

Construction Laws and Customs: Illinois

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

- The State Prompt Payment Act, which applies to state agencies (30 ILCS 540/0.01 to 540/7).
- The Local Government Prompt Payment Act, which applies to municipal agencies (50 ILCS 505/1 to 505/9).

Payments by Owners

State Contracts

After an authorized state official or agency approves payment for goods or services furnished to the State of Illinois, the payment must be made within 60 days of receiving a proper bill or invoice unless a state agency determines that the bill or invoice contains a defect making the agency unable to process the payment request. After discovering a defect on a construction-related bill, the agency must notify the vendor requesting payment as soon as possible, but no later than 30 days after the bill or invoice was first submitted. (30 ILCS 540/1 and 540/3-2(1), (1.1).)

This notice must identify:

- The defect.
- Any additional information necessary to correct the defect.

(30 ILCS 540/3-2(1.1).)

If the state agency disapproves only a portion of the construction bill or invoice, the agency must pay the approved portion within 60 days after the approval date (30 ILCS 540/3-2(1), (1.1)).

Municipal Contracts

For contracts with municipal agencies, the appropriate local government official or agency receiving goods or services must approve or disapprove a bill from a seller within the later of:

- 30 days after receiving the bill.
- 30 days after receiving the goods or services.

(50 ILCS 505/3.)

Any bill approved for payment must be paid within 30 days after the approval date (50 ILCS 505/4).

The agency must immediately notify the contractor in writing if the bill is disapproved. If the local government official or agency disapproves only a portion of the entire bill or invoice, it must timely pay the approved portion of the bill. (50 ILCS 505/3.)

Payments by Prime Contractors

State Agencies

For state agencies, the contractor must pay each subcontractor and material supplier in proportion to the work it completed plus interest received. After receiving payment, contractors or higher-tiered subcontractors must pay subcontractors and suppliers within the earlier of:

- Ten business days.
- 15 calendar days.

(30 ILCS 540/7(a-5), (b).)

If the contractor receives less than the full payment due under the contract, the contractor disburses the funds received, plus interest, on a pro rata basis to all subcontractors and material suppliers. However, where the owner pays less than the full amount because specific areas of work or materials were rejected or deemed not suitable for payment:

- The responsible subcontractors or suppliers will not be paid for the portion of work rejected or deemed not suitable.
- All other subcontractors and suppliers must be paid in full, plus interest.

(30 ILCS 540/7(a-5).)

Municipal Agencies

For municipal agencies, within 15 days of receiving payment the contractor must pay each subcontractor

and material supplier in proportion to the work completed. If the contractor receives less than the full payment due under the contract, the contractor disburses the funds received on a pro rata basis to:

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

(50 ILCS 505/9.)

The contractor must also distribute all interest payments it receives on a pro rata basis to any subcontractors and material suppliers to whom payment has been delayed. (50 ILCS 505/9.)

Where amounts are withheld from the contract because specific areas of work or materials are rejected or deemed not suitable for payment:

- The responsible subcontractors or suppliers will not be paid for the portion of work rejected or deemed not suitable.
- All other subcontractors and suppliers must be paid in full, plus interest.

(50 ILCS 505/9.)

Penalties for Failure to Comply

State Agencies

If a state official or agency approves but does not issue the owner payment within a 60-day period, an interest penalty of 1% of any amount approved and unpaid is added for each month or fraction of a month until final payment is made (30 ILCS 540/3-2).

If the contractor, without reasonable cause, fails to pay any subcontractor or supplier within the earlier of 10 business days or 15 calendar days after receipt of payment under the contract, the contractor must pay that subcontractor or supplier an additional 2% interest per month. The interest is calculated from the expiration of the 10-business-day or 15-calendar-day period until fully paid. This interest penalty also applies to all payments due to lower-tier subcontractors and material suppliers throughout the contracting chain. (30 ILCS 540/7(b).)

If a contractor, without reasonable cause, fails to make payment in full within the earlier of 10 business days or 15 calendar days after receiving payment under the public construction contract, any subcontractor or material supplier to whom payments

are owed may file a written notice with the state official or agency setting out:

- The amount owed by the contractor.
- The contractor's failure to timely pay the amount owed.

(30 ILCS 540/7(b)(1).)

Municipal Agencies

If a municipal agency does not issue payment within 30 days after approving a bill, an interest penalty of 1% of any amount approved and unpaid is added for each month or part of a month after the expiration of the 30-day period until final payment is made (50 ILCS 505/4).

If the contractor, without reasonable cause, fails to make any payment to its subcontractors and material suppliers within 15 days after receiving payment under a contract, the contractor must pay its subcontractors and material suppliers an additional 2% interest per month. The interest is calculated from the expiration of the 15-day period until the amount is fully paid. This interest penalty also applies to all payments due to lower-tier subcontractors and material suppliers throughout the contracting claim. (50 ILCS 505/9.)

Right to Stop Work

None of the state or local government prompt payment statutes specifically address a contractor's right to stop work in the event of nonpayment by a public 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?

The Illinois Contractor Prompt Payment Act applies to privately owned projects (815 ILCS 603/1 to 603/99). However, this law does not apply to contracts for the design, construction, alteration, improvement, or repair of:

- Single family residences.
- Multiple family residences with 12 or fewer units in a single building.

(815 ILCS 603/5(b).)

Payments by Owners

An owner must pay the contractor in the manner agreed to in the construction contract. However, the following terms are considered part of every construction contract:

- The owner must pay the amount due to the contractor under a payment application within 15 calendar days of approving the payment application if the contractor performed according to the contract provisions.
- The payment application is deemed approved 25 days after the owner receives it unless, before the end of the 25-day period, the owner provides a written statement of:
 - the amount withheld; and
 - the reason for withholding payment.
- If the owner finds that a portion of the work is not performed according to the contract, the payment:
 - may only be withheld for the reasonable value of that portion; and
 - must be made for the portion of the work performed according to the contract provisions.

(815 ILCS 603/10(1).)

Payments by Prime Contractors

If a subcontractor performs according to the provisions of its contract with the contractor or higher-tier subcontractor and the owner or its agent accepts the work, the contractor must pay its subcontractor:

- The full amount received for the subcontractor's work completed or the services rendered under the construction contract.
- Within 15 calendar days of the contractor's receipt of each periodic or final payment or of retainage monies.

(815 ILCS 603/10(2).)

Penalties for Failure to Comply

If a payment is not made in a timely manner, the delinquent party is liable for the payment plus 10% interest per year (815 ILCS 603/15(a)). The interest imposed under the Contractor Prompt Payment Act must not be duplicative of the interest charged under the Mechanics Lien Act (815 ILCS 603/15(c)).

Right to Stop Work

A contractor or subcontractor who is not paid as required by Illinois law may suspend performance until payment is made without breaching the construction contract if it provides seven calendar days' written notice to the delinquent party (815 ILCS 603/15(b)).

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

Illinois has prompt payment acts that set out the requirements for payments, interest, and a contractor's right to stop work on both public and private construction projects (see Questions 1 and 2).

4. If your state does not regulate the timing of payments to subcontractor, 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?

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

Courts generally consider "pay-if-paid" and "pay-when-paid" provisions to be enforceable as a matter of contract law but require a pay-if-paid clause to explicitly state that payment from the owner or higher-tier contractor is a condition precedent to payment (*Premier Elec. Const. Co. v. Am. Nat. Bank of Chicago*, 658 N.E.2d 877, 885 (Ill. App. Ct. 1995)).

Pay-if-paid clauses do not preclude claims under the Illinois Mechanic's Lien Act (770 ILCS 60/21(e)). The Illinois Mechanic's Lien Act is incorporated into every construction contract entered into in Illinois (*J&K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 456 N.E.2d 889, 896 (Ill. App. Ct. 1983)).

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 project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

The Illinois Public Construction Bond Act sets limits on retainage that a local governmental unit may withhold from payments to the contractor who furnishes the bond required by the Act.

The maximum amount of retainage is:

- 10% of any payments made before the contract is 50% complete.
- 5% of any payments made beginning when the contract is 50% complete.

(30 ILCS 550/1.)

When a contract is 50% complete, retainage withheld must be reduced so that no more than 5% is held (30 ILCS 550/1).

The same retainage limits apply to payments from the contractor and its subcontractors to their respective subcontractors (30 ILCS 550/1).

Effective June 1, 2027, these retainage limits also apply to Illinois state agencies (except the Illinois Department of Transportation) (30 ILCS 550/1).

Additionally, for contracts entered into on or after June 1, 2027, with state agencies (except the Illinois State Toll Highway Authority):

- A state agency may not withhold retainage unless it determines that a contractor or subcontractor has not made satisfactory progress during the period for which payment is to be made.
- The state agency's contract with the contractor or subcontractor must clearly provide for satisfactory progress.
- Retainage may not be used as a substitute for good contract management.
- The state agency may not withhold funds without cause.
- The state agency must determine both whether to retain and the specific amount to be withheld on a case-by-case basis based on the performance of milestones under the state agency's current contract with the contractor.
- A contractor may not withhold retainage from a subcontractor except to the extent a state agency has withheld retainage from the contractor that is attributable to that subcontractor's subcontract.

(30 ILCS 550/1.)

Illinois also has a statute concerning highway construction that includes retainage provisions. For any contract for the construction of a highway, retainage must be withheld as required by the Standard Specifications for Road and Bridge Construction (605 ILCS 5/4-103). Under the current version of the [Standard Specifications for Road and Bridge Construction](#):

- Before the work is 50% complete, the State may not deduct more than 10% of any payments made.
- Once the work is 50% complete, the State must reduce the retainage so that no more than 5% is held.

([Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Article 109.07\(a\)](#).)

The same retainage limits apply to payments from the contractor and its subcontractors to their respective subcontractors ([Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Article 109.07\(a\)](#)).

At the contractor's request, and with the [Illinois Department of Transportation's](#) approval, a

contractor's retainage funds may be deposited under a trust agreement with an Illinois financial institution. The contractor receives any interest on the deposited amount. (605 ILCS 5/4-103.)

When a subcontractor's retainage on a highway project is expected to exceed \$20,000, by mutual agreement of the contractor and subcontractor retainage may be deposited under a trust agreement with an Illinois financial institution. The subcontractor receives any interest on the deposited amount. (605 ILCS 5/4-104.)

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

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

The Illinois Contractor Prompt Payment Act sets limits on the amount of retainage that may be withheld as part of a construction project. The Act applies to any contract or subcontract for the design, construction, alteration, improvement, or repair of real property, except for contracts involving:

- The use of public funds.
- Single family residences.
- Residential apartment buildings with 12 or fewer units.

(815 ILCS 603/5(b).)

Amount of Retainage

The maximum amount of retainage is:

- 10% of any payments made before the contract is 50% complete.
- 5% of any payments made beginning when the contract is 50% complete.

(815 ILCS 603/20.)

Partial Release of Retainage

When a contract is 50% complete, retainage withheld must be reduced so that no more than 5% is held (815 ILCS 603/20).

Final Release of Retainage

An owner must release all funds due to the contractor no more than 15 days after approval of the final payment application. The payment application is deemed approved 25 days after the owner receives it unless the owner provides, before the end of the 25-day period:

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

(815 ILCS 603/10(1).)

If the owner finds that a portion of the work is not in accordance with the contract, payment may be withheld for the reasonable value of that portion only. Payment must be made for any portion of the contract for which the work has been performed in accordance with the provisions of the contract. (815 ILCS 603/10(1).)

Contractors must release all funds due to any subcontractor no more than 15 days after the contractor receives payment (815 ILCS 603/10(2)).

Penalties

If an owner or contractor fails to pay in a timely manner, the party is liable for the amount of that payment, plus interest at a rate equal to 10% per year (815 ILCS 603/15(a)). The interest imposed under the Contractor Prompt Payment Act must not be duplicative of the interest charged under the Mechanics Lien Act. (815 ILCS 603/15(c)).

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

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

In Illinois, the parties are free to negotiate the amount withheld from progress payments as retainage on privately owned construction projects, subject to the limitations of the Contractor Prompt Payment Act (see Question 6). Typically, the percentage withheld ranges from 3% to 10% of the amount of each progress payment depending on factors such as:

- The total dollar amount of the contract.
- The complexity of design or construction elements.
- Any requirements for testing or commissioning building systems.
- Other forms of security given by the contractor such as a payment or performance bonds.
- The requirements of an owner's construction loan.

The parties often negotiate contract terms that require one or more of the following:

- Returning early performing subcontractor retainage, such as demolition contractors, following inspection and acceptance of that subcontractor's work by the owner.
- Reducing the percentage held for retainage when the contractor achieves specific performance milestones.
- Returning a portion of the previously withheld retainage when the contractor achieves specific performance milestones.

Owners often agree to language in the contract requiring the release of some portion of the retainage when the owner occupies some or all of the project for its intended use (beneficial use and occupancy) or on substantial completion. The owner usually retains some amount to ensure that the contractor meets one or more of the following performance requirements:

- Completion of all punch list items.
- Commissioning of building systems.
- Training of owner or building maintenance personnel.
- Turnover of all operations manuals and related materials.
- Turnover of all warranty documents and service contracts.

The contract describes all retainage formulas.

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 the most commonly used in Illinois. The most common construction contract used in a design-bid-build project delivery system is a lump sum agreement in which the general contractor's compensation is a fixed amount, subject to agreed-on events that could modify the fixed amount.

A less common approach uses a cost-plus agreement that has a guaranteed maximum price, or alternatively does not have a fixed cap on the costs.

Private owners often use a variant of the design-bid-build process that may take two different forms on:

- Larger, more complex projects.
- Projects where the design is not complete before construction must begin.

In one form, private owners contract with a general contractor or construction manager who is paid the cost of the work plus a fee (cost-plus), usually with a guaranteed maximum price (GMP) or other cap on total costs, subject to agreed-on events that could modify the cap. In this case, the general contractor or construction manager is guaranteeing both:

- The cost.
- The completion date.

The fee is commensurate with these risks. For more information on GMP contracts, see [Practice Note: Guaranteed Maximum Price Contracts: Drafting Strategies](#).

A second form is known as "multi-prime" construction. This may be used when an owner wants to:

- Exert maximum control on the construction process.
- Pay the least possible construction management fee.
- Take the highest risk of possible claims and disputes.

In a multi-prime project, the construction manager:

- Is engaged as an agent of the private owner.
- Is paid a reduced fee

- Does not guarantee price or completion time.
- Manages the contractors engaged directly by the owner to perform the construction work.

Another project delivery system used especially in process plant manufacturing, warehouse facilities, and similar projects is design-build or engineer-procure-construct. In this system, one entity contracts to take responsibility for both the design and construction of the project. In a design-build project, it is important to clearly define the scope of the work, performance specifications, and what is expected to be built. The owner commonly engages another design professional to assist in the preparation of the scope of work and performance specifications. For more information, see [Practice Note, Private Construction Project Delivery Systems: Overview: Design-Build](#).

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

- Design.
- Schedule.
- Budget.
- The owner's expertise, staff, and tolerance for risk.

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?

Under Illinois law, any public project by a Public Building Commission with a cost over \$20,000 must be awarded as a design-build project or to the lowest competitive bidder (50 ILCS 20/20).

If design-build is selected as the preferred delivery method, a Public Building Commission must make a written determination that design-build is the best method for a particular project, based on the following factors:

- The design-build method will provide a material savings of time or cost over other project delivery methods.

- The type and size of the project and its suitability for design-build.
- The ability of design-build to meet the scope and performance criteria of the project.

(50 ILCS 20/2.5.)

Use of the design-build delivery method for public projects by the state Capital Development Board requires a similar determination (30 ILCS 537/5).

Illinois does not have a design-build or construction management statute for privately owned or financed construction projects.

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

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

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

Examples of standard industry form agreements include:

- [American Institute of Architects \(AIA\)](#) forms, which are most commonly used.
- [Engineers Joint Contract Document Committee \(EJCDC\)](#) forms, which are generally used for projects where the engineer is the lead design professional.
- [ConsensusDOCS](#) forms, which are not as commonly used.

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

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

The most commonly negotiated terms in Illinois construction contracts are:

- Price.
 - The scope of work included in the price, including specific exceptions.
 - Schedule-related provisions, including:
 - the time frame for completion of the work;
 - any reasons for allowable delays;
 - the payment for additional costs for extended contract durations; and
 - no-damages-for-delay, liquidated damages, and bonus provisions.
- Indemnification obligations and limitations of liability.
- Insurance provisions and limits.
- The mechanism for adjusting the fee paid on change orders.
- Responsibility for unknown site conditions.
- Damages upon contract termination.

In certain types of contracts, such as cost-plus and guaranteed maximum price contracts, parties also negotiate:

- What is included and excluded from the definition of cost of the work.
- The formula for paying the contractor's fee (fixed amount or percentage).

In design-build and engineer-procure-construct (EPC) agreements, parties also negotiate:

- The specific performance criteria.
- In EPC agreements, guarantees for achieving performance.

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?

Construction Laws and Customs: Illinois

Illinois requires the following construction-related professions to be licensed or registered to practice:

- Architects (225 ILCS 305/5; see Architects).
- Landscape architects (225 ILCS 316/5; see Landscape Architects).
- Land surveyors (225 ILCS 330/5; see Land Surveyors).
- Professional engineers (225 ILCS 325/1 and 325/4; see Professional Engineers).
- Structural engineers (225 ILCS 340/1 and 340/5; see Structural Engineers).

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

- Plumbers (225 ILCS 320/2).
- Roofers (225 ILCS 335/2 and 335/9).
- Elevator contractors and mechanics (225 Ill. Comp. Stat.312/15).
- Fire sprinkler contractors (225 ILCS 317/10 and 317/15).
- Water well and pump installation contractors (225 ILCS 345/2 and 345/4).
- Interior designers (225 ILCS 310/3 and 310/4).

General contractors in Illinois are not required to carry state licensure to perform:

- General repair.
- Maintenance.
- Renovation work.

However, construction-related professions are not exempt from professional regulation.

The City of Chicago Department of Buildings issues licenses and registrations to contractors and others working in the construction trades in Chicago. More information on the specific licenses and forms is available on its [website](#).

Architects

An architect's license is required to practice architecture, which includes offering or furnishing professional services in connection with the construction, alteration, or restoration of any public or private building, structure, or project (225 ILCS 305/5). For an entity to provide architectural services, the business entity must be licensed as a professional design firm, which is separate from an individual practitioner's license (225 ILCS 305/21).

These professional services include, but are not limited to:

- Consultation.
- Environmental analysis.
- Feasibility studies.
- Programming.
- Planning.
- Aesthetic and structural design.
- Technical submissions consisting of drawings and specifications and other documents required in the construction process.
- Administration of construction contracts.
- Project representation.
- Construction management.

(225 ILCS 305/5.)

The [Architecture Licensing Board](#) assists in the licensing and discipline of architects. The secretary of the Illinois Department of Financial and Professional Regulation (IDFPR) appoints the seven-person board. (225 ILCS 305/9 and 305/10.)

Landscape Architects

A registration is required to practice landscape architecture, which includes offering or furnishing professional services in connection with a landscape architecture project that does not require the seal of an architect, land surveyor, professional engineer, or structural engineer. These professional services include but are not limited to:

- Providing preliminary studies.
- Developing design concepts.
- Planning for the relationships of physical improvements and intended uses of the site.
- Establishing form and aesthetic elements.
- Developing technical details on the site that are exclusive of any building or structure.
- Preparing and coordinating technical submissions.
- Conducting site observation of a landscape architecture project.

(225 ILCS 316/10.)

The [Registered Landscape Architecture Registration Board](#) assists in the licensing of landscape architects. The IDFPR secretary appoints the five-member board. (225 ILCS 316/33.)

Land Surveyors

A license is required to practice land surveying, which includes rendering, offering to render, or holding oneself as able to render or perform any service requiring special knowledge of the art and application of the principles of the accurate and precise measurement of length, angle, elevation or volume, mathematics, the related physical and applied sciences, and the relevant requirements of the law. For an entity to provide land surveying services, the business entity must be licensed as a professional design firm, which is separate from an individual practitioner's license (225 ILCS 330/25).

These services include:

- Establishing or reestablishing, locating, defining, and making or monumenting land boundaries or title or real property lines and the platting of lands and subdivisions.
- Determining the area or volume of any portion of the earth's surface, subsurface, or airspace with respect to boundary lines, determining the configuration or contours of any portion of the earth's surface, subsurface, or airspace or the location of fixed objects thereon, except as performed by photogrammetric methods by persons holding certification from the American Society of Photogrammetry and Remote Sensing or substantially similar certification as approved by the Department, or except when the level of accuracy required is less than the level of accuracy required by the National Society of Professional Surveyors Model Standards and Practice.
- Preparing descriptions for the determination of title or real property rights to any portion or volume of the earth's surface, subsurface, or airspace involving the lengths and direction of boundary lines, areas, parts of platted parcels or the contours of the earth's surface, subsurface, or airspace.
- Labeling, designating, naming, preparing, or otherwise identifying legal lines or land title lines of the United States Rectangular System or any subdivision thereof on any plat, map, exhibit, photograph, photographic composite, or mosaic or photogrammetric map of any portion of the earth's surface for the purpose of recording and amending

the same by the issuance of a certificate of correction in the Office of Recorder in any county.

- Setting monuments which have the appearance of or for the express purpose of marking land boundaries, either directly or as an accessory.
- Providing sketches, maps, plats, reports, monument records, or other documents indicating land boundaries and monuments, or accessory monuments.
- Performing topographic surveys.
- Locating, relocating, establishing, re-establishing, retracing, laying out, or staking of the location, alignment, or elevation of any proposed improvements whose location is dependent on property lines.

(225 ILCS 330/5(e).)

The [Land Surveyors Licensing Board](#) assists in the licensing of professional land surveyors. The IDFPR secretary appoints the seven-person board. (225 ILCS 330/6 and 330/7.)

Professional Engineers

A license is required to practice professional engineering, which includes the application of science to the design of engineering systems and facilities using the knowledge, skills, ability, and professional judgment developed through professional engineering education, training, and experience (225 ILCS 325/1 and 325/4). For an entity to provide professional engineering services, the business entity must be licensed as a professional design firm, which is separate from an individual practitioner's license (225 ILCS 325/23).

These professional services include, but are not limited to:

- Consultation.
- Conception.
- Investigation.
- Evaluation.
- Planning and design.
- Selection of materials to be used.
- Administration of construction contracts
- Site observation.

(225 ILCS 325/4.)

The [Board of Professional Engineers](#) assists in the licensing of professional engineers. The IDFPR secretary appoints the ten-person board. (225 ILCS 325/5 and 325/6.)

Structural Engineers

A license is required to practice structural engineering. A structural engineer is a person engaging in the design, analysis, or supervision of the construction, enlargement, or alteration of structures with foundations, columns, girders, trusses, arches, or beams, with or without other parts, and in which safe design and construction is computed and determined by mathematical calculations from scientific principles and engineering data. (225 ILCS 340/1 and 340/5.) For an entity to provide structural engineering services, the business entity must be licensed as a professional design firm, which is separate from an individual practitioner's license (225 ILCS 340/19).

Structural engineering services include, but are not limited to:

- Design.
- Analysis.
- Supervision of the construction.
- Enlargement or alteration of structure.

(225 ILCS 340/5.)

The [Structural Engineering Board](#) assists in the licensing of structural engineers. The IDFPR secretary appoints the seven-member board. (225 ILCS 340/7.)

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

To obtain a license to practice architecture in Illinois, an individual must:

- Be of good moral character.
- Obtain a first professional degree in architecture from a program accredited by the National

Architectural Accrediting Board, the Canadian Architectural Certification Board, or satisfies the qualifications of substantial equivalency through either an alternate pathway approved by the National Council of Architectural Registration Boards or a mutual recognition agreement.

- Complete expanded professional training, including academic training.
- Take and pass all sections of the exam authorized by the [Illinois Department of Financial & Professional Regulation](#) (IDFPR).

(225 ILCS 305/13.)

Licenses must be renewed every two years. Every license expires on November 30 of each even-numbered year. (Ill. Admin. Code tit. 68, § 1150.100(a).)

Continuing Education Requirements

Within each renewal period, each licensed architect must earn 24 hours of continuing education, including a minimum of:

- 16 hours relevant to safeguarding public health, safety, and welfare.
- One hour of sexual harassment prevention training.
- One hour of programs, courses, or activities related to design practices that reflect improved understanding of high winds or natural disasters.

(Ill. Admin. Code tit. 68, § 1150.105(b).)

Effective July 23, 2025, a licensee may carry over a maximum of 12 qualifying continuing education hours gained within six months from the current renewal deadline and not used for the current renewal period to the next renewal period. However, a licensee must satisfy the required hours for high wind or natural disasters and sexual harassment prevention training during each pre-renewal period. (Ill. Admin. Code tit. 68, § 1150.105(b)(3).)

Landscape Architects

Licensing Requirements

To qualify for registration as a registered landscape architect, each applicant must:

- Complete the IDFPR's [application for registration](#).
- Provide proof of:
 - graduation from an approved landscape architecture program;

- experience for registration as approved by rule; and
- successful passage of an examination as approved by rule.
- Pay the required fee.

(225 ILCS 316/40 and 316/45; Ill. Admin. Code tit. 68, § 1275.40.)

Registrations expire on August 31 of odd-numbered years (Ill. Admin. Code tit. 68, § 1275.70).

Continuing Education Requirements

Illinois does not currently require continuing education for renewal of registration for landscape architects. However, the department reserves the ability to adopt rules for continuing education for landscape architects in the future. (225 ICLS 316/53.)

Beginning with the 2027 renewal (for the period September 1, 2025, through August 31, 2027), each applicant for renewal of landscape architect registration must complete 24 credit hours of continuing education relevant to landscape architecture, including a minimum of:

- 16 hours relevant to safeguarding public health, safety, and welfare.
- One hour of sexual harassment prevention training.
- One hour in the area of professional conduct and/or ethics.

(Ill. Admin. Code tit. 68, § 1275.85(a)(1).)

Land Surveyors

Licensing Requirements

To obtain a land surveyor license, applicants must apply to the IDFPR in writing on the required forms or electronically. Each original application must contain:

- The nonrefundable fee.
- Information enabling the IDFPR to determine the applicant's qualifications.
- The applicant's Social Security number (225 ILCS 330/10.5).

(225 ILCS 330/10.)

To be licensed, the applicant must:

- Be of good ethical character.
- Be licensed as a surveyor intern and have four years of experience.

- Have passed the required examinations.
- Be a graduate of either a four-year:
 - approved land surveying program that includes an examination of the fundamentals of surveying; or
 - baccalaureate program that includes at least 24 semester hours of land surveying courses from an approved curriculum and an examination of the fundamentals of surveying.

(225 ILCS 330/12.)

Licenses must be renewed every two years. Every license expires on November 30 of each even numbered year. (Ill. Admin. Code tit. 68, § 1270.50.)

Continuing Education Requirements

To renew a land surveyor's license, a licensee must complete 20 professional development hours relevant to the practice of land surveying, including at least:

- Four hours of programs, courses, or activities in the area of Illinois statutes and rules that regulate professional land surveyors and surveys.
- Two hours of programs, courses, or activities in the area of professional conduct.
- 14 hours of programs, courses, or activities in the area of land surveying or related sciences.
- One hour of sexual harassment prevention training.

All 20 hours of the required courses may be completed online. A licensee is not required to report professional development hours during the first biennial renewal period in which the licensee obtained initial licensure in Illinois but is subject to the requirements for all subsequent biennial renewal periods. Waivers may also be granted for certain other circumstances, including a demonstration of undue hardship. (Ill. Admin. Code tit. 68, § 1270.65.)

Professional Engineers

Licensing Requirements

Applicants for a professional engineer's license must apply to the IDFPR in writing on the required forms or electronically. Each original application must contain:

- Payment of the nonrefundable fee.
- Information that will allow IDFPR to determine the qualifications of the applicant.

- The applicant's Social Security number (225 ILCS 325/8.5).

(225 ILCS 325/8(a).)

To qualify and be granted a license as a professional engineer, an applicant must do one of the following:

- Graduate from an approved engineering curriculum of at least four years and:
 - submit to the IDFPR's [Board of Professional Engineers](#) evidence of at least an additional four years of experience in engineering work of a grade and character demonstrating the applicant is competent to be a professional engineer;
 - pass an examination in the fundamentals of engineering; and
 - pass an examination in the principles and practice of engineering as defined by rule.
- Graduate from a non-approved engineering curriculum or a related science curriculum of at least four years and:
 - submit to the IDFPR's Board of Professional Engineers evidence of at least an additional four years of experience in engineering work of a grade and character demonstrating the applicant is competent to be a professional engineer;
 - pass an examination in the fundamentals of engineering; and
 - pass an examination in the principles and practice of engineering as defined by rule.
- Be an Illinois engineer intern who:
 - by application and payment of the required fee, takes and passes an examination in the principles and practice of engineering (225 ILCS 325/11); and
 - submits evidence to the Board of Professional Engineers of the Department to meet the experience qualifications described above.

(225 ILCS 325/10.)

Licenses expire on November 30 of each odd-numbered year (Ill. Admin. Code tit. 68, § 1380.310).

Continuing Education Requirements

To renew a license, a professional engineer must complete 30 professional development hours relevant to the practice of professional engineering, including:

- At least one hour of programs, courses, or activities on the Illinois statutes and rules that regulate professional engineers and professional engineering.
- At least one hour of programs, courses, or activities on professional conduct and ethics.
- One hour of sexual harassment prevention training. (Ill. Admin. Code tit. 68, § 1380.325(a).)

A licensee is not required to report professional development hours during the first biennial renewal period in which the licensee obtained initial licensure in Illinois but is subject to the requirements for all subsequent biennial renewal periods. Waivers may also be granted for certain other circumstances, including a demonstration of undue hardship. (Ill. Admin. Code tit. 68, § 1380.325(j).)

A licensee may carry over up to 15 qualifying professional development hours gained within six months from the current renewal deadline and not used for the current renewal period to the next renewal period. However, a licensee must satisfy the required hours on statutes and rules, professional conduct and ethics, and sexual harassment prevention training during each pre-renewal period. (Ill. Admin. Code tit. 68, § 1380.325(a)(8).)

Structural Engineers

Licensing Requirements

Applicants for a structural engineer's license must apply to the IDFPR in writing on the required forms or electronically. Each application must include:

- Evidence that the applicant is a graduate of at least an approved four-year:
 - structural engineering curriculum and has at least four additional years of experience in structural engineering work of a grade and character evidencing competency; or
 - related science curriculum and has at least an additional eight years of progressive experience in structural engineering work of a grade and character evidencing competency.
- The applicant's Social Security number (225 ILCS 340/9.5).

- Proof that the:
 - applicant passed the required examination; and
 - is of good moral character.
- Payment of the required fee.

(225 ILCS 340/9 to 340/11.)

Licenses expire on November 30 of each even-numbered year (Ill. Admin. Code tit. 68, § 1480.190(a)).

Continuing Education Requirements

To renew a license, a structural engineer must complete 30 professional development hours relevant to the practice of structural engineering, including:

- One hour of programs, courses, or activities on the Illinois statutes and rules that regulate structural engineers and structural engineering; and
- One hour of programs, courses, or activities on professional conduct and ethics.
- One hour of sexual harassment prevention training.

(Ill. Admin. Code tit. 68, § 1480.185(a).)

A licensee is not required to report professional development hours during the first biennial renewal period in which the licensee obtained initial licensure in Illinois but is subject to the requirements for all subsequent biennial renewal periods. Waivers may also be granted for certain other circumstances, including a demonstration of undue hardship. (Ill. Admin. Code tit. 68, § 1480.185(j).)

A licensee may carry over up to 15 qualifying professional development hours gained within six months from the current renewal deadline and not used for the current renewal period to the next renewal period. However, a licensee must satisfy the required hours on statutes and rules, professional conduct and ethics, and sexual harassment prevention training during each pre-renewal period. (Ill. Admin. Code tit. 68, § 1480.185(a)(8).)

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

License Confirmation

The Illinois Department of Financial and Professional Regulation maintains a searchable [database](#) of licensed architects, landscape architects, engineers, interior designers, land surveyors, and structural engineers. Many local governments that license construction participants have their own databases or regulating agencies that can also be consulted.

Consequences of Violation

Generally, Illinois entities providing services without the required license may be barred from collecting amounts owed (*Pascal C. Paddock, Inc. v. Glennon*, 203 N.E.2d 421, 422-23 (1964), but see *Hattis Associates, Inc. v. Metro Sports, Inc.*, 339 N.E.2d 270, 273 (Ill. App. Ct. 1st Dist. 1975) (allowing right to recover for work performed by a licensed design professional, even though the entity was not a licensed professional design firm)).

Additionally, any person, firm, or corporation that engages in business as any of the following licensed professionals without authorization may be subject to criminal prosecution, imprisonment, fines, or all three:

- Architects (225 ILCS 305/23.5).
- Landscape architects (225 ILCS 316/80).
- Land surveyors (225 ILCS 330/16).
- Plumbers (225 ILCS 320/29.5).
- Roofers (225 ILCS 335/9.8 and 335/10a).
- Professional engineers (225 ILCS 325/20.10).
- Structural engineers (225 ILCS 340/20.5).
- Elevator contractors and mechanics (225 ILCS 312/65).
- Fire sprinkler contractors (225 ILCS 317/95).
- Water well and pump installation contractors (225 ILCS 345/27).
- Interior designers (225 ILCS 310/4.5, 310/25, and 310/26).

Warranties

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

Under Illinois law, a party contracting to perform construction work impliedly warrants to do the work in a reasonably workmanlike manner. The failure to do so is a breach of contract. (*Zielinski v. Miller*, 660 N.E.2d 1289, 1293 (Ill. App. Ct. 1995).)

Illinois also recognizes an implied warranty of habitability, which protects purchasers of new houses that discover latent defects in their homes (*Redarowicz v. Ohlendorf*, 441 N.E.2d 324, 330 (Ill. 1982)). To avoid this, Illinois contractors often negotiate for a specific disclaimer of implied warranties in contracts.

Privity is usually required to recover economic loss damages due to breach of an implied warranty of habitability. For example, the Illinois Supreme Court overruled 35 years of appellate court precedent that allowed owners to assert breach of implied warranty of habitability claims under certain circumstances against a subcontractor. The court held that, regardless of remedies against a seller, a purchaser cannot pursue a claim for breach of implied warranty of habitability against a subcontractor unless a contractual relationship exists between the purchaser and subcontractor. (*Sienna Court Condo. Ass'n v. Champion Aluminum Corp.*, 2018 IL 122022, ¶ 30.) The court reasoned that because economic losses are contractual in nature, contractual privity is required between the parties (*Sienna Court Condo. Ass'n*, 2018 IL 122022, ¶ 21).

The Illinois Uniform Commercial Code (Illinois UCC) (810 ILCS 5/1-101 to 5/13-103) provides that all goods, unless otherwise specified in the sales contract, are covered by the implied warranties of:

- Merchantability (810 ILCS 5/2-314).
- Course of dealing or usage of trade (810 ILCS 5/2-314(3)).
- Fitness for a particular purpose (810 ILCS 5/2-315).

In addition, express warranties can be created by a seller's actions, even where specific warranty or guarantee language is not used (810 ILCS 5/2-313(2)).

In a construction setting, the Illinois courts:

- Look to the primary purpose of the contract to determine whether the contract is for the sale of goods governed by the Uniform Commercial Code, or primarily for the performance of construction services not governed by the Uniform Commercial Code.

- Do not usually apply the requirements of the Illinois UCC. Where items are incorporated into a structure and have become part of real estate, the items are no longer goods under the UCC (*Weiss v. MI Home Products, Inc.*, 877 N.E.2d 442, 445-46 (Ill. App. Ct. 1st Dist. 2007)).

(*Bob Neiner Farms, Inc. v. Hendrix*, 490 N.E.2d 257, 258 (1986).)

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

In Illinois, most construction contracts require the contractor to obtain manufacturers' warranties for all equipment and systems installed at the project. Owners generally require that all warranties run from the date of acceptance of the equipment or building systems, which can occur:

- When the owner assumes beneficial use and occupancy of the premises.
- When substantial completion has been achieved.
- On commissioning and acceptance of building systems.

Contractors frequently warrant all work, and agree to repair any deficient or defective work, for a period of one or two years after achieving one of the following milestones:

- Beneficial use and occupancy of the premises by the owner.
- Substantial completion of the work.
- Final completion of the contract.

The scope and duration of warranties are often business terms subject to negotiation by owners, contractors, and subcontractors.

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?

Illinois does not have any specific statute governing warranties for new residential construction.

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 the is security posted?

Illinois has a so-called Little Miller Act. The Public Construction Bond Act is codified at 30 ILCS 550/0.01 to 30 ILCS 550/3.

Minimum Requirements

Until January 1, 2029, the Illinois Public Construction Bond Act mandates payment and performance bonds on all public construction projects for public work of any kind costing over \$150,000 to be performed for the state of Illinois, any political subdivision of Illinois, or any official, board, commission, or agent of Illinois. On and after January 1, 2029, the cost threshold is reduced to \$50,000. (30 ILCS 550/1.)

Until January 1, 2029:

- When making contracts for public works to be constructed, the Department of Transportation and the Illinois State Toll Highway Authority must require every contractor for those works to furnish, supply, and deliver a bond to the Department or the Authority, respectively, with good and sufficient sureties only if the public works contract will cost more than \$500,000.
- Local governmental units may require a bond, by ordinance or resolution, for public works contracts valued at \$150,000 or less.
- When funds other than motor fuel tax funds, federal-aid funds, or other funds received from the State are used, a political subdivision may allow a

contractor to provide a non-diminishing irrevocable bank letter of credit, in lieu of a bond, on contracts under \$100,000 to comply with the Public Construction Bond Act. The letter of credit must contain all provisions required for bonds under Section 1 of the Public Construction Bond Act.

(30 ILCS 550/1).

Security

A county or municipality may not require any security if the builder or developer filed a cash bond, irrevocable letter of credit, or surety bond equal to or greater than 110% of the amount of the bid on each project improvement with the county or municipal clerk (30 ILCS 550/3(a)).

If a county or municipality receives a cash bond, an irrevocable letter of credit, or surety bond, it must:

- Register the bond under the address of the project and the construction permit number.
- Give the builder or developer a receipt for the bond.

The county or municipality must have a separate account for all cash bonds it receives from builders and developers to guarantee completion of a project improvement. (30 ILCS 550/3(b).)

After the builder or developer notifies the county or municipality in writing of the completion of the project improvement, the county or municipality must, with 60 days:

- Refund a cash bond to a builder or developer.
- Release the irrevocable letter of credit or surety bond.

The county or municipality must pay 1% interest per month on any unrefunded bond to the builder or developer, beginning 60 days after the builder or developer notifies the county or municipality, in writing, of the completion of the project improvement. (30 ILCS 550/3(c).)

A copy of the payment bond is kept at the following locations:

- The office of either the head of the department or bureau in charge of the public improvement.
- At the office of the comptroller or other financial officer.

These copies are open to public inspection. (5 ILCS 140/2.5)

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

To bring a claim under the Public Construction Bond Act for labor, material, apparatus, fixtures, or machinery in Illinois, the claimant must:

- File a verified notice of claim with the officer, board, bureau, or department (or Clerk or Secretary of a political subdivision) awarding the contract, within 180 days after the date of the last item of work or the furnishing of the last item.
- Give a copy of the verified notice to the contractor within ten days of filing notice with the agency awarding the contract.

(30 ILCS 550/2.)

The claim must be verified and must contain the following information:

- The claimant's:
 - name and address; and
 - business address in Illinois.
- If the claimant is a foreign corporation without a place of business in Illinois, its principal place of business.
- If the claimant is a partnership, each partner's name and address.
- The name of the contractor for the government.
- The name of the person, firm, or corporation who employed the claimant or to whom the claimant furnished materials, apparatus, fixtures, or machinery.
- A brief description of the public improvement.
- A brief description of the claim including:
 - the work performed by the claimant; and
 - the total amount due and unpaid as of the notice date.

(30 ILCS 550/2.)

Statute of Limitations

No action may be brought under the Public Construction Bond Act more than one year after the last date the claimant furnished labor or material to the project (30 ILCS 550/2).

Additional Requirements

Claimants must bring any action in the circuit court of judicial circuit where the contract is performed (30 ILCS 550/2).

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

In Illinois, whether additional security for performance is required on private construction projects depends on several factors, including:

- The contractor's financial assets.
- The contractor's track record for project completion and claims.
- The cost of the bond premium.

Bonds, especially performance bonds, may be difficult or costly for contractors to obtain, so contractors either resist posting them or pass along the costs to the private owner. As a result, performance and payment bonds are usually found only on large or complex projects. Sometimes, the contractor and owner agree to have performance bonds issued for a few of the critical subcontractors on the project.

On large projects, some large contractors are able to provide subcontractor default insurance (sometimes referred to by the trade name "Subguard") as an alternative to or in addition to a performance bond. Subcontractor default insurance offers a fund to cover costs arising from a subcontractor default on the project.

If not provided with a payment or performance bond, an owner's financial security for either a default in performance or a contractor's failure to pay its subcontractor or vendor is usually the retainage held in the progress payment process (see Question 6).

Vigilance in obtaining and reviewing appropriate lien waivers and other payment documents substantially reduces the risk of non-payment to down-stream contractors resulting in subcontractor claims.

Litigation Concerns

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

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

The following statutes of limitation apply regarding commencing lawsuits in Illinois:

- **Breach of contract.** The statute of limitations is four years (735 ILCS 5/13-214(a)).
- **Breach of warranty under the Illinois Uniform Commercial Code.** The statute of limitations is four years (810 ILCS 5/2-725(1)).
- **Negligence resulting in bodily injury or property damage.** Generally, the statute of limitations is four years for injuries arising out of construction-related activities (735 ILCS 5/13-214; *Tatara v. Peterson Diving Serv.*, 670 N.E.2d 789, 793 (Ill. App. Ct. 1996)). The same four-year statute of limitation applies to a construction worker's negligence action against a construction company (*Hernon v. E.W. Corrigan Const. Co.*, 595 N.E.2d 561, 562 (Ill. 1992)). Where the facts of a case implicate a more-specific statute of limitations, the more-specific statute of limitations may control (see, e.g., *Beetle v. Wal-Mart Associates, Inc.*, 761 N.E.2d 364 (Ill. App. 2d Dist. 2001) (two-year limitations period applied to widow's wrongful death claim); *Paszkowski v. Metropolitan Water Reclamation Dist. of Greater Chicago*, 820 N.E.2d 401, 408 (Ill. 2004) (one-year limitations period applied to tort claim against local governmental entity)).

- **Professional malpractice by a design professional.** The statute of limitations is four years (735 ILCS 5/13-214(a)).
- **Latent defects in design or construction.** The statute of limitations is four years (735 ILCS 5/13-214(a)).

The parties can contract for a shorter limitations period to replace any statute of limitations as long as it is reasonable. Shorter limitations periods are enforceable in Illinois. (*Zerjal v. Daech & Bauer Constr., Inc.*, 939 N.E.2d 1067, 1075 (2010).)

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

Illinois does not require a certificate or affidavit of merit when filing claims against design or construction professionals.

Proof of Licensure

Illinois does not require any proof of licensure.

Special Requirements

There are no special requirements to allege causes of actions related to latent design or construction defects.

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

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

Illinois has a statute of repose related to construction activities.

Period of Repose

Claims for construction-related activities must be brought within four years of discovery, provided that no claim may be brought more than ten years after the act or omission giving rise to the claim. However, if a person discovers an act or omission within the 10-year repose period, they will still be permitted four years to bring their claim. (735 ILCS 5/13-214).

Types of Claims Allowed

The following claims fall under the statute of repose:

- Tort.
- Contract.
- Other claims for acts or omissions in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property.

(735 ILCS 5/13-214(b).)

Notice or Conditions Precedent

There are no special requirements or conditions precedent to filing a lawsuit related to the statute of repose.

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

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

Liquidated Damages

Illinois follows the Restatement (Second) of Contracts, Section 356(1) to determine whether a liquidated damages provision is valid and enforceable. The court considers whether:

- The parties intended to agree to the settlement of damages that might arise from a future breach.

- The amount of liquidated damages was reasonable when the parties entered into the contract and has some relation to the damages which might be sustained.
- The amount of actual damages is uncertain and difficult to prove.

(*Grossinger Motorcorp, Inc. v. Am. Nat'l Bank & Trust Co.*, 607 N.E.2d 1337, 1345 (Ill. App. Ct. 1992).)

Limitations of Liability

Generally, Illinois courts will enforce a limitation of liability clause unless it violates public policy (*Kubisen v. Chicago Health Clubs*, 388 N.E.2d 44, 46-47 (Ill. App. Ct. 1979)). However, with respect to construction-related contracts, any promise or agreement to indemnify or hold harmless another party for that party's own negligence is void as against public policy and wholly unenforceable (740 ILCS 35/1).

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

No-Damages-For-Delay Clause

No-damages-for-delay clauses are generally valid and enforceable in Illinois as long as the basic requirements for a valid contract are present (*Gust K. Newberg, Inc. v. Illinois State Toll Highway Auth.*, 506 N.E.2d 658, 664-65 (Ill. App. Ct. 1987)).

However, Illinois courts have specifically recognized at least four exceptions to the enforceability of a no-damages-for-delay clause:

- A party is guilty of bad faith, fraud, concealment, misrepresentation, or acts of hindrance.
- The causes of the delay were not within the parties' contemplation when they entered into the contract.
- The delay is unreasonable in duration.
- The delay is due to "the inexcusable ignorance or incompetence" of another party.

(*J&B Steel Contractors, Inc. v. C. Iber & Sons, Inc.*, 642 N.E. 2d 1215, 1222 (Ill. 1994) (listing exceptions recognized by Appellate Court); *Bates & Rogers Const. Corp. v. N. Shore Sanitary Dist.*, 414 N.E.2d 1274, 1279 (Ill. App. Ct. 1980).)

Construction Laws and Customs: Illinois

Choice of Law or Forum

Any provision in a building and construction contract to be performed in Illinois is void and unenforceable as a matter of public policy if it:

- Makes another state's law applicable to the contract.

- Requires litigation, arbitration, or other dispute resolution proceedings to take place in another state.

(815 ILCS 665/10.)

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

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