractors (Ala. Code § 8-29-3(c)).

Penalties for Failure to Comply

Failure of an owner, contractor, or subcontractor to comply with the prompt payment statute requires payment of interest on the unpaid balance due at the rate of 1% per month, or 12% per year (Ala. Code § 8-29-3(d)).

Right to Stop Work

None of Alabama's prompt payment statutes specifically address a contractor's right to stop work in the event of nonpayment.

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 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?

Alabama has prompt payment acts that set 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?

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

Both pay-if-paid and pay-when-paid clauses are enforceable in Alabama.

Pay-if-Paid

Generally, conditions precedent are not favored in Alabama contract law and are not upheld unless there is clear supporting language. However, if two parties knowingly, clearly, and unequivocally enter into an agreement specifying that the parties' liability will be determined by some agreed-upon formula, an Alabama court will typically enforce the agreement as written. (*Lemoine Co. of Ala., L.L.C. v. HLH Constructors, Inc.*, 62 So. 3d 1020, 1025-26 (Ala. 2010).)

Pay-When-Paid

If the contract language does not establish an enforceable condition precedent for payment, it is

deemed a pay-when-paid clause with payment due within a reasonable time. A pay-when-paid clause merely specifies a time for payment instead of a condition precedent. (*Lemoine Co. of Ala., L.L.C.*, 62 So. 3d at 1026-27.)

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

- Ala. Code § 41-16-3 (where the state of Alabama is the contracting party).
- Ala. Code § 39-2-12 (where another public entity is the contracting party).

Amount of Retainage

For contracts with the state, there is no cap on retainage, but an upper-tier contractor or subcontractor cannot withhold retainage from a lower-tier subcontractor at a percentage greater than the percentage being withheld from it (Ala. Code § 41-16-3(d).)

For contracts with other public entities, an owner may withhold up to 5% of the estimated amount of work done and value of materials stored until the work is 50% complete. After 50% completion, no further retainage may be withheld. (Ala. Code § 39-2-12(c).)

No retainage may be withheld on contracts with the [Alabama Department of Transportation](#) for the construction or maintenance of public highways, bridges, or roads (Ala. Code § 39-2-12(c)).

Partial Release of Retainage

Alabama law does not address any partial release of or reduction in retainage.

Final Release of Retainage

For contracts with public entities other than the state, on the contractor's completion and the awarding authority's acceptance of all required work, the awarding authority must make final payment to the contractor within 35 days after it receives the following:

- A properly executed and duly certified voucher for payment.
- A release of all claims and liens against the awarding authority arising under the contract, if required.
- Proof of advertisement as required by law.

(Ala. Code § 39-2-12(i)(1), (2).)

Penalties

The statutes do not specifically address the obligation to pay interest on late payment of retainage. The statutes more generally discuss payment of interest on any contract payment that is not timely paid (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

In Alabama, retainage on private projects is capped at 10% of the estimated amount of properly performed work and the value of materials stored until the work is 50% complete. After 50% completion, no further

retainage may be withheld. These rules apply to retainage withheld by:

- An owner from a contractor.
- A contractor from a subcontractor.
- A subcontractor from a lower-tier subcontractor or supplier.

(Ala. Code § 8-29-3(i) to (k).)

An upper-tier contractor or subcontractor cannot withhold retainage from a lower-tier subcontractor at a percentage greater than the percentage being withheld from it (Ala. Code § 8-29-3(f), (g)).

Partial Release of Retainage

Alabama law does not address any partial release of or reduction in retainage.

Final Release of Retainage

The owner must release retainage for work completed on any construction contract no later than 60 days after the completion of the contractor's work or substantial completion of the project, whichever occurs first (Ala. Code § 8-29-3(l)). The paying party may condition payment on the receipt of a full release of any lien of the contractor, subcontractor, or sub-subcontractor for the amount of work being paid (Ala. Code § 8-29-3(n)).

Penalties

If an owner, contractor, or subcontractor withholds an amount greater than allowed by statute, the contractor or owner is liable to the subcontractor or contractor for interest accruing on the excess amount withheld at the rate of 1% per month (Ala. Code § 8-29-3(i) to (k)).

Similarly, if a contractor or subcontractor withholds from a lower-tier contractor a greater percentage of retainage than was withheld from them, the excess amount withheld shall accrue interest at the rate of 1% per month (Ala. Code § 8-29-3(f), (g)).

In any civil action filed under this statute, the party in whose favor a judgment is rendered is entitled to recover from the other party:

- Reasonable attorneys' fees.
- Court costs.
- Reasonable expenses.

(Ala. Code § 8-29-6.)

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?

Alabama has a prompt payment act regulating retainage amounts and release of final retainage on privately owned construction projects (see Question 6).

Alabama's prompt payment act does not address partial release of or reduction in retainage. The custom and practice varies depending on the type of project but partial release or reduction of retainage is common.

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 project delivery system and is most commonly used in Alabama for public projects, while private projects vary among design-bid-build and other project delivery systems. Public projects primarily use the design-bid-build project delivery system due to Alabama's Competitive Bid Laws and Public Works Laws requiring a competitive bid (Ala. Code §§ 41-16-2 to 41-16-144 and 39-1-1 to 39-8-8).

Private parties typically select their project delivery system depending on several factors including, but not limited to:

- Design.
- Schedule.

- Parties.
- Budget.
- Complexity.
- Owner's tolerance for risk.
- Type of project.

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?

No Alabama statute expressly governs design-build or construction management. However, the following state agencies are authorized by statute to use design-build arrangements:

- The [Alabama Department of Transportation](#) (Ala. Code § 23-1-40).
- The Alabama Toll Road, Bridge and Tunnel Authority (Ala. Code §§ 23-2-144 and 23-2-145).

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

While the [American Institute of Architects' \(AIA\)](#) documents are the most widely used standard form documents in Alabama, other organizations' forms are gaining more notoriety and use in the market. For example, heavy industrial projects may find the [Engineers Joint Contract Document Committee \(EJCDC\)](#) documents are more tailored to the project needs. Other forms used in the industry include:

- Associated General Contractors of America (AGC) documents.
- Associated Owners and Developers (AOD) documents.
- Construction Management Association of America (CMAA) documents.
- [ConsensusDOCS](#).
- [Design-Build Institute of America \(DBIA\)](#).

For more information on different 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?

In Alabama, the most commonly negotiated terms in construction contracts are:

- Price.
- Terms of payment.
- Scope of work, including changes.
- Schedule.
- Additional payment for extended contract durations.
- Delay and liquidated damages.
- Indemnity.
- Warranties.
- Insurance.
- Force majeure.

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?

Alabama requires the following construction related professions to be licensed to practice:

- Architects (Ala. Code §§ 34-2-30 to 34-2-43; see Architects).
- General contractors (Ala. Code §§ 34-8-1 to 34-8-28; see General Contractors).
- Engineers and land surveyors (Ala. Code §§ 34-11-1 to 34-11-37; see Engineers and Land Surveyors).
- Landscape architects (Ala. Code §§ 34-17-1 to 34-17-27; see Landscape Architects).
- Residential home builders (Ala. Code §§ 34-14A-1 to 34-14A-19; see Residential Home Builders).

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

- Electricians (Ala. Code §§ 34-36-1 to 34-36-18).
- HVAC contractors (Ala. Code §§ 34-31-18 to 34-31-35).
- Plumbers and gas fitters (Ala. Code §§ 34-37-1 to 34-37-18).

Architects

A license is required to practice architecture in Alabama, which is defined as performing or doing, or offering or attempting to do or perform any service, work, act, or thing within the scope of the practice of architecture. Architecture services include:

- Consultations.
- Investigations.
- Evaluations.
- Preliminary studies.
- Plans.
- Specifications.
- Contract documents.
- A coordination of all factors concerning the design and observation of construction of buildings.
- Any other service in connection with the design, observation, or construction of buildings.

(Ala. Code §§ 34-2-30 and 34-2-31.)

The services of a registered architect are required on all buildings except:

- Buildings on farms.
- Single family residential buildings.

- Utility projects prepared by an employee of a gas, electric or telephone utility.
- Any other type of building with a total area of less than 2,500 square feet not involving:
 - a school;
 - a church;
 - an auditorium; or
 - other buildings for assembly.

(Ala. Code § 34-2-32.)

Architects must be registered with the [Alabama Board of Registration for Architects](#). The board consists of six members who are appointed by the governor of Alabama. (Ala. Code § 34-2-38.)

General Contractors

A license is required for a general contractor, which is defined as one who undertakes to construct, superintend, or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site work, grading, paving, or project in Alabama where the cost is:

- \$50,000 or more. Effective October 1, 2024, the cost threshold will increase to \$100,000.
- More than \$5,000, for a swimming pool.

(Ala. Code § 34-8-1.)

The [Alabama Licensing Board for General Contractors](#) regulates licensure for general contractors. The board consists of five members who are appointed by the governor of Alabama. (Ala. Code § 34-8-20.)

Engineers and Land Surveyors

A license is required to practice engineering or land surveying in Alabama (Ala. Code § 34-11-2).

An engineer is defined as a person who, by reason of special knowledge of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering and has been licensed by the board as a professional engineer (Ala. Code § 34-11-1(5)).

A land surveyor is defined as a person who is:

- A professional specialist in the technique of measuring land.
- Educated in:
 - the principles of mathematics;
 - the related physical and applied sciences;
 - the relevant requirements of law for adequate evidence; and
 - all requisites for surveying of real property.
- Qualified to practice land surveying.
- Duly licensed as a professional land surveyor.

(Ala. Code § 34-11-1(9).)

The [Alabama Board of Licensure for Professional Engineers and Land Surveyors](#) regulates the licensure of engineers and land surveyors. The board consists of nine members who are appointed by the governor of Alabama (Ala. Code § 34-11-30).

Landscape Architects

A license is required to practice landscape architecture, which is defined as the performance of professional services in connection with the development of land areas where, and to the extent that the dominant purpose of the services is:

- The preservation, enhancement, or determination of proper:
 - land uses;
 - natural land features;
 - planting;
 - naturalistic and aesthetic values; and
 - settings and approaches to structures or other improvements.
- The setting of grades and determining drainage and providing for standard drainage structures.
- The consideration and determination of environmental problems of land including:
 - erosion;
 - blight; and
 - other hazards.

(Ala. Code § 34-17-1.)

Landscape architect services include:

- Consultations.
- Investigations.
- Research.
- Planning.
- Design.
- Preparation of drawings and specifications.
- Responsible supervision.

(Ala. Code § 34-17-1(3).)

The practice of landscape architecture also includes the design of tangible objects and features that are incidental and necessary to the purpose outlined in the statute, but does **not** include:

- The design of structures or facilities with separate and self-contained purposes like those ordinarily included in the practice of engineering or architecture.
- The making of land surveys of final plats for official approval or recordation.

(Ala. Code § 34-17-1(3).)

The [Alabama Board of Examiners of Landscape Architects](#) regulates licensure for landscape architects. The board consists of three members who are appointed by the governor of Alabama with the advice and consent of the Alabama Senate. (Ala. Code § 34-17-2.)

Residential Home Builders

A license is required for a residential home builder, which is defined as a person who does any of the following:

- Constructs a residence or structure for sale.
- For a fixed price, commission, fee, or wage, undertakes or offers to undertake the construction or superintending of the construction.
- Manages, supervises, assists, or provides consultation to a homeowner regarding construction, superintending of the construction, repair, improvement or reimprovement of any residence or structure three floors or less in height and which has four or fewer units in an apartment complex, to be used by another as

a residence, when the cost of the undertaking exceeds \$10,000.

- Installs products or repairs surfaces on the external upper covering of a residence or structure that seals, waterproofs, or weatherproofs the residence or structure when the cost of the undertaking exceeds \$2,500.

(Ala. Code § 34-14A-2(16), (17).)

The [Alabama Home Builders Licensure Board](#) regulates home building and residential construction in Alabama. The board consists of nine members appointed as follows:

- Three members appointed by the governor.
- Three members appointed by the lieutenant governor.
- Three members appointed by the speaker of the Alabama House of Representatives.

(Ala. Code § 34-14A-3.)

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

- Apply for a license.
- Pay the required fee.
- Pass the Architect Registration Examination.

(Ala. Code § 34-2-33; [Alabama Board of Registration for Architects: Registration by Examination.](#))

The applicant must, among other things, meet the following education and experience requirements to sit for the exam:

- Graduate with a degree in architecture from a school or college accredited by the National Architectural Accrediting Board.
- Additional practical experience in architectural work under the control of a registered architect or

architects satisfactory to the Board of Registration for Architects.

(Ala. Code § 34-2-33.)

An applicant may be exempt from examination if they hold an active certificate issued by the National Council of Architectural Registration Boards (NCARB) (Ala. Code § 34-2-33(b)).

Licenses expire on December 31 following their issuance and must be renewed before that date or they become invalid that day. Effective October 1, 2024, licenses not renewed by December 31 will become invalid on January 1 unless renewed. (Ala. Code § 34-2-33(e), (f).)

Continuing Education Requirements

To maintain a license, an architect must complete 12 hours of continuing education programs each calendar year. All 12 education hours must be devoted to health, safety, and welfare subjects related to the practice of architecture. (Ala. Admin. Code r. 100-X-3-.03.) Licensees are exempt from the continuing education requirements if they are:

- A first-time registrant by exam or NCARB certificate for the first renewal period.
- Granted emeritus status by the Alabama Board of Registration for Architects (BOA).
- A civilian who serves on active duty in the US armed forces for a period of time exceeding 90 consecutive days during the annual reporting period.
- Going through personal hardship (which is considered on an individual basis).

(BOA: [Continuing Education Guidelines](#).)

General Contractors

Licensing Requirements

To obtain a license to be a general contractor, an individual must:

- Be a US citizen or a person legally present in the US with appropriate documentation from the US federal government.
- File a written application with the [Alabama Licensing Board for General Contractors](#) 30 or more days before the board's regular meeting.

- Pay the \$300 application fee.
- Apply for a license covering the types of contracts the contractor wishes to perform, which includes the maximum allowable dollar amount it can bid.
- Provide proof of liability insurance.

(Ala. Code § 34-8-2.)

The licensing board may conduct an oral or written examination of the applicant over the course of up to three days to determine the applicant's:

- Ability to make a practical application of their knowledge of the profession of general contracting.
- Financial responsibility and past record, including, among other things, the applicant's qualifications in:
 - reading plans and specifications;
 - estimating costs; and
 - construction ethics.

(Ala. Code § 34-8-3.)

A general contracting license must be renewed every year. The fee to renew is \$200. If a licensee fails to renew their license within 90 days of expiration of the previous license, there is a \$50 late penalty fee. (Ala. Code § 34-8-2.)

Continuing Education Requirements

There are no continuing education requirements for general contractors in Alabama.

Engineers and Land Surveyors

Licensing Requirements

To obtain a license to practice as an engineer or land surveyor, an individual must:

- Apply for the license.
- Take the required examinations.
- Pay the required fee (not to exceed \$300).

(Ala. Code §§ 34-11-4 to 34-11-6.)

The license application must be on forms provided by the [Alabama Board of Licensure for Professional Engineers and Land Surveyors](#) and contain:

- Sworn statements.
- Three or more references from professional engineers or land surveyors with personal

knowledge of the applicant's engineering or land surveying experience, as appropriate.

(Ala. Code § 34-11-5(a).)

To receive an engineering license, an applicant must:

- Pass a board-approved exam on the fundamentals, principles, and practices of engineering.
- Graduate from:
 - an **approved** engineering curriculum of four years or more, and have an additional four years' experience; or
 - an **unapproved** engineering curriculum of four years or more, and have an additional six years or more of experience.

(Ala. Code § 34-11-4(1).)

To receive a land surveyor license, an applicant must:

- Pass board-approved examinations on:
 - the fundamentals of surveying;
 - the principles and practice of surveying; and
 - the laws, procedures, and practices pertaining to land surveying in Alabama.
- Graduate from:
 - an approved land surveying curriculum of four years or more, including a minimum of 15 semester hours or 22.5 quarter hours of surveying courses, and have an additional four years or more of progressive combined office and field experience in land surveying work;
 - an approved curriculum related to surveying of four years or more, including a minimum of 15 semester hours or 22.5 quarter hours of surveying courses, and have an additional five years or more of progressive combined office and field experience in land surveying work; or
 - a related science curriculum of four years or more, and have an additional six years or more of progressive combined office and field experience.

(Ala. Code § 34-11-4(3).)

The law also provides for certification of engineer and land surveyor interns (Ala. Code § 34-11-4(2), (4)).

Licenses must be renewed annually or biennially as determined by the board (Ala. Code § 34-11-8).

Continuing Education Requirements

To maintain a license, a licensed professional engineer or licensed professional land surveyor must complete the following number of Professional Development Hours (PDH):

- 15 per annual renewal period.
- 30 per biennial renewal period.

(Ala. Admin. Code r. 330-X-13-.02(4)(d)(1).)

Licensed professional land surveyors must complete at least four PDH on the Standards of Practice for Surveying in the State of Alabama every two years and one PDH on ethics every year (Ala. Admin. Code r. 330-X-13-.02(4)(d)(3), (4)).

Landscape Architects

Licensing Requirements

To obtain a license to practice as a landscape architect, an individual must:

- Be at least 19 years old.
- Be a US citizen or a person legally present in the US with appropriate documentation from the US federal government.
- Graduate from an Alabama Board of Examiners of Landscape Architects approved college or school of landscape architecture.
- Apply for the license.
- Provide proof of actual practical experience in landscape architectural work.
- Take both a registration exam and a law exam administered by the Council of Landscape Architectural Registration Boards.
- Pay the \$150 application fee.

(Ala. Code §§ 34-17-21, 34-17-22, and 34-17-25; Ala. Admin. Code r. 500-X-2-.02 and 500-X-2-.04.)

An applicant's education and practical experience must total five years. Each complete year of study in landscape architecture school or college counts as one year of practical experience. A master's or doctoral degree in landscape architecture fulfills the five-year requirement; however, an applicant must also submit proof of an additional year of practical experience. An applicant may be exempt from the education

requirements if they provide proof of at least eight years of actual practical experience in landscape architectural work. (Ala. Code § 34-17-21(2).)

Licenses expire on December 31 of each calendar year unless renewed. The right to renew expires March 15. A licensee who does not renew before March 15 must file a new application. Renewal applications are mailed out every November. (Ala. Admin. Code r. 500-X-2-.15.)

Continuing Education Requirements

Both in-state and out-of-state licensees must meet continuing education requirements to renew. A landscape architect must complete 16 Professional Development Hours (PDH) per year. A minimum of eight PDH per year must be related to protection of public health, safety, and welfare. (Ala. Admin. Code r. 500-X-2-.14.)

Residential Home Builders

Licensing Requirements

To obtain a license to be a residential home builder, an applicant must:

- Apply to the Alabama Home Builders Licensure Board 30 days before their next meeting.
- Be a US citizen or a person legally present in the US with appropriate documentation from the US federal government.
- Pay the required fee.

(Ala. Code § 34-14A-7.)

The board may examine the applicant at the board meeting. When making a determination, the board may consider the applicant's:

- Experience.
- Ability.
- Character.
- Business-related financial condition, including requiring:
 - a financial statement on a form prescribed by the board and a public records search directly from a credit reporting agency;
 - a positive net worth or other evidence of business-related financial condition sufficient

to reasonably satisfy the board of the applicant's financial responsibility; and

- that business-related judgments, judgment liens, and other perfected liens be satisfied and released.

- Ability and willingness to serve the public and conserve the public health and safety.
- Other pertinent information.

(Ala. Code § 34-14A-7.)

An applicant may be exempt from the licensing requirements under certain circumstances (Ala. Code § 34-14A-6).

The annual license fee is valid for a 12-month period beginning January 1 of each year (Ala. Code § 34-14A-5(b)(3)).

Continuing Education Requirements

To maintain a license, a residential home builder must complete six credit hours of approved continuing education each year to maintain a license. (Ala. Admin. Code r. 465-X-8-.03). At least two credit hours each year must come from an Alabama-specific course. Licensees are exempt from the continuing education requirements if they are:

- A licensee submitting a renewal application for the first time.
- A licensee who has taught continuing education approved by the board.
- A civilian who serves on active duty in the US armed forces for 90 consecutive days during the licensure year.
- Going through personal hardship (which is considered on an individual basis).
- A licensee who will be 60 years old on or before October 1 at the start of the license renewal period, with some exceptions.

(Alabama Home Builders Licensure Board: [Continuing Education Guidelines](#).)

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:

- [Alabama Board of Registration for Architects.](#)
- [Alabama Licensing Board for General Contractors.](#)
- [Alabama Board of Licensure for Professional Engineers and Land Surveyors.](#)
- [Alabama Board of Examiners of Landscape Architects.](#)
- [Alabama Home Builders Licensure Board.](#)
- [Alabama Electrical Contractors Board.](#)
- [Alabama Board of Heating, Air Conditioning & Refrigeration Contractors.](#)
- [Alabama Plumbers and Gas Fitters Examining Board.](#)

Consequences of Violation

Any person, firm, or corporation may be subject to criminal prosecution, imprisonment, fines, or all three, if they engage in business as one of the following licensed professionals without being duly authorized:

- Architects (Ala. Code § 34-2-36).
- General contractors (Ala. Code § 34-8-6).
- Professional engineers and land surveyors (Ala. Code § 34-11-15).
- Home builders (Ala. Code §§ 34-14A-14 and 13A-9-111.1).
- Landscape architects. The Board of Landscape Architects may also bring an action for injunctive relief. (Ala. Code §§ 34-17-7 and 34-17-24.)
- Electricians (Ala. Code §§ 34-36-16 and 13A-9-111.1).
- HVAC professionals (Ala. Code §§ 34-31-32 and 13A-9-111.1).
- Plumbers and gas fitters (Ala. Code §§ 34-37-17 and 13A-9-111.1).

Warranties

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

Alabama recognizes an implied warranty of workmanship, which requires the use of reasonable skill in fulfilling contractual obligations (*Blackmon v. Powell*, 132 So. 3d 1, 5 (Ala. 2013)). Courts also describe this as the duty to perform with that degree of skill or workmanship that is possessed by those of ordinary skill in the particular trade for which one is employed (*C.P. Robbins & Assocs. v. Stevens*, 301 So. 2d 196, 199 (Ala. Civ. App. 1974)).

New home construction also includes the implied warranty of habitability to the original purchaser of a new house (*Cochran v. Keeton*, 252 So. 2d 313, 314 (Ala. 1971)). For this warranty of habitability to apply:

- The buyer must have purchased a new residence from the builder.
- The builder must have constructed the residence.
- The residence must not have been inhabited by any other person prior to the purchase of the residence.
- The residence must have been:
 - constructed by the builder for purposes of sale; and
 - sold in a defective condition that impaired the intended use of the residence, namely, inhabitation.
- The buyer must not have been aware of the defective condition and had no knowledge or notice by which he could have reasonably discovered it.
- By reason of the defective condition, the buyer suffered damages in the form of a decrease in the residence's fair market value.

(*Sims v. Lewis*, 374 So. 2d 298, 303 (Ala. 1979).)

Additionally, the Alabama Uniform Commercial Code (UCC) recognizes an:

- Implied warranty of merchantability.
- Implied warranty of fitness for a particular purpose. (Ala. Code §§ 7-2-314 and 7-2-315.)

The implied warranty of merchantability requires that the good must be fit for the ordinary purpose for which such goods are used (Ala. Code § 7-2-314).

The implied warranty of fitness for a particular purpose can be created when at the time of contracting:

- The seller has reason to know of a particular purpose for which the goods are required.
- The buyer is relying on the seller's skill or judgment to furnish suitable goods.

(Ala. Code § 7-2-315.)

The UCC warranties may apply when goods are sold by merchants who deal in goods of the kind sold. The test for determining if an attachment to realty is a good under the UCC is whether the “thing” attached to the realty is capable of severance without material harm to the realty (*Keck v. Dryvit Sys., Inc.*, 830 So. 2d 1, 8 (Ala. 2002)).

Alabama permits the limitation of warranty coverage through written contract (Ala. Code § 7-2-316; *Turner v. Westhampton Court, LLC*, 903 So. 2d 82, 91 (Ala. 2004)).

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

Under the American Institute of Architects (AIA) forms and other standard new home residential contracts, builders in Alabama typically warrant material and workmanship against defects, with the option for the builder to come out and repair or replace any defects in work within one year. Most standard construction contracts impose an obligation on the contractor to warrant its workmanship to be new, of good quality, conforming to the requirements of the contract, and free from defects. The duration of these warranty periods vary.

Further, some sellers or builders use a residential warranty company which typically provides a ten-year limited warranty against major structural defects which are defined in the warranty agreement. Most contracts contain provisions which expressly limit or disclaim any express or implied warranty not expressly contained in the contract.

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

Under Alabama law, there are express warranties for condominiums that:

- The unit and related rights and uses will conform to any affirmation of material fact or material promise.
- The condominium will substantially conform to any model or description of the physical characteristics of the condominium.
- The condominium will conform to any description of the quantity and extent of the real estate compromising the condominium, subject to customary tolerances.
- A specified use of a unit is lawful.

(Ala. Code § 35-8A-413(a).)

Formal words, such as “warranty” or “guarantee,” are not necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty (Ala. Code § 35-8A-413(b)).

Time Period

Alabama statutory law does not specify a warranty period.

Restrictions

The statutory express warranties only apply to initial sales to the public. Express warranties in resales are governed by common law (Ala. Code § 35-8A-413, Alabama Cmt. 1).

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?

Alabama has a Little Miller Act, which is codified in Ala. Code §§ 39-1-1 to 39-1-5.

Minimum Requirements

If the estimated cost of a project is at least \$100,000, the contractor must execute a performance bond equal to 100% of the contract price and a payment bond of at least 50% of the contract price (Ala. Code § 39-1-1(a), (e)).

Security

Any person entering into a contract with an awarding authority must execute a:

- Performance bond in an amount equal to 100% of the contract price.
- Payment bond with a penal sum of at least 50% of the contract price, with the obligation that the contractor must promptly make payments to all persons supplying labor, materials, or supplies for or in the prosecution of the work provided in the contract and for the payment of reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on the bond.

(Ala. Code § 39-1-1(a).)

The security may be posted by any surety company, insurance company, or bonding company authorized by law. The awarding entity or agent cannot require the use of a particular company for the security. (Ala. Code § 39-1-4(a).)

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

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

Statutory Notices

In Alabama, a claimant must provide written notice to the surety of:

- The amount claimed.
- The nature of the claim.

The notice must be sent by registered or certified mail, postage prepaid, addressed to the surety at any of its places of business or offices. If the surety fails to pay the claim within 45 days of the notice, the claimant may bring a suit on the bond directly against the surety. (Ala. Code § 39-1-1(b).)

Statute of Limitations

A lawsuit on the bond must be brought within one year from the date of final settlement of the contract. A lawsuit cannot be brought on the bond until 45 days after written notice to the surety of the amount claimed to be due and the nature of the claim. (Ala. Code § 39-1-1(b).)

Additional Requirements

In the event the surety and contractor fail to pay the claim in full within 45 days from the mailing of the notice, the claimant may recover from the contractor and surety:

- The amount of the claim.
- Interest on the claim from the date of the notice.
- Reasonable attorneys' fees based on the result.

(Ala. Code § 39-1-1(b).)

A lawsuit on the bond must be brought in the county where the work was done or where venue is proper under Alabama law (Ala. Code § 39-1-1(c)).

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?

Payment and performance bonds are common on large construction projects in Alabama. Many developers of large private construction projects require their general contractors to post payment and performance bonds to protect the scope of work, as well as the real property, from the threat of liens by subcontractors and suppliers. General contractors in turn often require payment bonds from their key subcontractors.

Whether a private owner requires a bond generally involves practical considerations such as:

- Any prior dealings with the contractor.
- The reputation of the contractor.
- The credit-worthiness of the contractor.

Additionally, commercial lenders typically require owners to obtain performance and payment bonds for private projects.

In addition to bonds, a letter of credit can be used as security. However, payment and performance bonds are more common.

Litigation Concerns

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

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

The following statutes of limitations apply to claims in Alabama:

- Breach of contract for writing under seal, ten years (Ala. Code § 6-2-33).
- Breach of simple contract or promises not under seal, six years (Ala. Code § 6-2-34(9)).
- Breach of warranty, six years (see *Stephens v. Creel*, 429 So. 2d 278, 280 (Ala. 1983)).
- Action on open account, three years (Ala. Code § 6-2-37).
- Negligence resulting in bodily injury or property damage (including wrongful death), two years (Ala. Code §§ 6-2-38 and 6-5-221(a)).
- Professional malpractice by a design professional, two years (Ala. Code § 6-5-221(a)).
- Latent defects in design or construction, two years after the cause of action accrues (Ala. Code § 6-5-221(a)).

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

No affidavit of merit is required for filing a professional malpractice claim against a design professional in Alabama.

Proof of Licensure

Licensed parties do not need to allege or attach proof of licensure.

Special Requirements

Expert testimony must be used to establish the appropriate standard of care that professionals such as architects and engineers must exercise based on the learning, skills, and care ordinarily possessed and practiced by those ordinarily skilled in that profession to support a claim for professional negligence (see *Collins Co. v. City of Decatur*, 533 So. 2d 1127, 1134 (Ala. 1988)).

Nonresident entities must qualify to do business with the Alabama secretary of state. A foreign entity that does business in Alabama without a certificate of authority may not maintain a lawsuit in Alabama courts. (Ala. Code § 10A-1-7.21.)

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

The period of repose is seven years after the project reaches substantial completion, unless the architect, builder, or engineer had actual knowledge that a defect or deficiency existed and failed to disclose the defect or deficiency to the person with whom the architect, engineer, or builder contracted to perform the service (Ala. Code § 6-5-221(a)).

Types of Claims Allowed

The statute of repose applies to all actions in tort, contract, or otherwise:

- For the recovery of damages for:
 - any defect or deficiency in the design, planning, specifications, testing, supervision, administration, or observation of the construction of any improvement, or any defect or deficiency in the construction of any such improvement;
 - damage to real or personal property caused by any defect or deficiency; or
 - injury to or wrongful death of a person caused by any defect or deficiency.
- Against any:
 - architect or engineer performing or furnishing the design, planning, specifications, testing, supervision, administration, or observation of any construction of any improvement on or to real property; or
 - builder who constructed, or performed or managed the construction of, an improvement on or to real property designed by and constructed under the supervision, administration, or observation of an architect or engineer, or designed by and constructed according to the plans and specifications prepared by an architect or engineer.

(Ala. Code § 6-5-221(a).)

The statute defines a builder as any individual, partnership, firm, or corporation that was licensed as a general contractor in Alabama at the time of the construction and either constructed, performed, or managed the construction of an improvement, or any portion of it, on or to real estate (Ala. Code § 6-5-220(a)). A builder does not include a licensed residential homebuilder who does not have a general contractor's license (*Franklin v. Mitchell*, 87 So. 3d 573, 579 (Ala. Civ. App. 2011)).

Notice or Conditions Precedent

No notice is required to file a lawsuit.

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

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

Liquidated Damages

Liquidated damages provisions are enforceable under Alabama law if both:

- They are a reasonable contractual stipulation and not a penalty.
- The measure of damages at the time of the contract was conjectural and uncertain.

(*Cove Creek Dev. Corp. v. APAC-Alabama, Inc.*, 588 So. 2d 458, 461-62 (Ala. 1991).)

Limitations of Liability

Limitations of liability provisions in contracts are generally enforceable under Alabama law (see *Saia Food Distributors & Club, Inc. v. SecurityLink from Ameritech, Inc.*, 902 So. 2d 46, 52-53 (Ala. 2004)). However, a provision in a design professional contract that requires the design professional to indemnify or hold others harmless for more than the design professional's proportionate share of responsibility is void and unenforceable (Ala. Code § 41-9A-3(b)). Alabama law also limits an indemnitee's ability to recover attorneys' fees when defending claims predicated on its own negligence (*Stone Bldg. Co. v. Star Elec. Contractors, Inc.*, 796 So.2d 1076, 1092 (Ala. 2000)).

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

No-Damages-For-Delay Clause

Generally, no-damage-for-delay clauses which prohibit a price increase and limit the contractor's recovery for construction delays to an extension of the contract time are enforceable in Alabama (see

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RaCON, Inc. v. Tuscaloosa Cty., 953 So. 2d 321, 339 (Ala. 2006)).

Choice of Law or Forum

Choice of law and forum selection clauses are generally enforceable in Alabama if the provisions are not unreasonable or unfair in application (*Ex parte*

D.M. White Constr. Co., Inc., 806 So. 2d 370, 372-73 (Ala. 2001); *Prof'l Ins. Corp. v. Sutherland*, 700 So. 2d 347, 351-52 (Ala. 1997)).

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

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