

Construction Laws and Customs: Mississippi

by Lynn Patton Thompson and Christopher Solop, Biggs, Ingram & Solop, PLLC, with Practical Law Real Estate

Status: **Law stated as of 04 Nov 2025** | Jurisdiction: **Mississippi, United States**

This document is published by Practical Law and can be found at: content.next.westlaw.com/w-000-7387
Request a free trial and demonstration at: tr.com/practicallaw-home

A Q&A guide to construction projects in Mississippi. 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?

Sections 31-5-25 and 31-5-27 of the Mississippi Code govern times for payment on publicly owned or financed projects.

Payments by Owners

Owners must pay prime contractors any partial, progress, or interim payment within 45 days after the payment becomes due under the contract (Miss. Code Ann. § 31-5-25(1)(a)). Final payment cannot be

made to the contractor unless and until the consent of the contractor’s surety has been obtained in writing.

Payment by Prime Contractors

When a contractor receives any payment from the owner, the contractor must pay each subcontractor and material supplier within 15 days after receipt of payment in proportion to the percentage of work completed by each subcontractor and material supplier. The contractor must disburse funds on a pro rata basis if the contractor receives less than the full payment due. (Miss. Code Ann. § 31-5-27.)

Penalties for Failure to Comply

An owner that fails to make any payment to a contractor for more than 45 calendar days after the payment becomes due must pay interest on the payment. The interest rate is 1% per month on the unpaid balance. (Miss. Code Ann. § 31-5-25(1).)

A contractor that fails to make any payment without reasonable cause within 15 days after receiving payment from the owner must pay a penalty. The penalty is ½ of 1% per day of the delinquency, calculated from the expiration of the 15-day period until fully paid. The total penalty cannot exceed 15% of the outstanding balance due. (Miss. Code Ann. § 31-5-27.)

Right to Stop Work

Mississippi's statutes do not expressly provide the contractor with a right to stop work on public projects for failure to receive payment.

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?

Sections 87-7-3 and 87-7-5 of the Mississippi Code govern times for payment on privately owned or financed projects.

Payments by Owners

Owners must pay prime contractors any partial, progress, or interim payment within 30 days after the payment becomes due under the contract (Miss. Code Ann. § 87-7-3(a)).

Final payment must be made within 30 days after the earliest of:

- Completion of the project or after the work has been substantially completed under the terms and provisions of the contract.
- The owner beneficially uses or occupies the project, except in the case where the project involves renovation or alteration to an existing facility in which the owner maintains beneficial use or occupancy during the project.
- The project is certified as having been completed by the architect or engineer authorized to make the certification.

(Miss. Code Ann. § 87-7-3(b).)

Payment by Prime Contractors

When a contractor receives any payment from the owner, the contractor must pay each subcontractor and material supplier within 15 days after receipt of payment in proportion to the percentage of work completed by each subcontractor and material supplier. The contractor must disburse funds on a pro rata basis if the contractor receives less than the full payment due. (Miss. Code Ann. § 87-7-5.)

These requirements do not apply to contracts for the construction of single-family dwellings (Miss. Code Ann. § 87-7-5).

Penalties for Failure to Comply

An owner that fails to make any payment to a contractor for more than 30 calendar days after the payment becomes due must pay interest on the payment. The interest rate is 1% per month on the unpaid balance. (Miss. Code Ann. § 87-7-3.)

A contractor that fails to make any payment without reasonable cause within 15 days after receiving payment from the owner must pay a penalty. The penalty is $\frac{1}{2}$ of 1% per day of the delinquency, calculated from the expiration of the 15-day period until fully paid. The total penalty cannot exceed 15% of the outstanding balance due. This does not apply to contracts for the construction of single-family dwellings. (Miss. Code Ann. § 87-7-5.)

Right to Stop Work

Mississippi's statutes do not expressly provide the contractor with a right to stop work on private projects for failure to receive payment.

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?

Mississippi has a prompt payment act that sets out the requirements for payments and interest on 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?

Mississippi has a prompt payment act that regulates the timing of payments to subcontractors for public and private construction projects (see Questions 1 and 2).

There are no specific common law restrictions on the flow-down of payments to subcontractors.

However, in *Nicholas Acoustics & Specialty Co. v. H&M Construction Co.*, in trying to reconcile conflicting prime contract and subcontract provisions, the Fifth Circuit Court of Appeals held that under Mississippi law a “pay when paid” provision does not set a condition precedent to payment but allows the contractor to delay final payment for a reasonable time after the subcontractor completes its work (695 F.2d 839, 843 (5th Cir. 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 the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

Section 31-5-33 of the Mississippi Code regulates withholding of retainage on publicly owned or financed construction projects.

Amount of Retainage

Retainage must be 5% on any public contract that provides for progress payments in installments. The percentage withheld by the prime contractor from

subcontractors cannot exceed the percentage withheld by the public owner. (Miss. Code Ann. § 31-5-33(1).)

Effective July 1, 2024, retainage is defined as money, or other security as agreed to by the parties, retained by the owner on the condition of final completion and acceptance of all work (Miss. Code Ann. § 31-5-33(1)).

These requirements do not apply to Mississippi Transportation Commission contracts for the construction, improvement, or maintenance of roads and bridges (Miss. Code Ann. § 31-5-33(2)).

The contractor may, with the written consent of its surety, substitute approved securities in place of retainage (Miss. Code Ann. § 31-5-15).

For select county contracts, the board of supervisors (board) must retain not less than 2.5% of partial payments and not more than 10% of the value of work done and material used and for subcontractors, not more than the percentage retained from the contractor. For select county contracts for which the total amount is at least \$750,000, the board must retain 10%. (Miss. Code Ann. § 19-13-15.)

Partial Release of Retainage

On contracts in an amount of \$250,000 or greater or any contract with a subcontractor, when the project is 50% complete, on schedule, and performed satisfactorily in the opinion of the architect or engineer, the owner must:

- Return half of the retainage to date to the contractor for distribution to the appropriate subcontractors and suppliers.
- Continue to withhold 2.5% retainage.

(Miss. Code Ann. § 31-5-33(1).)

These requirements do not apply to Mississippi Transportation Commission contracts for the construction, improvement, or maintenance of roads and bridges (Miss. Code Ann. § 31-5-33(2)).

For select county contracts for which the total amount is at least \$750,000, at 50% completion, the board must:

- Return half of the retainage to date to the contractor for distribution to the appropriate subcontractors and suppliers who are on schedule and performing satisfactorily.
- Continue to withhold 5% retainage.

(Miss. Code Ann. § 19-13-15.)

Final Release of Retainage

Once a public project has been completed under Miss. Code Ann. § 31-5-25, the remaining retainage must be released to the contractor as part of the final payment (*Re: Bankruptcy Proceeding - Treatment of Retainage*, Miss. Att'y Gen. Op. No. 2008-00191, 2008 WL 2043286 (2008)).

Final payment of all amounts due must be made within 45 days after the earliest of:

- Completion of the project or after substantial completion of the work.
- Beneficial use or occupancy by owner (except on alteration and repair projects in which the owner maintains use and occupancy during the project).
- The project being certified as complete by the authorized design.
- The project is certified as having been completed by the contracting authority.

(Miss. Code Ann. § 31-5-25(1)(b).)

In no event is final payment due until the contractor provides the contracting authority with the written consent of the contractor's surety (Miss. Code Ann. § 31-5-25(1)(b)).

Penalties

If final payment, including retainage, is not made in full within 45 calendar days after completion of the project, then interest at the rate of 1% per month accrues on the amount owed until fully paid (Miss. Code Ann. § 31-5-25; *Re: Bankruptcy Proceeding*, 2008 WL 2043286).

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?

Sections 87-9-3 and 87-7-5 of the Mississippi Code regulate withholding of retainage on privately owned or financed construction projects.

Amount of Retainage

A construction contract on any private project which provides for progress payments in installments based on an estimated percentage of completion with a percentage of the contract proceeds to be retained by the owner, contractor, or subcontractor pending final completion of the contract may provide for retainage of up to 5% the estimated amount of work properly done and the value of materials stored on the site or suitably stored and insured off-site (Miss. Code Ann. § 87-9-3(2)(a), (b), and (c)).

Partial Release of Retainage

Mississippi law does not address the partial release of or reduction in retainage for private projects.

Final Release of Retainage

The owner must release and pay retainage to the contractor for work completed on any construction contract no later than 60 days after the final completion of the contractor's work provided all necessary certificates of occupancy have been issued (Miss. Code Ann. § 87-9-3(3)).

Contractors and subcontractors must release retainage within 15 days after receipt of payment (Miss. Code Ann. §§ 87-9-3(3) and 87-7-5).

Penalties

Any amount of retainage held above the 5% for items of work required to achieve final completion is subject to interest accruing on the excess amount at the rate of 1% per month (Miss. Code Ann. § 87-9-3(2)(d)).

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?

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

Mississippi's prompt payment act does not address partial release of or reduction in retainage. Some contracts provide for a reduction of retainage when:

- A project reaches 50% completion.
- The project is on schedule.
- Reduction of retainage is approved by the architect, engineer, or both.
- There are no issues relating to the contractor's performance.

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 remains the most common project delivery system on both public and private projects. Use of design-build project delivery is increasing on both public and private projects in Mississippi. Construction Manager projects are also becoming more common on both public and private projects. Typically, Construction Manager projects in Mississippi are Construction Manager Not at Risk contracts.

For more information on project delivery systems, see [Practice Note, Selecting the Right Private Project Delivery System](#).

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?

Public Projects

Design-Build

Mississippi law provides for the use of a "dual-phase design-build method" of construction contracting when

the legislature has specifically required or authorized the use of this method in legislation authorizing the project. At a minimum, the determination must include an explanation of why using the design-build method for a particular project satisfies the public need better than the traditional design-bid-build method based on the following criteria:

- The project provides savings in time or cost over traditional methods.
- The size and type of project is suitable for design-build.

(Miss. Code Ann. § 31-7-13.1(1)(a), (b).)

The agency or governing authority must develop a scope of work statement for each proposed dual-phase design-build project that provides prospective bidders with sufficient information about the authority's requirements to develop a proposal based on specified information outlined in the statute. The final contract between the public entity and the design-builder must be either a fixed firm price or a guaranteed maximum price contract that includes payment for both the design phase and the construction phase of the project. (Miss. Code Ann. § 31-7-13.1(2).)

Once the agency or governing authority has assembled the required information for offerors, it must publish an invitation for proposals once a week for at least two consecutive weeks in a regular newspaper in the county where the project is to be located or in a newspaper with statewide circulation. The invitation must:

- Inform prospective offerors how to get the scope of work statement.
- Adequately describe the nature and scope of the project to promote full, equal, and open competition.

(Miss. Code Ann. § 31-7-13.1(3).)

The agency or governing authority must accept initial proposals only from entities able to provide an experienced and qualified design-build team, which includes, at a minimum, both:

- An architectural or engineering firm licensed and registered in Mississippi.
- A contractor licensed and domiciled in Mississippi for the type of work required.

(Miss. Code Ann. § 31-7-13.1(4).)

Phase Two of the process requires evaluation of submitted proposals. Proposals including criteria other than cost must be evaluated by an evaluation committee established according to the requirements of Miss. Code Ann. § 31-7-13.1(5). The committee may only consider:

- The bidder's knowledge and experience in executing projects of like size and complexity.
- The experience and qualifications of the proposed office and construction management personnel, subcontractors, and architects, engineers, and consultants.
- Schedule control.
- Cost factors.

An award of the contract to the design-builder is made based on the committee's determination of the "best value" offer. (Miss. Code Ann. § 31-7-13.1(2) to (5).)

If the agency selects a proposal that is not the lowest cost proposal, it must enter on its minutes:

- Detailed calculations and a narrative summary showing why the accepted proposal was determined to provide the best value.
- A specific statement regarding the justification for the award.

(Miss. Code Ann. § 31-7-13.1(6).)

This statute does not affect any procurement by the Mississippi Transportation Commission (Miss. Code Ann. § 31-7-13.1(10)).

Construction Manager at Risk

The statute defines "construction manager at risk" as a "method of project delivery in which a construction manager guarantees a maximum price for the construction of a project." Any governing authority or board using the construction manager at risk project delivery method must provide a detailed explanation of why using this method satisfies the public need better than the traditional design-bid-build method based on the following criteria:

- The use of construction manager at risk for the project provides savings in time or cost over traditional methods.
- The size and type of the project is suitable for use of the construction management at risk method of project delivery.

(Miss. Code Ann. § 31-7-13.2(1).)

Each project for construction under a construction manager at risk contract must be a single, specific project. This means that the project is constructed either:

- At a single location.
- At a common location.
- For a common purpose.

Each construction manager at risk project must have a minimum construction cost of \$25 million. (Miss. Code Ann. § 31-7-13.2(7).)

To procure construction management at risk services, the agency or governing authority must:

- Publicly announce requirements for construction management at risk services to obtain those services based on demonstrated competence and qualifications and to negotiate fair and reasonable prices.
- Establish procedures to prequalify firms desiring to provide construction management at risk services.
- Once a project is proposed, give advance notice published for 14 days in a professional services bulletin or official state newspaper and provide requirements for firms to submit letters of interest.
- Evaluate the prequalified firms and the firms submitting letters of interest, considering the firms' qualifications and other optional criteria set out in Miss. Code Ann. § 31-7-13.2(10)(d).
- Establish a committee to:
 - review the firms' qualifications, which may include discussions and public presentation regarding qualifications, approach to the project, and ability to furnish the required services; and
 - select at least three firms, ranking them in order of qualification.
- Negotiate a contract with the most qualified firm, considering the estimated value, scope, complexity, and professional nature of the services procured.

(Miss. Code Ann. § 31-7-13.2(10).)

Once construction management at risk services are procured, the construction manager:

- May, before soliciting bids and in consultation with the agency or governing authority, prequalify contractors or vendors desiring to submit bids, considering qualification criteria set out in Miss. Code Ann. § 31-7-13.2(11)(a).

- Must publish the defined qualifications at least two weeks before any prequalification of contractors or vendors in a regular newspaper in the city or county where the agency or governing authority is located. (The agency or authority also posts requirements on its website.)
- Solicits bids.
- May contract for construction with the lowest and best bidders, as determined in consultation with the agency or governing authority.

(Miss. Code Ann. § 31-7-13.2(11).)

This statute does not affect any procurement by the Mississippi Transportation Commission or existing or future Mississippi Institutions of Higher Learning or their related entities, joint ventures, or subsidiaries governed by or in connection with the named institutions (Miss. Code Ann. § 31-7-13.2(12), (13)).

Private Projects

There are no statutory provisions addressing design-build or construction management contracts in the private sector.

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

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

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

The [American Institute of Architects](#) (AIA) standard form contracts are widely used on both private and public projects. The [Mississippi Department of Transportation](#) uses a short form contract that incorporates an extensive set of standard specifications (commonly called the “Red Book”) and is periodically revised.

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?

There is little or no negotiation on public construction contracts in Mississippi.

In the private context, the most commonly negotiated terms include:

- Whether performance and payment bonds are required.
- Retainage.
- Liquidated damages.
- Timing of progress payments (pay-when-paid or pay-if paid).
- Scheduling.
- Release and waiver of liens if there is no performance and payment bond required under Miss. Code Ann. §§ 85-7-401 to 85-7-433.
- Whether to arbitrate or litigate and, if so, where and under what arbitration rules.

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?

Mississippi requires the following construction professionals to be licensed or registered:

- Architects (Miss. Code Ann. §§ 73-1-1 to 73-1-43; see Architect).
- Landscape Architects (Miss. Code Ann. §§ 73-2-1 to 73-2-23; see Landscape Architect).
- Engineers (Miss. Code Ann. §§ 73-13-1 to 73-13-45; see Engineer).
- Land Surveyors (Miss. Code Ann. §§ 73-13-71 to 73-13-105; see Land Surveyor).

- Contractors (Miss. Code Ann. §§ 31-3-1 to 31-3-23 and 73-59-1 to 73-59-21) and Construction Managers (Miss. Code Ann. § 73-59-1(h); 30 Miss. Admin. Code Pt. 802, R. 1.1(4)); see Contractor and Construction Manager).

Other construction trades in Mississippi that require a license include:

- Electricians.
- Plumbers.
- Mechanical contractors.
- Heating, ventilation, and air conditioning contractors.
- Residential solar contractors.

(Miss. Code Ann. § 73-59-3(1)(d), (e).)

Architect

A license is required to practice architecture in Mississippi (Miss. Code Ann. § 73-1-1).

A person engaging in the practice of architecture is someone who holds themselves out as able to:

- Perform any of the following professional services in connection with any buildings, structures, or projects, or the accompanying equipment, utilities, or accessories thereto, wherein the safeguarding of life, health or property is concerned or involved, such as:
 - planning;
 - design (including aesthetic and structural designs);
 - consultation; or
 - responsible inspection of construction.
- Apply the principles of mathematics, aesthetics, functional planning, and the physical sciences to the art and science of construction.

(Miss. Code Ann. § 73-1-3(c).)

The [Mississippi State Board of Architecture](#) (MSBOA) oversees the licensing and regulation of architects. The MSBOA consists of five members appointed by the governor. (Miss. Code Ann. § 73-1-5.)

Landscape Architect

A license is required to practice landscape architecture in Mississippi (Miss. Code Ann. § 73-2-5). Landscape architecture means:

- Any service or creative work that requires landscape architectural education, training, and experience to adequately perform.
- Performing professional services in connection with the development of land areas where the dominant purpose of such services is the preserving, enhancing, or determining proper land uses, natural land features, ground cover and plantings, naturalistic and aesthetic values, such as:
 - consultation;
 - investigation;
 - research;
 - associated planning;
 - design;
 - preparation of drawings, specifications and contract documents; and
 - responsible supervision or construction management.
- Determining settings, grounds, and approaches for buildings and structures or other improvements.
- Determining environmental problems of land relating to erosion, flooding, blight, and other hazards.
- Shaping and contouring land and water forms.
- Setting grades, determining drainage, and providing for storm drainage systems where such systems do not require structural design of system components, and determination of landscape irrigation.
- Designing such tangible objects and features as are necessary to the practice of landscape architecture, excluding the design of buildings or structures with separate and self-contained purposes that are ordinarily included in the practice of architecture or engineering.

(Miss. Code Ann. § 73-2-3(b).)

The MSBOA oversees the licensing and regulation of landscape architects. The MSBOA consists of five members appointed by the governor. (Miss. Code Ann. § 73-1-5.) The governor also appoints a landscape architect advisory committee consisting of five members (Miss. Code Ann. § 73-2-13).

Engineer

A license is required to practice engineering in Mississippi (Miss. Code Ann. § 73-13-1).

The practice of engineering means any service or creative work that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work to adequately perform, such as:

- Consultation.
- Investigation,
- Expert technical testimony.
- Evaluation.
- Planning, design, and design coordination of engineering works and systems.
- Planning the use of land, air and water.
- Performing engineering surveys and studies.
- The review of construction for the purpose of monitoring compliance with drawings and specifications.

(Miss. Code Ann. § 73-13-3.)

Engineering services or work includes:

- Public or private engineering services or work in connection with any:
 - utilities;
 - water resources;
 - structures;
 - buildings;
 - machines;
 - equipment;
 - processes;
 - work systems;
 - projects;
 - communication systems;
 - transportation systems;
 - industrial or consumer products; or
 - equipment of control systems.
- Engineering services or work of a following nature, insofar as they involve safeguarding life, health or property:
 - communications;
 - mechanical;

- electrical;
- hydraulic;
- pneumatic;
- chemical;
- geotechnical (including geology and geohydrology incidental to the practice of engineering);
- geological;
- environmental; or
- thermal.
- Other professional services as may be necessary to the planning, progress, and completion of any engineering services.

(Miss. Code Ann. § 73-13-3.)

The [Mississippi Board of Licensure for Professional Engineers and Surveyors](#) (MBLPES) oversees the licensing and regulation of engineers. The MBLPES consists of six members appointed by the governor. (Miss. Code Ann. § 73-13-5.)

Land Surveyor

A license is required to practice land surveying in Mississippi (Miss. Code Ann. § 73-13-73).

The practice of land surveying means providing professional services such as:

- Consultation.
- Investigation.
- Testimony evaluation.
- Expert technical testimony.
- Planning.
- Mapping.
- Assembling and interpreting reliable scientific measurement and information relative to:
 - the location, size, shape or physical features of the earth;
 - improvements on the earth;
 - the space above the earth; or
 - any part of the earth.
- Utilizing, developing, and interpreting information as it pertains to the earth to develop an orderly survey map, plan, or report.

- Retracing or creating land boundaries and descriptions of real property.

(Miss. Code Ann. § 73-13-71(4).)

The MBLPES oversees the licensing and regulation of land surveyors. The MBLPES consists of six members who are appointed by the governor. (Miss. Code Ann. §§ 73-13-5 and 73-13-71.)

Contractor and Construction Manager

The [Mississippi State Board of Contractors](#) (MSBOC) oversees the licensing and regulation of contractors. The MSBOC consists of ten members appointed by the governor with the advice and consent of the Senate. (Miss. Code Ann. §§ 31-3-3 and 73-59-1.)

Any commercial contractor performing public or private work for more than \$50,000 must be licensed by the MSBOC in the area for which the work is performed. (Miss. Code Ann. § 31-3-21(2)). It is unlawful for any person to:

- Submit a bid in excess of \$50,000 if the person does not possess the appropriate license from the MSBOC.
- Solicit bids or enter a contract with an individual or entity that does not possess the appropriate license from the MSBOC.

(Miss. Code Ann. § 31-3-21(1).)

The MSBOC's regulations also require that any person or entity contracting or undertaking construction management at any tier (prime, subcontractor, sub-subcontractor) must have a Certificate of Responsibility. The classification can be in either:

- The specialty classification of Construction Management:
- The major classification of Building Construction.

(30 Miss. Admin. Code Pt. 802, R. 1.1(4).)

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?

Architect

Licensing Requirements

An applicant for licensure as an architect must:

- Take and pass:
 - the Architect Registration Examination (ARE); and
 - the Mississippi Jurisprudence Examination.
- Have a professional degree in architecture from a school or college of architecture on the list of accredited schools of architecture issued by the National Architectural Accrediting Board.
- Meet the Architect Experience Program (AXP) requirements in accordance with 30 Miss. Admin. Code Pt. 201, R. 1.2.
- Complete and submit the [Mississippi Application for Initial Licensure](#) to the [Mississippi State Board of Architecture](#) (MSBOA).
- Have good standing in the profession.
- Have good moral character.

(Miss. Code Ann. §§ 73-1-13 and 73-1-17; 30 Miss. Admin. Code Pt. 201, R. 1.1 and 2.1.)

Architects' licenses must be renewed on or before November 30 in odd-numbered years (30 Miss. Admin. Code Pt. 201, R. 2.3). The renewal fee is \$275 (30 Miss. Admin. Code Pt. 201, R. 2.4; [Mississippi State Board of Architecture: Architect Fee Schedule](#)). There are additional fees for late renewal or reinstatement.

Architects' licenses do not expire while the licensed individual is serving on federal active duty and may be renewed for normal fees and activities if the license is renewed within 90 days after returning from federal active duty (Miss. Code Ann. § 33-1-39).

Continuing Education Requirements

An architect must complete 12 continuing education hours (CEH) every calendar year, for a total of 24 CEHs to be reported with each biennial renewal, in structured educational activities in health, safety and welfare topics (30 Miss. Admin. Code Pt. 201, R. 6.2).

Landscape Architect

Licensing Requirements

An applicant for licensure as a landscape architect must:

- Submit evidence of good moral character and integrity to the MSBOA.
- Have either:
 - obtained at least a four-year degree in landscape architecture in a curriculum approved by the MSBOA; or
 - completed seven years of work in the practice of landscape architecture of a grade and character acceptable to the MSBOA. The MSBOA may credit graduation from a college or university curriculum for up to two of the seven years of required experience.
- If the applicant:
 - has an approved degree, apply to the [Council of Landscape Architectural Registration Boards \(CLARB\)](#) to take the Landscape Architect Registration Examination (LARE); or
 - has the required experience but not the degree, contact the MSBOA to apply and once approved, take the LARE (30 Miss. Admin. Code Pt. 202, R. 1.7; see [MSBOA: Landscape Architect Examination & Initial Licensure](#)).
- Pass the LARE.
- Submit an application for initial registration along with:
 - the application fee; and
 - the CLARB Council Record, which includes verified documentation of the applicant's education, experience, examination, licensure, and professional conduct.

(Miss. Code Ann. § 73-2-7; 30 Miss. Admin. Code Pt. 202, R. 1.2 and 1.7.)

Landscape architects' licenses must be renewed on or before December 31 in odd-numbered years (30 Miss. Admin. Code Pt. 202, R. 1.9). The renewal fee is \$200 and is payable on the first day of January of each year (30 Miss. Code Ann. § 73-2-15; Miss. Admin. Code Pt. 202, R. 1.9; see [Mississippi State Board of Architecture: Landscape Architect Fee Schedule](#)).

Landscape architects' licenses do not expire while the licensed individual is serving on federal active duty and may be renewed for normal fees and activities if the license is renewed within 90 days after returning from federal active duty (Miss. Code Ann. § 33-1-39).

Continuing Education Requirements

A landscape architect must complete 24 continuing education units in health, safety, and welfare course study every two years, no more than eight of which can be through self-directed activities (30 Miss. Admin. Code Pt. 202, R. 4.5).

Engineer

Licensing Requirements

An applicant for licensure as an engineer must:

- Graduate from an engineering curriculum of four years or more from a school or college approved by the [Mississippi Board of Licensure for Professional Engineers and Surveyors](#) or graduate from a non-approved but related program (engineering, engineering technology, or related science) and then earn a graduate degree in engineering from a school with an approved undergraduate engineering program.
- Have four years of qualifying engineering experience indicating that the applicant is competent to practice engineering. The Board may count up to three years of graduate study in engineering toward this four year experience requirement.
- Pass examinations.
- Submit an [application](#), including at least five references, of which three or more must be engineers having personal knowledge of the applicant's engineering experience.
- Pay a \$75 application fee.
- Possess good character and reputation as defined by the Board's Code of Professional Conduct.

(Miss. Code Ann. §§ 73-13-23(1)(a), 73-13-25, and 73-13-27.)

Engineers' licenses expire on the last day of December following their issuance or renewal. All licensees must renew their respective certificates of

licensure every other year, dependent upon the year in which the licensee's certificate of licensure was issued. (Miss. Code Ann. § 73-13-31; 30 Miss. Admin. Code Pt. 901, R. 6.6.) The individual renewal fee is \$70. The renewal fee for dual licensees (individuals licensed as both an engineer and surveyor) is \$140. ([Mississippi Board of Licensure for Professional Engineers and Surveyors: Licensure Renewals.](#))

Engineers' licenses do not expire while the licensed individual is serving on federal active duty and may be renewed for normal fees and activities if the license is renewed within 90 days after returning from federal active duty (Miss. Code Ann. § 33-1-39).

Any firm, corporation, or partnership practicing or offering to practice engineering or surveying in Mississippi must be licensed to practice with a Certificate of Authority from the Mississippi State Board of Licensure for Professional Engineers & Surveyors (Miss. Code Ann. § 73-13-43).

Continuing Education Requirements

An engineer must obtain 15 professional development hours (PDH) during every calendar year (30 Miss. Admin. Code Pt. 901, R. 6.4(2(a))). Engineers may carry forward up to 15 excess PDHs into the next year (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(f)).

Engineers must obtain one PDH of ethics training every biennial renewal period. Excess ethics PDHs may not be carried forward. (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(e).)

Dual licensees (individuals licensed as both an engineer and a surveyor) are required to obtain eighteen PDHs during every calendar year, including at least six in each profession (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(d)). Dual licensees may carry forward up to 18 excess PDHs into the next year (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(f)).

Land Surveyor

Licensing Requirements

An applicant for licensure as a land surveyor must:

- Have the required amount of surveying experience based on the applicant's level and area of education, as set out in Miss. Code Ann. § 73-13-77(1)(a).
- Pass an examination.

- Be of good character and reputation.
- Submit an [application](#), including at least five references, of which three or more must be professional surveyors having personal knowledge of the applicant's surveying experience.
- Pay a \$75 application fee.

(Miss. Code Ann. §§ 73-13-77 and 73-13-79.)

Land surveyors' licenses expire on the last day of December following their issuance or renewal (Miss. Code Ann. § 73-13-85). All licensees must renew their respective certificates of licensure every other year, dependent upon the year in which the licensee's certificate of licensure was issued. (30 Miss. Admin. Code Pt. 901, R. 6.6.) The individual renewal fee is \$70 ([Mississippi Board of Licensure for Professional Engineers and Surveyors: Licensure Renewals.](#))

Land surveyors' licenses do not expire while the licensed individual is serving on federal active duty and may be renewed for normal fees and activities if the license is renewed within 90 days after returning from federal active duty (Miss. Code Ann. § 33-1-39).

Continuing Education Requirements

A surveyor must obtain 12 professional development hours (PDH) during every calendar year (30 Miss. Admin. Code Pt. 901, R. 6.4(2(b))). Surveyors may carry forward up to 12 excess PDHs into the next year (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(f)).

A surveyor with five years or less of licensure in Mississippi must obtain one PDH in Mississippi Standards of Practice annually. Surveyors with more than five years of licensure in Mississippi must obtain one PDH in Mississippi Standards of Practice every biennial renewal period. Excess Mississippi Standards of Practice PDHs may not be carried forward. (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(c).)

Surveyors must also obtain one PDH of ethics training every biennial renewal period. Excess ethics PDHs may not be carried forward. (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(e).)

Dual licensees (individuals licensed as both an engineer and a surveyor) are required to obtain eighteen PDHs during every calendar year, including at least six in each profession (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(d)). Dual licensees may carry forward

up to 18 excess PDHs into the next year (30 Miss. Admin. Code Pt. 901, R. 6.4(2)(f)).

Contractor and Construction Manager

Licensing Requirements

An applicant for a commercial contractor's license, referred to in Mississippi as a Certification of Responsibility, must:

- Pay \$400 in fees to apply for one classification and pay additional fees for multiple classifications ([Mississippi State Board of Contractors: Forms](#)).
- Submit an [application](#), including:
 - a reviewed financial statement completed within the previous 12 months, prepared and signed by a certified public accountant, stating the assets, liabilities, and net worth of the person; and
 - a certificate of insurance evidencing current minimum coverage of \$300,000 per occurrence and \$600,000 aggregate for general liability purposes.
- Pass a business integrity examination or appropriate technical examination or both.

(Miss. Code Ann. §§ 31-3-13(a) and 31-3-14(1); 30 Miss. Admin. Code Pt. 802, R. 1.1(2)(g), (i), (j).)

An applicant for a residential contractor's license (Certificate of Responsibility) generally must:

- Submit to the [Mississippi State Board of Contractors](#):
 - proof of workers' compensation insurance, if applicable; and
 - a federal employer identification number or Social Security number.
- Pay a \$50 initial license fee.
- Submit an [application](#).
- Pass an examination.

(Miss. Code Ann. §§ 73-59-3 and 73-59-5.)

Commercial contractors' licenses expire one year from the date of issuance (Miss. Code Ann. § 31-3-13(a)). The renewal fee is \$400 and increases to \$450 after the license expires (30 Miss. Admin. Code Pt. 802, R. 3.4; [Mississippi State Board of Contractors: Renew License: Commercial Renewal](#)).

Residential contractors' licenses expire on the last day of the twelfth month following their issuance

(Miss. Code Ann. § 73-59-3(5)). The renewal fee is \$100 and increases to \$110 after the license expires (30 Miss. Admin. Code Pt. 802, R. 3.4; [Mississippi State Board of Contractors: Residential Builder or Remodeler Renewal Form](#)).

Both commercial and residential contractors' licenses do not expire while the licensed individual is serving on federal active duty and may be renewed for normal fees and activities if the license is renewed within 90 days after returning from federal active duty (Miss. Code Ann. § 33-1-39).

Continuing Education Requirements

Commercial contractors and construction managers are not subject to continuing education requirements.

A residential contractor must complete two credit hours of continuing education each year (Miss. Code Ann. § 73-59-11(g); 30 Miss. Admin. Code Pt. 803, R. 1.4).

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

Parties may confirm that an architect or a landscape architect is duly registered by conducting a search on the Mississippi State Board of Architecture's [website](#).

Parties may confirm that an engineer or a surveyor is duly registered by conducting a search on the Mississippi State Board of Licensure for Professional Engineers and Surveyors' [website](#).

The Mississippi State Board of Contractors' [website](#) provides search pages for the following licenses and violations:

- Contractors, residential and commercial, holding current Certificates of Responsibility.
- Residential and commercial contractor [violations](#).

Consequences of Violation

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

- Architect (Miss. Code Ann. §§ 73-1-25(a) and 73-1-29(4)).
- Landscape architect (Miss. Code Ann. § 73-2-21).
- Engineer (Miss. Code Ann. §§ 73-13-37(4) and 73-13-39).
- Land surveyor (Miss. Code Ann. § 73-13-95).
- Contractors and construction managers (Miss. Code Ann. §§ 31-3-21(1), (4) and 73-59-9(1), (2)).

Warranties

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

Mississippi has adopted the Uniform Commercial Code (UCC), where, unless excluded or modified, there is an implied warranty that goods are:

- Merchantable, if the seller is a merchant regarding goods of that kind (Miss. Code Ann. § 75-2-314(1)).
- Fit for the purpose for which the goods are required if both:
 - the seller, at the time of contract, has reason to know the purpose for which the buyer requires the goods; and
 - the buyer relies on the seller's skill or judgment to select or furnish suitable goods.

(Miss. Code Ann. § 75-2-315.)

For residential construction, the contractor implicitly warrants that the home was built in a workmanlike manner and is suitable for habitation (see *Keyes v. Guy Bailey Homes, Inc.*, 439 So. 2d 670, 671 (Miss. 1983)).

A project owner, as a matter of law, has an implied warranty with the contractor with whom he contracts that the plans and specifications furnished to the contractor are not defective (*Employers Ins. of Wausau v. Mississippi State Highway Com.*, 575 So. 2d 999 (Miss. 1990)).

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

In Mississippi, commercial contractors customarily provide for a one-year general warranty for their work, which runs from the date of substantial completion. As to items such as appliances, mechanical systems, roofing systems, and other goods incorporated into construction, manufacturer and installer warranties exceeding the contractor's one-year general warranty apply.

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?

Mississippi's New Home Warranty Act governs warranties for new residential construction (Miss. Code Ann. §§ 83-58-1 to 83-58-17).

Building Structures and Systems

Every residential builder warrants to the owner (the initial purchaser and subsequent purchasers who may succeed in title during the period the warranties are in effect) that for:

- One year following the warranty commencement date, the home will be free from any defect due to noncompliance with the applicable building standards.
- Six years following the warranty commencement date, the home will be free from major structural defects due to noncompliance with the applicable building standards.

(Miss. Code Ann. § 83-58-5(1).)

Time Period

The owner must give the builder written notice by registered or certified mail within 90 days after knowledge of any defect, advising the builder of the defects and giving the builder a reasonable opportunity to repair the defect (Miss. Code Ann. § 83-58-7). This notice must be given before the owner undertakes any repairs on its own.

Any action to enforce a warranty must commence within 30 days after the expiration of the appropriate time period provided (Miss. Code Ann. § 83-58-9).

Restrictions

Unless otherwise agreed in writing, the builder's warranties exclude, among other things:

- Outbuildings and improvements that are not a part of the home itself, except for outbuildings that contain the plumbing, electrical, heating, cooling, or ventilation systems serving the home.
- Various forms of damage that either:
 - occur to real property that is not part of the home covered by the warranty; or
 - is caused or made worse by people, things, or events unrelated to the builder or its employees, agents, or subcontractors.
- Defects not reported in writing by registered or certified mail to the builder or insurance company, as appropriate, before expiration of the period of coverage of that defect plus 30 days.

(Miss. Code Ann. § 83-58-5(2).)

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?

Mississippi has a Little Miller Act, which is codified in Miss. Code Ann. §§ 31-5-51 to 31-5-57.

Minimum Requirements

The Little Miller Act requires that contractors furnish payment and performance bonds for any public construction contract that exceeds \$25,000. For

any public contract below \$25,000, the owner may withhold a lump sum until completion, in which case no bonds are required. (Miss. Code Ann. § 31-5-51(1), (5).)

Any person must provide proof of general liability insurance coverage in an amount of at least \$1 million for bodily injury and property damage for contracts with:

- The state, which exceed \$5,000.
- A county, city, or other public authority, which exceed \$25,000.

(Miss. Code Ann. § 31-5-51(7).)

Security

A person entering into a construction contract for a public improvement must furnish to the public body:

- A performance bond for the work to be done in an amount at least equal to the amount of the contract, conditioned for the full and faithful performance of the contract.
- A payment bond conditioned for the prompt payment of all persons supplying labor or material used in performing the work under the contract, in an amount at least equal to the amount of the contract.

(Miss. Code Ann. § 31-5-51(1)(a), (b).)

The bonds may be:

- Made by any surety company authorized to do business in Mississippi and listed on the US Treasury Department's list of acceptable sureties.
- Guaranteed by a personal surety, if cash or a certificate of deposit, in an amount not less than the contract amount, is deposited with the state treasurer.

(Miss. Code Ann. § 31-5-51(1)(c).)

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

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

Statutory Notices

Under Mississippi law, second-tier subcontractors and suppliers without a direct contractual relationship with the prime contractor have a cause of action on the payment bond only after providing written notice to the contractor or surety within 90 days of last furnishing labor or materials to the project. The notice must state with substantial accuracy the amount claimed and the name of the party to which the material was furnished or for which the labor was performed. Delivery requirements for the notice also apply. (Miss. Code Ann. § 31-5-51(3).)

Statute of Limitations

A person must bring suit on a performance bond under the Little Miller Act within one year after the obligee made final payment on the contract. However, if the contract is abandoned by the general contractor as bond principal or terminated by the bond obligee, the suit must be commenced within one year after the earlier of either the abandonment or termination. (Miss. Code Ann. § 31-5-53(a).)

A person must bring suit on a payment bond under the Little Miller Act within one year after the day on which the last labor was performed or material was supplied by the person bringing the action (Miss. Code Ann. § 31-5-53(b)).

Additional Requirements

A person must bring suit on a performance or payment bond in the county in which either:

- The contract or some part of it was performed.
- The service of process may be obtained on either the principal or surety on the bond.

(Miss. Code Ann. § 31-5-53(c).)

The trial judge may award the claimant a reasonable amount in attorneys' fees if the judge finds that the contractor's or surety's defense is either:

- Unreasonable.
- Not in good faith.
- Merely for the purpose of delaying payment.

The claimant may be found liable likewise. If the trial judge finds that the claimant's action was without just cause or in bad faith, reasonable attorneys' fees spent by the contractor or surety defending the claim

may be awarded against the claimant. (Miss. Code Ann. § 31-5-57.)

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?

While neither common nor rare in Mississippi, private owners generally require payment and performance bonds when the size, complexity, or duration of a project presents risks that warrant the increased project costs associated with bonding. The bonding requirements generally resemble those on public projects. However, it is not uncommon that terms such as the penal sum, covered claimants, and coverage will be tailored to the project and project risk.

Litigation Concerns

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

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

The following statutes of limitation apply to claims in Mississippi:

- **Breach of contract.** Except as otherwise provided in the UCC, to the extent applicable, the statute of limitations is three years from the date of breach for both written and oral contracts (Miss. Code Ann. §§ 15-1-29 and 15-1-49; *Anderson v. LaVere*, 136 So. 3d 404, 411 (Miss. 2014)).
- **Breach of warranty.** Except as otherwise provided in the UCC, to the extent applicable, the statute of limitations is three years from the date of breach (Miss. Code Ann. § 15-1-49).

- **Negligence.** The statute of limitations is three years from when the injury occurred. If the injury is latent, the limitations period starts to run when the plaintiff has discovered or by reasonable diligence should have discovered the injury. (Miss. Code Ann. § 15-1-49; *Peoples Bank of Biloxi v. McAdams*, 171 So. 3d 505, 508 (Miss. 2015).)
- **Defects in design or construction.** Defects in design or construction are governed by Mississippi's statute of repose (Miss. Code Ann. § 15-1-41; see Question 23).

22. Are there any special requirements for filing a construction-related lawsuit? For example:

- Is an affidavit of merit required for filing a professional malpractice claim against a design professional?
- Must a party required to be licensed allege or attach proof of licensure?
- Are there any special requirements for lawsuits alleging damages resulting from latent design or construction defects?

Affidavit of Merit

Mississippi does not require a certificate or affidavit of merit when a plaintiff files a claim against a design or construction professional.

Proof of Licensure

Mississippi does not require proof of licensure to be attached to a claim when the complaining party is a design or construction professional that must be licensed under Mississippi law.

Under Mississippi's special lien law applicable to private construction projects, no lien may exist in favor of any contractor or subcontractor who is not properly licensed or who contracts with any contractor or subcontractor who is not properly licensed (Miss. Code Ann. §85-7-403(5)).

Special Requirements

Before bringing an action against a builder for breach of statutory warranties for construction defects in a new home under Miss. Code Ann. §§ 83-58-3 and 83-58-5 (see Question 17), a claimant must give the builder written notice, by registered or certified mail,

within 90 days after knowledge of the defect to advise of the defect and provide a reasonable opportunity to repair (Miss. Code Ann. § 83-58-7). If the owner files an action before complying with these requirements, the action will be dismissed without prejudice and refiling will not be permitted until the owner achieves compliance (Miss. Code Ann. § 83-58-17(3)).

Mississippi has no other special requirements or conditions precedent for lawsuits against design or construction professionals for defective design or work, although the parties may contract otherwise.

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

Section 15-1-41 of the Mississippi Code establishes a six-year statute of repose for actions against any person, firm, or corporation performing or furnishing the design, planning, supervision of construction, or construction of a project. The limitations period starts to run after the earlier of either:

- Written acceptance.
- Actual occupancy or use of the construction or improvement.

(Miss. Code Ann. § 15-1-41.)

Types of Claims Allowed

Mississippi's statute of repose applies to actions to recover damages for injury to property, real or personal, or for personal injury arising out of any deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property (Miss. Code Ann. § 15-1-41).

The repose period does not apply to:

- Any person, firm, or corporation in actual possession and control as owner, tenant, or otherwise of the improvement at the time the defective and unsafe condition causes injury.
- Actions for wrongful death.

(Miss. Code Ann. § 15-1-41.)

Notice or Conditions Precedent

There are no special notice requirements or conditions precedent to filing a lawsuit under Mississippi's statute of repose.

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 damage provisions are enforceable in Mississippi if:

- The amount of the damages is a reasonable estimate of the owner's damages made at the time of contracting.
- The liquidated damages do not constitute a penalty.

(*Bd. of Trs. of State Insts. of Higher Learning v. Johnson*, 507 So. 2d 887, 890 (Miss. 1987).)

Limitations of Liability

Limitations of liability clauses are generally enforceable. However, courts apply strict scrutiny to ensure the limitation is fairly and honestly negotiated and understood by both parties. (*Royer Homes of Miss., Inc. v. Chandeaur Homes, Inc.*, 857 So. 2d 748, 754 (Miss. 2003).)

A construction contract that contains a promise to indemnify or hold harmless another party from its own negligence is void and wholly unenforceable. However, this does not apply to construction bonds or insurance contracts. (Miss. Code Ann. § 31-5-41.)

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.

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

No-Damages-for-Delay Clause

No-damages-for-delay clauses are generally enforceable in Mississippi. However, courts have determined that even with a no-damages-for-delay clause, damages may be recovered for any delay that:

- Was not intended or contemplated by the parties.
- Resulted from fraud, misrepresentation, or other bad faith by the party seeking the benefit of the provision.
- Has extended for an unreasonable length of time, to the point where the delayed party is justified in abandoning the contract.
- Is not within the specifically enumerated delays to which the clause applies.

(See *Tupelo Redevelopment Agency v. Gray Corp., Inc.*, 972 So. 2d 495, 511-12 (Miss. 2007) (citing *Miss. Transp. Comm'n. v. SCL, Inc.*, 717 So. 2d 332, 338 (Miss. 1998)).)

Choice of Law or Forum

Choice of law clauses are generally enforceable if they are not unreasonable (see, for example, *Sentinel Indus. Contracting Corp. v. Kimmins Indus. Serv. Corp.*, 743 So. 2d 954 (Miss. 1999)). Choice of law provisions are not enforceable, however, if the law in question violates Mississippi's fundamental public policy (see, for example, *Williamson Pounders Architects P.C. v. Tunica Cty.*, 597 F.3d 292 (5th Cir. 2010)).

A provision in a construction contract for the improvement of Mississippi real property, or to provide materials for a Mississippi improvement, where at least one of the parties is a Mississippi resident, is void if it:

- Makes the construction contract subject to the laws of another state.
- Requires the exclusive forum for any litigation, arbitration, or other dispute resolution process to be located in another state.

(Miss. Code Ann. § 87-7-9).

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