

# Index

- ACCELERATION**  
Changes and delays, **7:9**
- ACCESSIBILITY CODE**  
Building codes, applicability, **13:11**
- ACCOUNT STATED**  
Extra-contractual remedies, **9:3**
- ACCURACY OF DRAWINGS AND SPECIFICATIONS**  
Generally, **6:21 to 6:23**  
For detailed treatment see index heading **WARRANTIES**
- ACTUAL DAMAGES**  
Generally, **10:1 to 10:7**  
For detailed treatment see index heading **DAMAGES**
- ADDITIONAL INSUREDS**  
Generally, **5:11**
- ADMINISTRATION DEPARTMENT**  
Public contracts. See index heading **PUBLIC CONTRACTS**
- ADMINISTRATION OF PUBLIC CONTRACTS**  
Generally, **2:58 to 2:77**  
For detailed treatment see index heading **PUBLIC CONTRACTS**
- ADMINISTRATIVE CODE AND POLICIES**  
Building codes, **13:6**
- ADOPTION**  
Building codes, **13:3**
- ADVERTISEMENTS**  
Public contracts, state procurement of construction services, **2:12**
- AGENTS**  
Lien agents. See index heading **LIENS**
- AGREEMENTS**  
Generally, **1:1 to 1:30**  
For detailed treatment see index heading **CONTRACTS**
- ALLOWANCES**  
Contracts, public policy limitations, **1:30**
- AMBIGUITIES**  
Changes and delays, ambiguities in drawings and specifications, **7:3**
- AMENDMENT**  
Building codes, **13:3**
- AMERICAN ARBITRATION ASSOCIATION**  
Construction Industry Arbitration Rules, **17:16**  
Mediation, contractual requirements, **16:15**
- AMERICAN INSTITUTE OF ARCHITECTS**  
Standard form construction contracts, **1:16 to 1:19**
- ANSWERS**  
Arbitration, **17:19**
- APPEAL AND REVIEW**  
Arbitration, **17:36**  
Building codes, **13:5**  
Public contracts. See index heading **PUBLIC CONTRACTS**
- APPORTIONMENT**  
Public contracts, liquidated damages, **2:65**
- ARBITRATION**  
Generally, **17:1 to 17:44**  
American Arbitration Association Construction Industry Arbitration Rules, **17:16**  
Answering statement, **17:19**

**ARBITRATION—Cont'd**

- Appeals, **17:36**
- Arbitration agreements
  - generally, **17:5 to 17:10**
  - bonds, effect on claims against, **4:37**
  - choice of law and forum selection provisions, **17:41**
  - common arbitration clauses, **17:6**
  - determination of arbitrability, **17:8**
  - enforceability, **17:7**
  - nonsignatories, **17:38**
  - scope of arbitrability, **17:10**
  - severability, **17:9**
- Authority for binding arbitration, **17:2**
- Awards
  - generally, **17:25 to 17:27**
  - enforcement of award. See “Enforcement of award” under this index heading
  - pre-award ruling by arbitrator, **17:25**
  - remedies, **17:26**
- Bankruptcy, arbitration clauses, **12:35**
- Choice of law provisions, **17:41**
- Compel, motion to, **17:20**
- Confirmation of award, **17:29**
- Consolidation, **17:40**
- Correction of award, **17:33**
- Counterclaims, **17:19**
- Court-ordered nonbinding arbitration, **17:44**
- Demand for arbitration, **17:18**
- Discovery, **17:23**
- Enforceability of arbitration agreements, **17:7**
- Enforcement of award
  - generally, **17:28 to 17:35**
  - change of award by arbitrator, **17:30**
  - confirmation of award, **17:29**
  - determination of arbitrability, **17:8**
  - judgment on award, **17:34**
  - modification or correction of award, **17:33**
  - post-remand rehearing, **17:32**

**ARBITRATION—Cont'd**

- Enforcement of award—Cont'd
  - preclusive effect of award, **17:35**
  - scope of arbitrability, **17:9**
  - severability, **17:9**
  - vacating award, **17:31**
- Federal Arbitration Act, **15:10, 17:4**
- Forum selection provisions, **17:41**
- Hearings, **17:24**
- Immunity of arbitrators, **17:22**
- Incorporation by reference, **17:39**
- Joinder, **17:40**
- Judgment on award, **17:34**
- Lien enforcement, **17:42**
- Little Miller Act claims, **17:43**
- Mediation
  - American Arbitration Association rules, contractual requirements, **16:15**
  - interplay of contractual requirements, **16:16**
- Modification of award, **17:30, 17:33**
- Motion to stay or compel arbitration, **17:20**
- Nonbinding arbitration, court-ordered, **17:44**
- Nonsignatories to arbitration agreement, **17:38**
- Post-remand rehearing, **17:32**
- Pre-award ruling by arbitrator, **17:25**
- Preclusive effect of award, **17:35**
- Procedure, generally, **17:15 to 17:36**
- Revised Uniform Arbitration Act, **17:3, 17:17 et seq.**
- Scope of arbitrability, arbitration agreements, **17:10**
- Selection of arbitrators, **17:21**
- Severability, enforcement of arbitration agreements, **17:9**
- Stay, motion to, **17:20**
- Vacating award, **17:31**
- Venue and forum. See index heading VENUE AND FORUM
- Waiver of arbitration
  - generally, **17:11 to 17:14**
  - conduct constituting waiver, **17:13**
  - conduct not constituting waiver, **17:14**

## INDEX

### ARBITRATION—Cont'd

Waiver of arbitration—Cont'd  
entity that decides waiver, **17:12**

### ARCHITECTS

Licenses  
generally, **14:25 to 14:30**  
for detailed treatment see index  
heading **LICENSES**  
Negligence, **11:16**

### ASSIGNMENT

Bankruptcy, executory construction  
contracts, **12:9, 12:25**

### ASSUMPTION

Bankruptcy, executory construction  
contracts, **12:8, 12:23, 12:24**

### ATTENDANCE

Mediation, civil superior court  
actions, **16:5**

### ATTORNEYS' FEES

Construction litigation, **15:62**  
Contracts, public policy limitations,  
**1:29**  
Damages  
generally, **10:12 to 10:16**  
for detailed treatment see index  
heading **DAMAGES**  
Payment bonds, claims against, **4:36**

### AUTOMATIC STAY

Bankruptcy, **12:5, 12:16, 12:17**

### AUTOMOBILES

Insurance coverage, **5:30**

### AWARDS

Arbitration  
generally, **17:25 to 17:27**  
for detailed treatment see index  
heading **ARBITRATION**  
Public contracts. See index heading  
**PUBLIC CONTRACTS**

### BACTERIA

Insurance, exclusions, **5:23**

### BAD FAITH

See index heading **GOOD FAITH**

### BANKRUPTCY

Generally, **12:1 to 12:35**  
Arbitration clauses, **12:35**  
Assignment of executory construc-  
tion contracts, **12:9, 12:25**  
Assumption of executory construc-  
tion contracts, **12:8, 12:23,**  
**12:24**  
Automatic stay provisions, **12:5,**  
**12:16, 12:17**  
Bond claims and sureties  
generally, **12:14 to 12:25**  
assignment by debtor, executory  
bonded construction  
contracts, **12:25**  
assumption by debtor with default,  
executory bonded construc-  
tion contracts, **12:24**  
assumption by debtor without  
default, executory bonded  
construction contracts, **12:23**  
automatic stay, **12:16, 12:17**  
continuation of work by debtor on  
bonded contract, surety's  
right to bonded contract  
funds, **12:20**  
default by debtor without attempt  
to complete contract, surety's  
right to bonded contract  
funds, **12:19**  
executory bonded construction  
contracts  
generally, **12:21 to 12:25**  
assignment by debtor, **12:25**  
assumption by debtor with  
default, **12:24**  
assumption by debtor without  
default, **12:23**  
rejection by debtor, **12:22**  
payment bond claims, automatic  
stay, **12:16**  
performance bond claims and  
bonded contract balance,  
automatic stay, **12:17**  
rejection by debtor, executory  
bonded construction  
contracts, **12:22**  
surety's right to bonded contract  
funds  
generally, **12:18 to 12:20**

**BANKRUPTCY—Cont'd**

- Bond claims and sureties—Cont'd
  - surety's right to bonded contract funds—Cont'd
    - continuation of work by debtor on bonded contract, **12:20**
    - default by debtor without attempt to complete contract, **12:19**
- Contemporaneous exchange for new value, preference, **12:30**
- Continuation of work by debtor on bonded contract, surety's right to bonded contract funds, **12:20**
- Default by debtor without attempt to complete contract, surety's right to bonded contract funds, **12:19**
- Defenses. See "Preference" under this index heading
- Executory construction contracts
  - generally, **12:6 to 12:9**
  - assignment of contract, **12:9, 12:25**
  - assumption of contract, **12:8, 12:23, 12:24**
  - bond claims and sureties. See "Bond claims and sureties" under this index heading
  - rejection of contract, **12:7, 12:22**
- Funds, mechanic's liens on, **12:11**
- General contractor as debtor, **12:3**
- Liens. See index heading LIENS
- Mechanic's liens
  - generally, **12:10 to 12:14**
  - funds, liens on, **12:11**
  - lien claims vs. secured creditors, **12:12**
  - post-petition perfection of liens, **12:13**
  - real property, liens on, **12:10**
- Ordinary course of business, preference, **12:31 to 12:33**
- Owner as debtor, **12:2**
- Payment bond claims, automatic stay, **12:16**
- Performance bond claims and bonded contract balance, automatic stay, **12:17**

**BANKRUPTCY—Cont'd**

- Post-petition perfection of mechanic's liens, **12:13**
- Preference
  - generally, **12:28 to 12:34**
  - contemporaneous exchange for new value, **12:30**
  - defenses, generally, **12:29 to 12:34**
  - elements, **12:28**
  - ordinary course of business, **12:31 to 12:33**
  - subsequent new value, **12:34**
- Preferential payments, **12:27**
- Real property, mechanic's liens on, **12:10**
- Rejection of executory construction contracts, **12:7, 12:22**
- Subcontractor as debtor, **12:4**
- Subsequent new value, preference, **12:34**
- Surety's right to bonded contract funds. See "Bond claims and sureties" under this index heading
- UCC financing statement, filing by surety, **12:26**

**BETTERMENT**

- Nonperformance of contract, **8:18**

**BIDS**

- Bonds, **4:5**
- Promissory estoppel in construction bidding, **1:14**
- Public contracts. See index heading PUBLIC CONTRACTS

**BODILY INJURY**

- Insurance, **5:8**

**BONDS AND SURETIES**

- Generally, **4:1 to 4:46**
- Arbitration provision, effect on claims against bonds, **4:37**
- Attorneys' fees, claims against payment bonds, **4:36**
- Bad faith claims against sureties, **4:41**
- Bankruptcy
  - generally, **12:14 to 12:25**

## INDEX

### BONDS AND SURETIES—Cont'd

Bankruptcy—Cont'd  
for detailed treatment see index heading **BANKRUPTCY**

Bid bonds, **4:5**

Changes and delays, bonding capacity lost, **7:21**

Claims against bonds  
generally, **4:16 to 4:37**  
arbitration provision, effect of, **4:37**  
attorneys' fees, payment bonds, **4:36**  
copy of payment bond, obtaining, **4:31**  
declaration of default, performance bonds, **4:18**  
limitations of liability of surety, payment bonds, **4:34**  
limitations period for commencement of actions, payment bonds, **4:33, 15:18**

North Carolina Bond Act. See "Payment bonds" under this subheading

notice requirements, payment bonds, **4:28**

payment bonds  
generally, **4:26 to 4:36**  
attorneys' fees, **4:36**  
contractor's project statement, **4:30**  
copy of payment bond, obtaining, **4:31**  
limitations of liability of surety, **4:34**  
limitations period for commencement of actions, **4:33, 15:18**

North Carolina Bond Act, generally, **4:27 to 4:36**

notice of claim on payment bond, **4:28**

notice of public subcontract, **4:29**

persons and entities covered by act, **4:27**

prejudgment contractual interest, liability for, **4:35**

### BONDS AND SURETIES—Cont'd

Claims against bonds—Cont'd  
payment bonds—Cont'd  
venue for actions, **4:32**

performance bonds  
generally, **4:17 to 4:25**  
completion agreement, **4:24**  
completion by contractor, **4:22**  
completion by principal, **4:21**  
declaration of default, **4:18**  
deny obligee's claim, surety's option to, **4:24**  
subcontracts, **4:20**  
surety's options following declaration of default, generally, **4:19 to 4:25**  
tender payment to obligee, surety's option to, **4:23**  
prejudgment contractual interest, payment bonds, **4:35**  
venue for actions, payment bonds, **4:32**

Completion agreement, **4:43, 4:44**

Contractor's project statement, **4:30, 4:45**

Copy of payment bond, obtaining, **4:31**

Declaration of default, claims against performance bonds, **4:18**

Defenses and rights of sureties  
generally, **4:38 to 4:41**  
bad faith claims against sureties, **4:41**  
recovery from principal and indemnitors, **4:40**  
subrogation, **4:39**

Development bonds, **4:15**

Federal construction projects  
payment bonds, **4:12**  
performance bonds, **4:8**

Forms  
completion agreements, **4:43, 4:44**  
contractor's project statement, **4:45**  
liens. See index heading **LIENS**  
notice of public subcontract, **4:46**  
ratification agreements, **4:42**

Insurance, distinguished, **4:2**

Liens. See index heading **LIENS**

**BONDS AND SURETIES—Cont'd**

- Limitations of liability of surety, claims against payment bonds, **4:34**
- Limitations period for commencement of actions, claims against payment bonds, **4:33, 15:18**
- Miscellaneous bonds, **4:14**
- Model Payment and Performance Bond Act, **4:3**
- Nature of suretyship, **4:1**
- North Carolina Bond Act. See “Claims against bonds” under this index heading
- Notice
  - claims against payment bonds, **4:28**
  - public subcontract, **4:29, 4:46**
- Payment bonds
  - generally, **4:10 to 4:13**
  - claims against bonds. See “Claims against bonds” under this index heading
  - federal construction projects, **4:12**
  - private construction projects, **4:13**
  - public construction projects in North Carolina, **4:11**
- Performance bonds
  - generally, **4:6 to 4:9**
  - claims against bonds. See “Claims against bonds” under this index heading
  - federal construction projects, **4:8**
  - private construction projects, **4:9**
  - public construction projects in North Carolina, **4:7**
- Prejudgment contractual interest, claims against payment bonds, **4:35**
- Private construction projects
  - payment bonds, **4:13**
  - performance bonds, **4:9**
- Public construction projects in North Carolina
  - payment bonds, **4:11**
  - performance bonds, **4:7**
- Ratification agreement, **4:42**
- Recovery from principal and indemnitors, **4:40**

**BONDS AND SURETIES—Cont'd**

- Rights of sureties. See “Defenses and rights of sureties” under this index heading
- Subrogation, **4:39**
- Types of bonds, generally, **4:4 to 4:15**
- Venue for actions, claims against payment bonds, **4:32**

**BUILDER’S RISK INSURANCE**

- Generally, **5:29**

**BUILDING CODES**

- Generally, **13:1 to 13:28**
- Accessibility Code, applicability, **13:11**
- Additional oversight. See “State enforcement and additional oversight” under this index heading
- Administrative code and policies, **13:6**
- Adoption of code, **13:3**
- Amendment of code, **13:3**
- Appeals, **13:5**
- Applicability of code
  - generally, **13:7 to 13:17**
  - Accessibility Code, **13:11**
  - Chapter 34 of Building Code, existing buildings, **13:14**
  - Energy Conservation Code, **13:10**
  - exemptions, **13:17**
  - existing buildings, generally, **13:12 to 13:16**
  - Existing Buildings Code, **13:15**
  - high-rise provisions for existing buildings, **13:16**
  - manufactured buildings, **13:9**
  - new, non-residential construction, **13:7**
  - Rehabilitation Code, **13:13**
  - residential construction, **13:8**
- Certificates of compliance and occupancy, **13:23**
- Chapter 34 of Building Code, existing buildings, **13:14**
- Compliance and liability, **13:27, 13:28**

## INDEX

### **BUILDING CODES—Cont'd**

- Department of Insurance review of plans, **13:24**
- Energy Conservation Code, applicability, **13:10**
- Existing buildings, applicability, **13:12 to 13:16**
- High-rise provisions for existing buildings, applicability, **13:16**
- Inspections. See “Permits and inspections” under this index heading
- Interpretation of code, **13:4**
- Liability and compliance, **13:27, 13:28**
- Local building departments, permits and inspections, **13:18**
- Manufactured buildings, applicability, **13:9**
- Negligence
  - building inspectors, **11:25, 11:26**
  - per se negligence, violation as, **11:15**
  - standard of care under, **11:5**
- New, non-residential construction, applicability, **13:7**
- North Carolina Building Code Council
  - Residential Code Council, **13:2**
- Permits and inspections
  - generally, **13:18 to 13:23**
  - building permits, **13:19**
  - certificates of compliance and occupancy, **13:23**
  - inspections, **13:20 to 13:22**
  - liability of inspectors, **13:28**
  - local building departments, **13:18**
  - negligence of building inspectors, **11:25, 11:26**
  - special inspections, **13:21**
  - stop work/corrective action, **13:22**
- Rehabilitation Code, applicability, **13:13**
- Residential construction, applicability, **13:8**
- Sanctions for violations, **9:4**
- Special inspections, **13:21**
- State building codes, **13:1**
- State Construction Office, **13:25**

### **BUILDING CODES—Cont'd**

- State enforcement and additional oversight
  - generally, **13:24 to 13:26**
- Department of Insurance review of plans, **13:24**
- other state agencies, **13:26**
- State Construction Office, **13:25**
- Stop work/corrective action, **13:22**

### **BUSINESS COURT**

- Construction litigation. See index heading **CONSTRUCTION LITIGATION**

### **CARDINAL CHANGES**

- Generally, **7:4**

### **CERTIFICATES OF COMPLIANCE AND OCCUPANCY**

- Building codes, **13:23**

### **CHANGE**

- Generally, See index heading **MODIFICATION OR CHANGE**

### **CHANGES AND DELAYS**

- Generally, **7:1 to 7:26**
- Acceleration, **7:9**
- Ambiguities in drawings and specifications, **7:3**
- Bonding capacity lost, contractor damages, **7:21**
- Cardinal change, **7:4**
- Claims for delay, generally, **7:8 et seq.**
- Concurrent delay, defenses, **7:13**
- Conflicts in drawings and specifications, **7:3**
- Contractor damages. See “Damages for delay” under this index heading
- Damages for delay
  - generally, **7:14 to 7:26**
  - bonding capacity lost, contractor damages, **7:21**
  - contractor damages
    - generally, **7:18 to 7:21**
    - bonding capacity lost, **7:21**
    - home office overhead, **7:20**
    - idle equipment and labor/materials, **7:18**



**CHANGES AND DELAYS—Cont'd**

- Damages for delay—Cont'd
  - contractor damages—Cont'd
    - opportunity lost, **7:21**
    - project overhead/general conditions, **7:19**
  - defenses, **7:14**
  - direct or actual cost, proof of, **7:24**
  - equitable adjustment/price escalation clause distinguished, **7:22**
  - general and special damages, owner damages, **7:17**
  - home office overhead, contractor damages, **7:20**
  - idle equipment and labor/materials, contractor damages, **7:18**
  - liquidated damages, owner damages, **7:16**
  - methods for proving damages, **7:23 to 7:26**
  - modified total cost, proof of, **7:26**
  - opportunity lost, contractor damages, **7:21**
  - owner damages, **7:16, 7:17**
  - project overhead/general conditions, contractor damages, **7:19**
  - total cost, proof of, **7:25, 7:26**
- Defenses to delay claims
  - generally, **7:10 to 7:14**
  - concurrent delay, **7:13**
  - no damages for delay, **7:14**
  - notice, **7:11**
  - waiver, **7:12**
- Direct or actual cost, proof of damages for delay, **7:24**
- Efficiency, loss of, **7:9**
- Equitable adjustment/price escalation clause distinguished, damages for delay, **7:22**
- General and special damages, owner damages, **7:17**
- Home office overhead, contractor damages for delay, **7:20**
- Idle equipment and labor/materials, contractor damages for delay, **7:18**
- Implied warranty not to delay, **6:24**

**CHANGES AND DELAYS—Cont'd**

- Liquidated damages, owner damages for delay, **7:16**
- Modified total cost, damages for delay, **7:26**
- Nonperformance of contract, **8:6**
- Notice, defenses to delay claims, **7:11**
- Opportunity lost, contractor damages for delay, **7:21**
- Orders, change orders, **7:2**
- Owner damages for delay, **7:16, 7:17**
- Pricing changes in work, **7:6**
- Productivity, loss of, **7:9**
- Project overhead/general conditions, contractor damages for delay, **7:19**
- Public contracts, administration of contracts, **2:66**
- Site conditions as different, **7:5**
- Special and general damages, owner damages, **7:17**
- Total cost, damages for delay, **7:25, 7:26**
- Waiver, defenses to delay claims, **7:12**

**CHOICE OF LAW**

- Generally, **15:8**
- Arbitration, **17:41**
- Contracts, public policy limitations, **1:25**

**CLASS ACTIONS**

- Construction litigation, **15:53**

**CLASSIFICATIONS**

- Licenses. See index heading **LICENSES**

**COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE**

- Generally, **5:2**

**COMMON LAW**

- Negligence, standard of care, **11:4**

**COMPEL, MOTION TO**

- To arbitration, **17:20**

**COMPLETION AGREEMENTS**

- Bonds and sureties, **4:43, 4:44**



## INDEX

### **CONCURRENT DELAY**

Changes and delays, defenses, **7:13**

### **CONDITION PRECEDENT**

Nonperformance of contract, **8:12**

### **CONFIDENTIAL INFORMATION**

Public records, legal materials, **15:60**

### **CONFIRMATION**

Arbitration awards, **17:29**

### **CONFLICTS OF INTEREST**

Public contracts, design services, **2:9**

### **ConsensusDOCS**

Standard form construction contracts,  
**1:20**

### **CONSEQUENTIAL DAMAGES**

Generally, **10:8**

### **CONSIDERATION**

Nonperformance of contract, failure  
of consideration, **8:14**

### **CONSOLIDATION**

Arbitration, **17:40**  
Procedural issues, **15:32**

### **CONSTRUCTION AND INTERPRETATION**

Building codes, **13:4**  
Contracts, **1:11**

### **CONSTRUCTION DEFECTS**

Insurance, **5:24**

### **CONSTRUCTION DIARIES**

Public records, **15:59**

### **CONSTRUCTION LITIGATION**

Generally, **15:1 to 15:62**  
Attorneys' fees, **15:62**  
Business Court  
electronic discovery, disputes,  
**15:41**  
rules, **15:33**  
Class actions, **15:53**  
Corporate defendants, service of pro-  
cess, **15:37**  
Costs, **15:63**  
Electronic discovery  
generally, **15:41 to 15:43**

### **CONSTRUCTION LITIGATION**

#### **—Cont'd**

Electronic discovery—Cont'd  
Business Court, **15:42**  
Western District, North Carolina  
Judge Whitney Protocol,  
**15:43**  
Entry of judgment, **15:50**  
Forum  
generally, **15:1 to 15:11**  
for detailed treatment see index  
heading **VENUE AND FORUM**  
Individual defendants, service of pro-  
cess, **15:37**  
Joinder of claims, **15:40**  
Joinder of parties  
necessary joinder, **15:39**  
permissive joinder, **15:38**  
Jury trial, **15:52**  
Local government, service of pro-  
cess, **15:36**  
Local rules in state court, **15:34**  
Necessary joinder of parties, **15:39**  
Offers of judgment, **15:49**  
Permissive joinder of parties, **15:38**  
Public bid protests, **15:61**  
Public records  
generally, **15:54 to 15:60**  
for detailed treatment see index  
heading **PUBLIC RECORDS**  
Relief from judgment, **15:51**  
Service of process  
generally, **15:35 to 15:37**  
corporate and individual  
defendants, **15:37**  
state and local government, **15:36**  
Standing, **15:64**  
State Court General Rules of  
Practice, **15:31**  
State government, service of process,  
**15:36**  
Statutes of limitations and repose  
generally, **15:12 to 15:30**  
for detailed treatment see index  
heading **STATUTES OF LIMITATIONS**  
Venue  
generally, **15:1 to 15:11**

**CONSTRUCTION LITIGATION  
—Cont'd**

- Venue—Cont'd
  - for detailed treatment see index heading VENUE AND FORUM
- Western District, North Carolina
  - Judge Whitney Protocol, electronic discovery, **15:43**
- Witnesses
  - generally, **15:44 to 15:48**
  - for detailed treatment see index heading WITNESSES

**CONSTRUCTION MANAGER AT RISK**

- Public contracts. See index heading PUBLIC CONTRACTS

**CONSTRUCTION MANUALS**

- Public contracts, administration of contracts, **2:59**

**CONSTRUCTIVE FRAUD**

- Extra-contractual remedies, **9:6**

**CONSULTING EXPERTS**

- Witnesses, **15:46**

**CONTRACT ADMINISTRATION AND PROJECT MANAGEMENT FORMS (G SERIES)**

- American Institute of Architects (AIA) standard form construction contracts, **1:19**

**CONTRACTS**

- Generally, **1:1 to 1:30**
- Allowances, public policy limitations, **1:30**
- American Institute of Architects (AIA), standard form construction contracts, **1:16 to 1:19**
- Arbitration agreements
  - generally, **17:5 to 17:10**
  - for detailed treatment see index heading ARBITRATION
- Attorneys' fees, public policy limitations, **1:29**
- Choice of law, public policy limitations, **1:25**

**CONTRACTS—Cont'd**

- ConsensusDocs, standard form construction contracts, **1:20**
- Construction and interpretation of contracts, **1:11**
- Contract Administration and Project Management Forms (G Series), American Institute of Architects (AIA) standard form construction contracts, **1:19**
- Dispute resolution, public policy limitations, **1:26**
- Engineers Joint Contract Documents Committee (EJCDC), standard form construction contracts, **1:21**
- Express contracts, **1:4 to 1:6, 1:10**
- Fact, contracts implied in, **1:7, 1:8**
- Formation of contracts, generally, **1:1 to 1:30**
- Forms. See "Standard form construction contracts" under this index heading
- Forum selection, public policy limitations, **1:25**
- Implied contracts, **1:4, 1:7 to 1:10**
- Indemnity agreements, public policy limitations, **1:23**
- Insurance, contractual liability, **5:19**
- Interpretation of contracts, **1:11**
- Law, contracts implied in, **1:7, 1:9**
- Limitations of liability, **1:24**
- Liquidated damages, public policy limitations, **1:28**
- Mediation
  - generally, **16:14 to 16:16**
  - for detailed treatment see index heading MEDIATION
- Modification, **1:12**
- Nonperformance of contract
  - generally, **8:1 to 8:26**
  - for detailed treatment see index heading NONPERFORMANCE OF CONTRACT
- Oral express contracts, **1:6**
- Pattern jury instructions, **1:3**
- Pay if paid/pay when paid, public policy limitations, **1:27**
- Promissory estoppel, **1:14**

## INDEX

### CONTRACTS—Cont'd

- Public policy limitations on common construction contract provisions generally, **1:22 to 1:30**
- allowances, **1:30**
- attorneys' fees, **1:29**
- choice of law and forum selection, **1:25**
- dispute resolution, **1:26**
- indemnity agreements, **1:23**
- limitations of liability, **1:24**
- liquidated damages, **1:28**
- pay if paid/pay when paid, **1:27**
- Rescission, **1:13**
- Standard Form Agreements between Owner and Architect (B Series), American Institute of Architects (AIA) standard form construction contracts, **1:18**
- Standard form construction contracts generally, **1:15 to 1:21**
- American Institute of Architects (AIA), **1:16 to 1:19**
- ConsensusDocs, **1:20**
- Contract Administration and Project Management Forms (G Series), American Institute of Architects (AIA), **1:19**
- Engineers Joint Contract Documents Committee (EJCDC), **1:21**
- Standard Form Agreements between Owner and Architect (B Series), American Institute of Architects (AIA), **1:18**
- Theories for establishing contract, generally, **1:4 to 1:9**
- Waiver, **1:12**

### CONTRIBUTORY NEGLIGENCE

- Generally, **11:28**

### CONVERSION

- Extra-contractual remedies, **9:13**

### CORPORATE OFFICERS

- Negligence, individual liability, **11:27**

### CORPORATIONS

- Licenses. See index heading **LICENSES**

### CORRECTION

- Arbitration awards, **17:33**
- Building codes, **13:22**

### COSTS AND EXPENSES

- Actual damages, cost to complete and cost to correct, **10:4**
- Construction litigation, **15:63**
- Damages, **10:4, 10:18**
- General contractors, cost of undertaking for license, **14:3**
- Mediation, civil superior court actions, **16:9, 16:10**

### COUNTERCLAIMS

- Arbitration, **17:19**

### DAMAGES

- Generally, **10:1 to 10:18**
- Actual damages
  - generally, **10:1 to 10:7**
  - completed work, **10:2**
  - contract price, **10:2**
  - economic waste doctrine, **10:5**
  - negligence, damages for, **10:6**
  - nominal damages, **10:7**
  - unfinished work, **10:3**
- Attorneys' fees
  - generally, **10:12 to 10:16**
  - reciprocal provisions in business contracts, **10:15**
  - statutory provisions, **10:13 to 10:16**
- Changes and delays
  - generally, **7:14 to 7:26**
  - for detailed treatment see index heading **CHANGES AND DELAYS**
- Completed work, actual damages, **10:2**
- Consequential damages, **10:8**
- Contract price, actual damages, **10:2**
- Costs, **10:4, 10:18**
- Economic waste doctrine, actual damages, **10:5**
- Incidental damages, **10:8**
- Interest, **10:17**
- Liquidated damages
  - generally, **10:11**
  - for detailed treatment see index heading **LIQUIDATED DAMAGES**

**DAMAGES—Cont'd**

- Negligence, damages for, **10:6**
- Nominal damages, **10:7**
- Punitive damages, **10:9**
- Reciprocal provisions in business contracts, attorneys' fees, **10:15**
- Treble damages, **10:10**
- Unfinished work, actual damages, **10:3**
- Warranties
  - generally, **6:33 to 6:35**
  - for detailed treatment see index heading **WARRANTIES**

**DATE**

- See index heading **TIME AND DATE**

**DECEPTIVE TRADE PRACTICES**

- Extra-contractual remedies, **9:9**

**DECLARATORY JUDGMENTS**

- Insurance, **5:27**

**DECREES**

- See index heading **JUDGMENTS AND DECREES**

**DEFENSE OF PARTY**

- Insurance, duty to provide defense, **5:25**

**DEFENSES**

- For detailed treatment see index heading **BANKRUPTCY**
- Bankruptcy, **12:29 to 12:34**
- Bonds and sureties
  - generally, **4:38 to 4:41**
  - for detailed treatment see index heading **BONDS AND SURETIES**
- Changes and delays
  - generally, **7:10 to 7:14**
  - for detailed treatment see index heading **CHANGES AND DELAYS**
- Negligence, **11:28 to 11:30**
- Nonperformance of contract, **8:8 to 8:25**
- Warranties. See index heading **WARRANTIES**

**DELAYS**

- Generally, **7:1 to 7:26**

**DELAYS—Cont'd**

- For detailed treatment see index heading **CHANGES AND DELAYS**

**DEMAND**

- Arbitration, **17:18**

**DEPARTMENT OF ADMINISTRATION**

- Public contracts. See index heading **PUBLIC CONTRACTS**

**DEPARTMENT OF INSURANCE**

- Building codes, review of plans, **13:24**

**DEPARTMENT OF TRANSPORTATION**

- Public contracts. See index heading **PUBLIC CONTRACTS**

**DESIGN**

- Architects' licenses, design-build, **14:28**
- Lien agent, design professionals, **3:17**
- Nonperformance of contract, defenses, **8:22**
- Public contracts
  - generally, **2:3 to 2:9**
  - for detailed treatment see index heading **PUBLIC CONTRACTS**

**DEVELOPMENT BONDS**

- Generally, **4:15**

**DISCHARGE**

- Generally, **3:39 to 3:45, 3:55 to 3:61**
- For detailed treatment see index heading **LIENS**

**DISCIPLINARY ACTIONS**

- Licenses. See index heading **LICENSES**

**DISCLAIMERS**

- Warranties, Uniform Commercial Code, **6:28, 6:30:6:32**

**DISCOVERY**

- Arbitration, **17:23**
- Insurance, determination of applicable policy, **5:5**

## INDEX

### **DISPUTE RESOLUTION**

- Arbitration
  - generally, **17:1 to 17:44**
  - for detailed treatment see index
    - heading **ARBITRATION**
- Construction litigation
  - generally, **15:1 to 15:62**
  - for detailed treatment see index
    - heading **CONSTRUCTION LITIGATION**
- Contracts, public policy limitations, **1:26**
- Mediation
  - generally, **16:1 to 16:20**
  - for detailed treatment see index
    - heading **MEDIATION**

### **DUAL BIDDING**

- Public contracts. See index heading **PUBLIC CONTRACTS**

### **DURESS**

- Nonperformance of contract, **8:26**

### **ECONOMIC LOSS RULE**

- Generally, **11:9 to 11:13**
- For detailed treatment see index
  - heading **NEGLIGENCE**

### **ECONOMIC WASTE DOCTRINE**

- Actual damages, **10:5**

### **EFFICIENCY**

- Changes and delays, loss of efficiency, **7:9**

### **ELECTRICAL CONTRACTORS**

- Generally, **14:17 to 14:20**
- For detailed treatment see index
  - heading **LICENSES**

### **ELECTRONIC DISCOVERY**

- Generally, **15:41 to 15:43**
- For detailed treatment see index
  - heading **CONSTRUCTION LITIGATION**

### **ENDORSEMENTS**

- Insurance, **5:14**

### **ENERGY CONSERVATION CODE**

- Building codes, applicability, **13:10**

### **ENGINEERS**

- Licenses
  - generally, **14:31 to 14:35**
  - for detailed treatment see index
    - heading **LICENSES**
- Negligence, **11:16**

### **ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE (EJCDC)**

- Standard form construction contracts, **1:21**

### **ENTRY OF JUDGMENT**

- Construction litigation, **15:50**

### **EQUITABLE ADJUSTMENT**

- Damages for delay, distinctions, **7:22**

### **ESTOPPEL**

- See index heading **WAIVER OR ESTOPPEL**

### **EVIDENCE**

- Generally, **15:44 to 15:48**
- For detailed treatment see index
  - heading **WITNESSES**

### **EXAMINATIONS**

- Licenses, general contractors, **14:12**

### **EXCLUSIONS**

- For detailed treatment see index
  - heading **INSURANCE**

### **EXCLUSIONS AND EXCEPTIONS**

- Generally, **5:17 to 5:23**

### **EXECUTION OF PUBLIC CONSTRUCTION CONTRACTS**

- Generally, **2:45 to 2:52**
- For detailed treatment see index
  - heading **PUBLIC CONTRACTS**

### **EXECUTORY CONSTRUCTION CONTRACTS**

- Generally, **12:6 to 12:9**
- For detailed treatment see index
  - heading **BANKRUPTCY**

### **EXEMPLARY DAMAGES**

- Generally, **10:9**

**EXISTING BUILDINGS**

Building codes, applicability, **13:12 to 13:16**

**EXPECTED INJURY**

Insurance, exclusions, **5:18**

**EXPENSES**

See index heading **COSTS AND EXPENSES**

**EXPERT WITNESSES**

Generally, **15:44 to 15:46**

**EXTRA-CONTRACTUAL  
REMEDIES**

Generally, **9:1 to 9:13**

Account stated, **9:3**

Building code violations, sanctions for, **9:4**

Constructive fraud, **9:6**

Conversion, **9:13**

Deceptive trade practices, **9:9**

Fiduciary duty, breach of, **9:5**

Fraud, **9:6, 9:7**

Negligent misrepresentation, **9:8**

Open account, **9:3**

Plans, unauthorized use of, **9:11**

Quantum meruit, **9:2**

Theft, **9:12**

Tortious interference with contract, **9:10**

Unfair trade practices, **9:9**

Unjust enrichment, **9:2**

**FALSE CLAIMS**

Public contracts, **2:91**

**FALSE STATEMENTS**

Liens, **3:81**

**FEDERAL ARBITRATION ACT**

Generally, **17:4**

Preemption, forum selection clauses, **15:10**

**FEDERAL CONSTRUCTION  
PROJECTS**

Bonds and sureties. See index heading **BONDS AND SURETIES**

**FIDUCIARY DUTY**

Extra-contractual remedies, **9:5**

**FIFTY PERCENT COMPLETION**

Public contracts, retainage, **2:74**

**FILING OF CLAIMS**

Generally, **3:18 to 3:28**

For detailed treatment see index heading **LIENS**

**FINAL PAYMENTS**

Public contracts, administration of contracts, **2:67**

**FIRE SPRINKLER  
CONTRACTORS**

Generally, **14:21 to 14:24**

For detailed treatment see index heading **LICENSES**

**FITNESS FOR PARTICULAR  
PURPOSE**

Implied warranty, Uniform Commercial Code, **6:31, 6:32**

**FORESEEABILITY**

Negligence, **11:7, 11:8**

**FORMS**

Bonds and sureties. See index heading **BONDS AND SURETIES**

Contracts

generally, **1:15 to 1:21**

for detailed treatment see index heading **CONTRACTS**

Liens

generally, **3:82 to 3:97**

for detailed treatment see index heading **LIENS**

**FORUM**

Generally, **15:1 to 15:11**

For detailed treatment see index heading **VENUE AND FORUM**

**FORUM SELECTION CLAUSES**

Generally, **15:9 to 15:11**

For detailed treatment see index heading **VENUE AND FORUM**

**FRAUD**

Extra-contractual remedies, **9:6, 9:7**

**FRAUD IN INDUCEMENT**

Nonperformance of contract, **8:25**

## INDEX

### **FUNGI**

Insurance, exclusions, **5:23**

### **GENERAL CONTRACTORS**

Generally, **14:2 to 14:16**

For detailed treatment see index heading **LICENSES**

### **GOOD FAITH**

Public contracts, minority business participation, **2:56**

Sureties, bad faith claims against, **4:41**

### **GUARANTEED MAXIMUM PRICE (GMP)**

Public contracts, construction manager at risk for project delivery systems, **2:34**

### **HABITABILITY, IMPLIED WARRANTY OF**

Generally, **6:10 to 6:20**

For detailed treatment see index heading **WARRANTIES**

### **HAZARDOUS ACTIVITIES**

Negligence, independent contractors, **11:21**

### **HEARINGS**

Arbitration, **17:24**

### **HEATING CONTRACTORS**

Generally, **14:21 to 14:24**

For detailed treatment see index heading **LICENSES**

### **HIGH-RISE PROVISIONS**

Building codes, existing buildings, **13:16**

### **HINDER**

Implied warranty not to hinder, **6:24**

### **HOME INSPECTORS**

Generally, **14:48 to 14:51**

For detailed treatment see index heading **LICENSES**

### **HOME OFFICE OVERHEAD**

Delay, contractor damages for, **7:20**

### **HOMEOWNERS RECOVERY FUND**

Licenses, general contractors, **14:16**

### **IDLE EQUIPMENT AND LABOR/MATERIALS**

Delay, contractor damages for, **7:18**

### **IMMUNITY**

Arbitrators, **17:22**

### **IMPLIED CONTRACTS**

Generally, **1:4, 1:7 to 1:10**

Liens, **3:10**

### **IMPLIED WARRANTIES**

Generally, **6:5 to 6:25**

For detailed treatment see index heading **WARRANTIES**

### **IMPOSSIBILITY OF PERFORMANCE**

Nonperformance of contract, **8:24**

### **IMPRACTICABILITY OF PERFORMANCE**

Nonperformance of contract, **8:24**

### **INCIDENTAL DAMAGES**

Generally, **10:8**

### **INCORPORATION BY REFERENCE**

Arbitration, **17:39**

### **INDEMNITY AND INDEMNIFICATION**

Contracts, public policy limitations, **1:23**

Insurance, duty to indemnify, **5:26**

Liens, indemnification of obligor for wrongful payments, **3:65**

### **INDEPENDENT CONTRACTORS**

Generally, **11:19 to 11:22**

For detailed treatment see index heading **NEGLIGENCE**

### **INDEXING**

Lien on real property, **3:28**

### **INDUSTRY STANDARDS AND CUSTOM**

Negligence, duty and breach, **11:6**



**INSPECTIONS**

Generally, **13:18 to 13:23**  
 For detailed treatment see index  
 heading BUILDING CODES

**INSURANCE**

Generally, **5:1 to 5:37**  
 Additional insured, **5:11**  
 Alternatives to traditional coverage,  
**5:36**  
 Applicable policy, determination of  
 generally, **5:5 to 5:7**  
 application of coverage trigger, **5:7**  
 discovery or manifestation, **5:5**  
 injury-in-fact, **5:6**  
 Tufco Rule, **5:5 to 5:7**  
 Automobile coverage, **5:30**  
 Bacteria, exclusions, **5:23**  
 Bodily injury and property damage,  
**5:8**  
 Bonds and sureties, distinguished,  
**4:2**  
 Builder's risk insurance, **5:29**  
 Cancellation of insurance, **5:37**  
 "Claims made" vs. "occurrence"  
 policies, **5:4**  
 Commercial general liability (CGL)  
 insurance, **5:2**  
 Construction defects, **5:24**  
 Contractual liability, exclusions, **5:19**  
 Controlled insurance programs, **5:34**  
 Damage to property, exclusions, **5:21**  
 Damage to work, exclusions, **5:22**  
 Declarations, **5:13**  
 Declaratory judgments, **5:27**  
 Defense, duty to provide, **5:25**  
 Definitions in policy, **5:12**  
 Discovery, determination of  
 applicable policy, **5:5**  
 Duty to defend, **5:25**  
 Duty to indemnify, **5:26**  
 Endorsements, **5:14**  
 Excess coverage, **5:31**  
 Exclusions  
     contractual liability, **5:19**  
     damage to property, **5:21**  
     damage to work, **5:22**  
     expected or intended injury, **5:18**

**INSURANCE—Cont'd**

Exclusions—Cont'd  
     fungi or bacteria, **5:23**  
     pollutants, **5:20**  
 Exclusions and exceptions, **5:17**  
     generally, **5:17 to 5:23**  
 Expected injury, exclusions, **5:18**  
 Fungi, exclusions, **5:23**  
 Indemnify, duty to, **5:26**  
 Injury-in-fact, determination of  
 applicable policy, **5:6**  
 Insuring agreement  
     generally, **5:8 to 5:16**  
     additional insured, **5:11**  
     bodily injury and property damage,  
     **5:8**  
     declarations, **5:13**  
     definitions in policy, **5:12**  
     endorsements, **5:14**  
     limits of liability, **5:13**  
     named insured, **5:10**  
     occurrence, **5:9**  
     period of policy, **5:16**  
 Intended injury, exclusions, **5:18**  
 Limits of liability, **5:13**  
 Manifestation, determination of  
 applicable policy, **5:5**  
 Miscellaneous liability issues, **5:28**  
 Named insured, **5:10**  
 Occurrence, **5:9**  
 Period of policy, **5:16**  
 Pollutants, exclusions, **5:20**  
 Professional liability insurance, **5:32**  
 Project-specific professional liability  
 insurance, **5:35**  
 Property damage and bodily injury,  
**5:8**  
 Tufco Rule, determination of  
 applicable policy, **5:5 to 5:7**  
 Types of policies, **5:4**  
 Umbrella coverage, **5:31**  
 Workers' compensation, **5:33**

**INTENDED INJURY**

Insurance, exclusions, **5:18**

**INTENT**

Liens, **3:1**

## INDEX

### INTEREST

- Damages, **10:17**
- Liens, funds secured by subcontractor's claim upon funds, **3:52**

### INTERFERENCE

- Nonperformance of contract, **8:6**

### INTERPRETATION

- See index heading CONSTRUCTION AND INTERPRETATION

### INTERVENING OR INSULATING NEGLIGENCE

- Generally, **11:29**

### IRRIGATION CONTRACTORS

- Generally, **14:44 to 14:47**
- For detailed treatment see index heading LICENSES

### JOINDER OF CLAIMS

- Arbitration, **17:40**
- Construction litigation, **15:40**

### JOINDER OF PARTIES

- Arbitration, **17:40**
- Construction litigation. See index heading CONSTRUCTION LITIGATION

### JOINT AND SEVERAL LIABILITY

- Negligence, multiple tortfeasors, **11:8**

### JOINT VENTURE LICENSING

- General contractors, **14:14**

### JUDGMENTS AND DECREES

- Arbitration awards, **17:34**
- Entry of judgment, construction litigation, **15:50**
- Liens, judgment enforcing a lien, **3:32**
- Relief from judgment, construction litigation, **15:51**

### JURY TRIAL

- Construction litigation, **15:52**

### LANDSCAPE ARCHITECTS AND CONTRACTORS

- Generally, **14:36 to 14:39**
- For detailed treatment see index heading LICENSES

### LATENT DEFECTS

- Implied warranty of habitability, **6:17**

### LICENSES

- Generally, **14:1 to 14:51, App. 14A**
- Application for license, general contractors, **14:11**
- Architects
  - generally, **14:25 to 14:30**
  - definitions
    - landscape architects. See "Landscape architects and contractors" under this index heading
    - practice of architecture, **14:25**
  - design-build, **14:28**
  - disciplinary actions
    - generally, **14:29**
    - landscape architects and contractors, **14:39, 14:43**
  - exceptions
    - generally, **14:26**
    - landscape architects. See "Landscape architects and contractors" under this index heading
  - individuals and business entities, **14:27**
  - landscape architects. See "Landscape architects and contractors" under this index heading
  - seal of architect, **14:30**
- Business entities and firms
  - architects, **14:27**
  - engineers and surveyors, **14:33**
  - irrigation contractors, **14:46**
  - landscape architects and contractors, **14:38, 14:42**
- Classifications
  - electrical contractors, **14:19**
  - general contractors, **14:8**
  - home inspectors, **14:50**
  - plumbing, heating and fire sprinkler contractors, **14:21, 14:23**
- Corporations. See "Business entities and firms" under this index heading
- Cost of undertaking, general contractors, **14:3**

**LICENSES—Cont'd**

- Disciplinary actions
  - architects. See “Architects” under this index heading
  - electrical contractors, **14:20**
  - engineers and surveyors, **14:34**
  - irrigation contractors, **14:47**
  - landscape architects and contractors, **14:39, 14:43**
  - plumbing, heating, and fire sprinkler contractors, **14:24**
- Electrical contractors
  - generally, **14:17 to 14:20**
  - classifications, **14:19**
  - definition of electrical contracting, **14:17**
  - disciplinary actions, **14:20**
  - exceptions to license requirement, **14:18**
- Engineers and surveyors
  - generally, **14:31 to 14:35**
  - definition, **14:31**
  - disciplinary actions, **14:34**
  - exceptions, **14:32**
  - firms, **14:33**
  - seals of engineers and surveyors, **14:35**
- Examination, general contractors, **14:12**
- Exceptions
  - architects. See “Architects” under this index heading
  - electrical contractors, **14:18**
  - engineers and surveyors, **14:32**
  - general contractors, **14:4**
  - home inspectors, **14:49**
  - irrigation contractors, **14:45**
  - landscape architects and contractors. See “Landscape architects and contractors” under this index heading
  - plumbing, heating and fire sprinkler contractors, **14:22**
- Failure to be licensed, effect of, **14:7**
- Fire sprinkler contractors. See “Plumbing, heating and fire sprinkler contractors” under this index heading

**LICENSES—Cont'd**

- Firms. See “Business entities and firms” under this index heading
- General contractors
  - generally, **14:2 to 14:16**
  - application for license, **14:11**
  - classifications, **14:8**
  - cost of undertaking, **14:3**
  - definition of general contracting, **14:2**
  - examination, **14:12**
  - exceptions to license requirement, **14:4**
  - failure to be licensed, effect of, **14:7**
  - Homeowners Recovery Fund, **14:16**
  - joint venture licensing, **14:14**
  - limitations, **14:9**
  - procedure to obtain license, **14:10 to 14:12**
  - qualifier, **14:13**
  - subcontractors, **14:5**
  - unauthorized practice, **14:6**
- Heating contractors. See “Plumbing, heating and fire sprinkler contractors” under this index heading
- Home inspectors
  - generally, **14:48 to 14:51**
  - classifications, **14:50**
  - contract requirements, **14:51**
  - definition, **14:48**
  - exceptions, **14:49**
- Homeowners Recovery Fund, general contractors, **14:16**
- Individuals
  - architects, **14:27**
  - irrigation contractors, **14:46**
  - landscape architects and contractors, **14:38, 14:42**
- Irrigation contractors
  - generally, **14:44 to 14:47**
  - definition, **14:44**
  - disciplinary actions, **14:47**
  - exceptions to licensing requirements, **14:45**
  - individuals and business entities, licensing of, **14:46**

## INDEX

### LICENSES—Cont'd

- Joint venture licensing, general contractors, **14:14**
- Landscape architects and contractors generally, **14:36 to 14:43**
  - business entities, licensing of, **14:42**
  - definition
    - generally, **14:36**
    - landscape contractor, **14:40**
  - disciplinary actions, **14:39, 14:43**
  - exceptions
    - generally, **14:37**
    - landscape contractors, **14:41**
  - individuals, licensing of, **14:42**
  - individuals and business entities, **14:38, 14:42**
  - irrigation contractors. See “Irrigation contractors” under this index heading
  - landscape contractors, generally, **14:40 to 14:43**
- Limitations, general contractors, **14:9**
- Nonperformance of contract, lack of license, **8:21**
- Plumbing, heating, and fire sprinkler contractors
  - disciplinary actions, **14:24**
- Plumbing, heating and fire sprinkler contractors
  - generally, **14:21 to 14:24**
  - classification, **14:21, 14:23**
  - definition, **14:21**
  - exceptions, **14:22**
- Qualifier, general contractors, **14:13**
- Seals
  - architects, **14:30**
  - engineers and surveyors, **14:35**
- Subcontractors, **14:5**
- Surveyors. See “Engineers and surveyors” under this index heading
- Testifying experts, **15:45**
- Unauthorized practice, general contractors, **14:6**

### LIENS

- Generally, **3:1 to 3:97**

### LIENS—Cont'd

- Acknowledgment of satisfaction in presence of clerk, discharge of claims on real property, **3:40**
- Amendment of claim on real property, **3:24**
- Arbitration, **17:42**
- Assignment of claims on real property, **3:26**
- Attachment, enforcement of claims on real property, **3:36**
- Attorneys' fees, **3:80**
- Bankruptcy
  - enforcement of claims on real property, effect on, **3:35**
  - subcontractor's liens, effect on, **3:79**
- Bonds
  - discharge of claims on real property, **3:45**
  - discharge of claim upon funds, **3:61**
  - forms See “Forms” under this index heading
- Cancellation of claim on real property, form of notice, **3:85**
- Cash deposit, discharge of claims on real property, **3:44**
- Checklist summary of obligations with respect to lien agent, **3:97**
- Contact information, lien agent, **3:14, 3:70**
- Contents of notice of claim upon funds, **3:55**
- Contract, form of notice, **3:94**
- Deadlines
  - commencement of action, enforcement of claims on real property, **3:30**
  - filing claims on real property, **3:21**
- Debts owing, defined, **3:11**
- Defenses of owner against contractor as binding on subcontractor on subrogated claim on real property, **3:72**
- Design professionals, **3:17**
- Direct claim of subcontractor on real property due to wrongful payment, **3:48, 3:66, 3:67**

**LIENS—Cont'd**

- Discharge of claims on real property
  - generally, **3:39 to 3:45**
  - acknowledgment of satisfaction in presence of clerk, **3:40**
  - cash deposit, **3:44**
  - failure to timely commence enforcement action, **3:42**
  - filing of court judgment or decree, **3:43**
  - filing of instrument of satisfaction, **3:41**
  - surety bond, **3:45**
- Discharge of claims upon funds. See “Preparation, enforcement and discharge of claims upon funds” under this index heading
- Effective date of claim on real property, **3:22**
- Elements, generally, **3:6 to 3:11**
- Enforcement of claims on real property
  - generally, **3:29 to 3:38**
  - attachment, **3:36**
  - bankruptcy proceeding, effect of, **3:35**
  - deadline for commencement of action, **3:30**
  - judgment enforcing a lien, **3:32**
  - lis pendens, **3:33**
  - necessary and proper parties to action, **3:34**
  - notice of action, **3:33**
  - pre-judgment sale of property, **3:37**
  - sale of property in satisfaction of judgment enforcing claim, **3:38**
  - subcontractor’s subrogated claim of lien on real property, **3:69**
  - venue for action, **3:31**
- Enforcement of claims upon funds. See “Preparation, enforcement and discharge of claims upon funds” under this index heading
- Errors in claim on real property, **3:25**
- Express contract, defined, **3:10**
- Extent of claim on real property, **3:23**
- Failure to timely commence enforcement action, discharge of claims

**LIENS—Cont'd**

- on real property, **3:42**
- False statement in connection with lien claim, **3:81**
- Filing
  - claims on real property. See “Preparation and filing of claims on real property” under this index heading
  - court judgment or decree, discharge of claims on real property, **3:43**
  - instrument of satisfaction, discharge of claims on real property, **3:41**
  - notice of claim upon funds, **3:59**
- First tier subcontractor, form of notice of claim upon funds by, **3:87**
- Forms
  - generally, **3:82 to 3:97**
  - bonds
    - amendment to discharge additional subcontractor lien, **3:93**
    - discharge of subcontractor lien on real property and funds, **3:92**
  - checklist summary of obligations with respect to lien agent, **3:97**
  - claim of lien on real property, **3:19, 3:82**
  - lien information form, **3:86**
  - lis pendens, **3:83**
  - notice
    - generally, **3:87 to 3:90**
    - cancellation of claim on real property, **3:85**
    - contract, **3:94**
    - first tier subcontractor, claim upon funds by, **3:87**
    - lien agent, notice to, **3:96**
    - lis pendens, **3:83**
    - second tier subcontractor, claim upon funds by, **3:88**
    - subcontract, **3:95**
    - subcontractor more remote than third tier, claim upon funds by, **3:90**

## INDEX

### LIENS—Cont'd

- Forms—Cont'd
  - notice—Cont'd
    - third tier subcontractor, claim upon funds by, **3:89**
    - withdrawal of notice of claim upon funds, **3:91**
    - satisfaction of claim on real property, **3:84**
- Framework of statute, **3:3**
- History, **3:2**
- Implied contract, defined, **3:10**
- Implied warranty of title free of liens, **6:25**
- Improve, defined, **3:8**
- Improvement, defined, **3:8**
- Indemnification of obligor for wrongful payments, subcontractor's claim upon funds, **3:65**
- Indexing of lien on real property, **3:28**
- Intent, **3:1**
- Interest, funds secured by subcontractor's claim upon funds, **3:52**
- Judgment enforcing a lien, **3:32**
- Labor, defined, **3:7**
- Lien agent
  - generally, **3:12 to 3:17**
  - checklist summary of obligations with respect to lien agent, **3:97**
  - contact information, providing and obtaining, **3:14, 3:70**
  - designation of lien agent by owner, **3:13**
  - design professionals, **3:17**
  - notifying lien agent, **3:15, 3:70, 3:96**
  - single family residences, **3:16**
- Lien information form, **3:86**
- Lis pendens, enforcement of claims on real property, **3:33, 3:83**
- Materials, defined, **3:7**
- Necessary and proper parties to action, enforcement of claims on real property, **3:34**
- Notice
  - enforcement of claims on real property, **3:33**

### LIENS—Cont'd

- Notice—Cont'd
  - forms. See "Forms" under this index heading
  - lien agent, notice to, **3:15, 3:70, 3:96**
  - subrogated claim of subcontractor on real property. See "Subrogated claim of subcontractor on real property" under this index heading
- Owner, defined, **3:9**
- Payments, subrogated claim of subcontractor on real property, **3:77**
- Perfection
  - claim on real property, **3:20**
  - notice of claim upon funds, **3:57**
  - subcontractor's subrogated claim of lien on real property, **3:69, 3:71**
- Pre-judgment sale of property, enforcement of claims on real property, **3:37**
- Prejudice to subcontractor's rights caused by contractor, subrogated claim on real property, **3:71**
- Preparation, enforcement and discharge of claims upon funds generally, **3:55 to 3:61**
  - contents of notice of claim, **3:55**
  - discharge of claim, **3:60, 3:61**
  - filing of notice of claim, **3:59**
  - perfection of notice of claim, **3:57**
  - service of notice of claim, **3:58**
  - statutory forms for various tiers, **3:56**
  - surety bond, discharge of claim, **3:61**
- Preparation and filing of claims on real property
  - generally, **3:18 to 3:28**
  - amendment of claim, **3:24**
  - assignment, **3:26**
  - deadline for filing, **3:21**
  - effective date of claim, **3:22**
  - errors in claim, **3:25**
  - extent of claim, **3:23**
  - form for claim, **3:19**

**LIENS—Cont'd**

- Preparation and filing of claims on real property—Cont'd
  - indexing of lien, **3:28**
  - perfecting/filing claim, **3:20**
  - strict requirements, **3:18**
  - waiver of right to assert lien, **3:27**
- Priority among competing claimants, subcontractor's claim upon funds, **3:53**
- Pro rata payments, subcontractor's claim upon funds, **3:54**
- Public projects, subcontractor's claim upon funds, **3:47**
- Purpose, **3:1**
- Reimbursement of obligor for wrongful payments, subcontractor's claim upon funds, **3:65**
- Retention of funds, obligor's duties regarding subcontractor's claim upon funds, **3:62**
- Rights, **3:4**
- Sale of property in satisfaction of judgment enforcing claim on real property, **3:38**
- Satisfaction of claim on real property, form, **3:84**
- Second tier subcontractors
  - form of notice of claim upon funds, **3:88**
  - subrogated claim of subcontractor on real property, **3:73**
- Service of notice of claim upon funds, **3:58**
- Statutes of limitations and repose
  - generally, **15:17**
  - subrogated claim of subcontractor on real property, **3:69**
- Statutory entitlement to claim of lien on real property, **3:5**
- Statutory forms for various tiers of claims upon funds, **3:56**
- Strict requirements, preparation and filing of claims on real property, **3:18**
- Subcontract, form of notice, **3:95**
- Subcontractor's claim upon funds
  - generally, **3:46 to 3:67**

**LIENS—Cont'd**

- Subcontractor's claim upon funds
  - Cont'd
    - direct claim on real property due to wrongful payment, **3:48, 3:66, 3:67**
    - direct rights of various tiers to claim, **3:48**
    - discharge of claims. Preparation, enforcement and discharge of claims upon funds, above earned funds, **3:50**
    - enforcement of claims. Preparation, enforcement and discharge of claims upon funds, above
    - forms of notice of claim, **3:87 to 3:90**
    - funds secured
      - generally, **3:50 to 3:52**
      - earned by claimant, **3:50**
      - funds as due, **3:51**
      - interest, **3:52**
    - interest, funds secured, **3:52**
    - obligor's duties
      - generally, **3:62 to 3:65**
      - reimbursement/indemnification of obligor for wrongful payments, **3:65**
      - retention of funds, **3:62**
      - wrongful payments, **3:63 to 3:65**
    - preparation, enforcement and discharge of claims upon funds, above
    - priority among competing claimants, **3:53**
    - pro rata payments, **3:54**
    - public projects, **3:47**
    - reimbursement/indemnification of obligor for wrongful payments, **3:65**
    - retention of funds, obligor's duties, **3:62**
    - subrogation rights of various tiers to claim, **3:49**
    - wrongful payments
      - generally, **3:63 to 3:65**



## INDEX

### **LIENS—Cont'd**

- Subcontractor's claim upon funds
  - Cont'd
  - wrongful payments—Cont'd
    - direct claim on real property due to wrongful payment, **3:66, 3:67**
    - reimbursement/indemnification of obligor for wrongful payments, **3:65**
- Subrogated claim of subcontractor on real property
  - generally, **3:68 to 3:78**
  - contact information, providing to lien agent, **3:14, 3:70**
  - contract, notice of, **3:75, 3:78**
  - defenses of owner against contractor as binding on subcontractor, **3:72**
  - notice
    - generally, **3:74 to 3:78**
    - contract, **3:75, 3:78**
    - lien agent, notifying, **3:15, 3:70**
    - payments, **3:77**
    - procedural issues, **3:78**
    - subcontract, **3:76, 3:78**
  - payments, notice of, **3:77**
  - perfection and enforcement, **3:69**
  - prejudice to subcontractor's rights caused by contractor, **3:71**
  - second and third tier claims, extent of, **3:73**
  - subcontract, notice of, **3:76, 3:78**
- Subrogation rights of various tiers to claim, subcontractor's claim upon funds, **3:49**
- Surety bond. See "Bonds" under this index heading
- Third tier subcontractors
  - form of notice of claim upon funds, **3:89**
  - subrogated claim of subcontractor on real property, **3:73**
- Time. See "Deadlines" under this index heading
- Venue for action, enforcement of claims on real property, **3:31**
- Waiver of right to assert lien on real property, **3:27**

### **LIENS—Cont'd**

- Withdrawal of notice of claim upon funds, form, **3:91**
- Wrongful payments. See "Subcontractor's claim upon funds" under this index heading

### **LIMITATION OF ACTIONS**

- Generally, **15:12 to 15:30**
- For detailed treatment see index heading STATUTES OF LIMITATIONS AND REPOSE

### **LIMITATIONS OF LIABILITY**

- Contracts, public policy limitations, **1:24**
- Payment bonds, claims against, **4:34**

### **LIQUIDATED DAMAGES**

- Generally, **10:11**
- Contracts, public policy limitations, **1:28**
- Delay damages for owner, **7:16**
- Public contracts, administration of contracts, **2:64, 2:65**

### **LIS PENDENS**

- Liens, enforcement of claims on real property, **3:33, 3:83**

### **LITIGATION**

- Generally, **15:1 to 15:62**
- For detailed treatment see index heading CONSTRUCTION LITIGATION

### **LITTLE MILLER ACT**

- Arbitration, **17:43**

### **LOCAL BUILDING DEPARTMENTS**

- Building permits and inspections, **13:18**

### **LOCAL GOVERNMENTS AND AGENCIES**

- Construction litigation, service of process, **15:36**
- Negligence, **11:24 to 11:26**
- Statutes of limitation and repose, **15:16**

**LOWEST RESPONSIBLE BIDDER**

Public contracts, construction services, **2:19**

**MALPRACTICE**

See index heading PROFESSIONAL NEGLIGENCE

**MANIFESTATION**

Insurance, determination of applicable policy, **5:5**

**MANUFACTURED BUILDINGS**

Building codes, applicability, **13:9**

**MATERIALITY**

Nonperformance of contract, **8:2**

**MECHANIC'S LIENS**

Generally, **12:10 to 12:14**  
For detailed treatment see index heading BANKRUPTCY

**MEDIATION**

Generally, **16:1 to 16:20**  
American Arbitration Association rules, contractual requirements, **16:15**  
Arbitration clauses, interplay of contractual requirements, **16:16**  
Attendance requirement, civil superior court actions, **16:5**  
Building construction, statutory requirements in public construction, **16:12**  
Civil superior court actions generally, **16:2 to 16:10**  
attendance requirement, **16:5**  
costs, **16:9, 16:10**  
enforcement of agreements reached during mediated settlement conferences, **16:7**  
negotiations during mediated settlement conference, inadmissibility of, **16:8**  
sanctions, **16:6**  
selection of mediator, **16:4**  
Contractual requirements generally, **16:14 to 16:16**  
American Arbitration Association rules, **16:15**

**MEDIATION—Cont'd**

Contractual requirements—Cont'd arbitration clauses, interplay with, **16:16**  
Costs, civil superior court actions, **16:9, 16:10**  
Eastern District of North Carolina, **16:19**  
Enforcement of agreements reached during mediated settlement conferences, civil superior court actions, **16:7**  
Infrastructure not including buildings, statutory requirements in public construction, **16:13**  
Middle District of North Carolina, **16:20**  
Negotiations during mediated settlement conference, inadmissibility in civil superior court actions, **16:8**  
Public contracts, **2:84, 2:90**  
Sanctions, civil superior court actions, **16:6**  
Selection of mediator, civil superior court actions, **16:4**  
Statutory requirements in public construction generally, **16:11 to 16:13**  
building construction, **16:12**  
infrastructure, not including buildings, **16:13**  
U.S. District Court for civil actions generally, **16:17 to 16:20**  
Eastern District of North Carolina, **16:19**  
Middle District of North Carolina, **16:20**  
Western District of North Carolina, **16:18**  
Western District of North Carolina, **16:18**

**MERCHANTABILITY**

Implied warranty, Uniform Commercial Code, **6:29, 6:30**

**MINORITY BUSINESS PARTICIPATION**

Generally, **2:53 to 2:57**

## INDEX

### MINORITY BUSINESS

#### PARTICIPATION—Cont'd

For detailed treatment see index  
heading PUBLIC CONTRACTS

### MINUTES OF CLOSED SESSIONS

Public records, **15:58**

### MITIGATION OF DAMAGES

Nonperformance of contract, **8:15**

### MODEL PAYMENT AND PERFORMANCE BOND ACT

Generally, **4:3**

### MODIFICATION OR CHANGE

Arbitration awards, **17:30, 17:33**

Changes and delays  
generally, **7:1 to 7:26**  
for detailed treatment see index  
heading CHANGES AND DELAYS

Contracts, **1:12**

Public contracts, changes in work,  
**2:62**

### MODIFIED TOTAL COST

Delay damages, **7:26**

### MOTOR VEHICLES

Insurance coverage, **5:30**

### MULTIPLE-PRIME BIDDING

Public contracts, project delivery  
systems, **2:26**

### MUTUAL RESCISSION

Nonperformance of contract, **8:20**

### NAMED INSUREDS

Generally, **5:10**

### NEGLIGENCE

Generally, **11:1 to 11:33**

Architects, **11:16**

Breach. See “Duty and breach”  
under this index heading

Building code violation as negligence  
per se, **11:15**

Building inspectors, **11:25, 11:26**

Code

building inspectors, **11:25, 11:26**

negligence per se, building code  
violation as, **11:15**

### NEGLIGENCE—Cont'd

Code—Cont'd

standard of care under, **11:5**

Common law standard of care, duty  
and breach, **11:4**

Completed and accepted work doc-  
trine, defense of, **11:30**

Contributory negligence, **11:28**

Control exception, independent  
contractors, **11:20**

Corporate officers, individual liability  
of, **11:27**

Damages, **10:6**

Defective real property improve-  
ments, statutes of limitation or  
repose, **11:32**

Defenses, **11:28 to 11:30**

Duty and breach

generally, **11:3 to 11:6**

common law standard of care, **11:4**

industry standards and custom,  
**11:6**

statute, code or regulation, stan-  
dard of care under, **11:5**

Economic loss rule

generally, **11:9 to 11:13**

adoption of rule by state, **11:10**

product cases, **11:12**

residential cases, exception for,  
**11:11**

stucco cases, **11:13**

Elements, generally, **11:2 to 11:8**

Engineers, **11:16**

Foreseeability, **11:7, 11:8**

Hazardous activity exception, inde-  
pendent contractors, **11:21**

Independent contractors

generally, **11:19 to 11:22**

control exception, **11:20**

hazardous activity exception,  
**11:21**

negligent hiring or retention excep-  
tion, **11:22**

Industry standards and custom, duty  
and breach, **11:6**

Intervening or insulating negligence  
of others, **11:29**

Joint and several liability of multiple  
tortfeasors, **11:8**

**NEGLIGENCE—Cont'd**

- Limitation of actions. See “Statutes of limitations or repose” under this index heading
- Local governments and agencies, claims against, **11:24 to 11:26**
- Negligent hiring or retention exception, independent contractors, **11:22**
- Negligent misrepresentation, **9:8**
- Per se negligence, **11:14, 11:15**
- Product cases, economic loss rule, **11:12**
- Property owners, **11:17**
- Proximate cause, **11:7, 11:8**
- Regulation, standard of care under, **11:5**
- Repose. See “Statutes of limitations or repose” under this index heading
- Residential cases, economic loss rule, **11:11**
- Safety of real property improvements, statutes of limitation or repose, **11:32**
- State departments and agencies, claims against, **11:23**
- Statute, standard of care under, **11:5**
- Statutes of limitations or repose generally, **11:31 to 11:33**
  - defective or unsafe real property improvements, **11:32**
  - exceptions to statute of repose, **11:33**
  - professional negligence, **15:26, 15:27**
- Stucco cases, economic loss rule, **11:13**
- Superseding negligence of others, **11:29**
- Surveyors, **11:16, 15:27**
- Third parties
  - generally, **11:16 to 11:27**
  - architects, engineers and surveyors, **11:16**
  - building inspectors, **11:25, 11:26**
  - corporate officers, individual liability of, **11:27**
  - independent contractors, above

**NEGLIGENCE—Cont'd**

- Third parties—Cont'd
  - local governments and agencies, claims against, **11:24 to 11:26**
  - property owners, **11:17**
  - state departments and agencies, claims against, **11:23**
  - Woodson claims, **11:18**
- Unsafe real property improvements, statutes of limitation or repose, **11:32**
- Woodson claims, **11:18**

**NEGOTIATIONS**

- Mediated settlement conference, inadmissibility in civil superior court actions, **16:8**

**NOMINAL DAMAGES**

- Generally, **10:7**

**NONCONFORMING WORK**

- Nonperformance of contract, **8:5**

**NONPERFORMANCE OF CONTRACT**

- Generally, **8:1 to 8:26**
- Betterment, **8:18**
- Condition precedent, failure to perform, **8:12**
- Consideration, failure of, **8:14**
- Defenses to claims, generally, **8:8 to 8:25**
- Delay, **8:6**
- Design, performance according to, **8:22**
- Duress, **8:26**
- Estoppel, **8:16**
- Fraud in inducement, **8:25**
- Impossibility of performance, **8:24**
- Impracticability of performance, **8:24**
- Interference, **8:6**
- License, lack of, **8:21**
- Materiality of breach, **8:2**
- Mitigation of damages, **8:15**
- Mutual rescission, **8:20**
- Nonconforming work, **8:5**
- Nonpayment, **8:3**
- Notice provisions, failure to comply with, **8:13**

## INDEX

### **NONPERFORMANCE OF CONTRACT—Cont'd**

- Pleading affirmative defenses with particularity, **8:9**
- Prior material breach of contract, **8:11**
- Reading of contract, failure as to, **8:19**
- Stop work, **8:4**
- Substantial performance doctrine, **8:10**
- Termination for Convenience, **8:7**
- Termination of performance, **8:4**
- Unconscionability, **8:23**
- Waiver, **8:17**

### **NORTH CAROLINA BOND ACT**

- Generally, **4:27 to 4:36**
- For detailed treatment see index heading **BONDS AND SURETIES**

### **NOTICE**

- Bonds and sureties. See index heading **BONDS AND SURETIES**
- Delay claims, defenses to, **7:11**
- Liens. See index heading **LIENS**
- Nonperformance of contract, failure to comply with notice provisions, **8:13**
- Payment bonds, claims against, **4:28**

### **OFFERS OF JUDGMENT**

- Construction litigation, **15:49**

### **OPEN ACCOUNT**

- Extra-contractual remedies, **9:3**

### **OPPORTUNITY LOST**

- Delay, contractor damages for, **7:21**

### **ORAL EXPRESS CONTRACTS**

- Generally, **1:6**

### **ORDINARY COURSE OF BUSINESS**

- Bankruptcy, preference, **12:31 to 12:33**

### **OVERHEAD**

- Delay, contractor damages for, **7:19**

### **PASS-THROUGH CLAIMS**

- Public contracts, **2:80**

### **PATTERN JURY INSTRUCTIONS**

- Contracts, **1:3**

### **PAY IF PAID/PAY WHEN PAID**

- Contracts, public policy limitations, **1:27**

### **PAYMENT**

- Bonds. See index heading **PAYMENT BONDS**
- Liens, subrogated claim of subcontractor on real property, **3:77**
- Nonperformance of contract, **8:3**

### **PAYMENT BONDS**

- Bankruptcy, automatic stay, **12:16**
- Bonds and sureties generally, **4:10 to 4:13**
  - for detailed treatment see index heading **BONDS AND SURETIES**
- Public contracts generally, **2:47 to 2:50**
  - for detailed treatment see index heading **PUBLIC CONTRACTS**

### **PENALTIES**

- Mediation, civil superior court actions, **16:6**

### **PERFECTION**

- Liens for detailed treatment see index heading **LIENS**

### **PERFORMANCE BONDS**

- Bankruptcy, automatic stay, **12:17**
- Bonds and sureties generally, **4:6 to 4:9**
  - for detailed treatment see index heading **BONDS AND SURETIES**
- Public contracts generally, **2:47 to 2:50**
  - for detailed treatment see index heading **PUBLIC CONTRACTS**

### **PERMITS**

- Building codes generally, **13:18 to 13:23**
  - for detailed treatment see index heading **BUILDING CODES**
- Criminal theft from a permitted construction cite, **9:12**

**PER SE NEGLIGENCE**

Generally, **11:14, 11:15**

**PLUMBING CONTRACTORS**

Generally, **14:21 to 14:24**

For detailed treatment see index heading **LICENSES**

**POLLUTANTS**

Insurance, exclusions, **5:20**

**PRECLUSIVE EFFECT**

Arbitration awards, **17:35**

**PREFERENCE**

Generally, **12:28 to 12:34**

For detailed treatment see index heading **BANKRUPTCY**

**PREFERENTIAL PAYMENTS**

Bankruptcy, **12:27**

**PREJUDGMENT INTEREST**

Payment bonds, claims against, **4:35**

**PREJUDICE**

Liens, prejudice to subcontractor's rights caused by contractor, **3:71**

**PREQUALIFICATION**

Public contracting, **2:25**

**PREVENTION OF PERFORMANCE**

Nonperformance of contract, **8:6**

**PRICE**

Changes in work, **7:6**

Damages for delay, price escalation clauses, **7:22**

**PRIORITY**

Liens, subcontractor's claim upon funds, **3:53**

**PRIVATE CONSTRUCTION PROJECTS**

Bonds and sureties. See index heading **BONDS AND SURETIES**

Public-private partnerships, project delivery systems, **2:37**

**PRODUCTIVITY**

Changes and delays, loss of productivity, **7:9**

**PRODUCTS LIABILITY**

Statute of repose, **15:28**

**PROFESSIONAL NEGLIGENCE**

Liability insurance, **5:32**

Statute of repose, **15:26, 15:27**

**PROGRESS PAYMENTS**

Public contracts, administration of contracts, **2:68, 2:69**

**PROJECT DELIVERY SYSTEMS**

Generally, **2:24 to 2:41**

For detailed treatment see index heading **PUBLIC CONTRACTS**

**PROJECT EXPEDITERS**

Public contracts, role in administration of contracts, **2:61**

**PROJECT STATEMENT OF CONTRACTOR**

Generally, **4:30, 4:45**

**PROMISSORY ESTOPPEL**

Contracts, **1:14**

**PROPERTY DAMAGE**

Insurance, **5:8**

**PRO RATA PAYMENTS**

Liens, subcontractor's claim upon funds, **3:54**

**PROTESTING OF BIDS**

Generally, **2:42 to 2:44**

For detailed treatment see index heading **PUBLIC CONTRACTS**

**PROXIMATE CAUSE**

Negligence, **11:7, 11:8**

**PUBLIC BID PROTESTS**

Construction litigation, **15:61**

**PUBLIC CONSTRUCTION PROJECTS**

Bonds and sureties. See index heading **BONDS AND SURETIES**

**PUBLIC CONTRACTS**

Generally, **2:1 to 2:91, App. 2A**

Administration Department. See "Claims" under this index heading

## INDEX

### **PUBLIC CONTRACTS—Cont'd**

- Administration of contracts
  - generally, **2:58 to 2:77**
  - apportionment of liquidated damages, **2:65**
  - changes in work, **2:62**
  - construction manuals, **2:59**
  - delay damages, **2:66**
  - Department of Transportation, progress payments, **2:69**
  - design professional, role of, **2:60**
  - fifty percent completion, retainage, **2:74**
  - final payment, **2:67**
  - liquidated damages, **2:64, 2:65**
  - progress payments, **2:68, 2:69**
  - project expeditor, role of, **2:61**
  - retainage
    - generally, **2:73 to 2:77**
    - fifty percent completion, **2:74**
    - subcontractors, early finishing, **2:76**
    - subcontractors, retainage from, **2:75**
    - timing of release of retainage, **2:77**
  - subcontractors
    - early finishing, **2:76**
    - notice of public subcontract, **4:29, 4:46**
    - payments. See “Subcontractors, payments to” under this subheading
    - retainage from, **2:75**
    - subcontractors, payments to
      - generally, **2:70 to 2:72**
      - additional requirements, **2:72**
      - exceptions, **2:71**
  - time
    - extensions of time, **2:63**
    - release of retainage, **2:77**
- Advertisement, state procurement of construction services, **2:12**
- Alternative contracting methods. See “Project delivery systems” under this index heading
- Appeal
  - Department of Administration, appeal from Director’s decision, **2:86**

### **PUBLIC CONTRACTS—Cont'd**

- Appeal—Cont'd
  - Department of Transportation, appeal from Secretary’s decision, **2:89**
- Apportionment of liquidated damages, administration of contracts, **2:65**
- Approval criteria, alternative contracting methods for project delivery systems, **2:40**
- Awards. See “Construction services” under this index heading
- Bids
  - bonds, state procurement of construction services, **2:13**
  - counting, dual bidding for project delivery systems, **2:30**
  - opening, state procurement of construction services, **2:14**
- Changes in work, administration of contracts, **2:62**
- Claims
  - generally, **2:78 to 2:91**
  - appeal. See “Appeal” under this index heading
  - contract requirement, **2:79**
  - Department of Administration
    - generally, **2:82 to 2:86**
    - appeal from Director’s decision, **2:86**
    - mediation, **2:84**
    - project designer review, **2:83**
    - verified claims, **2:85**
  - Department of Transportation
    - generally, **2:87 to 2:89**
    - appeal from decision of Secretary, **2:89**
    - verified claims, **2:88**
  - false claims, **2:91**
  - mediation, **2:84, 2:90**
  - pass-through claims, **2:80**
  - procedures, **2:81 to 2:89**
  - project designer review, Department of Administration, **2:83**
  - verified claims, **2:85, 2:88**
- Conflicts of interest, design services, **2:9**



**PUBLIC CONTRACTS—Cont'd**

- Construction manager at risk. See “Project delivery systems” under this index heading
- Construction manuals, administration of contracts, **2:59**
- Construction services
  - generally, **2:10 to 2:23**
  - advertisement, state procurement, **2:12**
  - awards
    - generally, **2:18 to 2:20**
    - lowest responsible bidder, **2:19**
    - responsive bid, **2:20**
  - bid bond, state procurement, **2:13**
  - bid opening, state procurement, **2:14**
  - DOT procurement, **2:16**
  - local procurement, **2:17**
  - lowest responsible bidder, **2:19**
  - responsive bid, **2:20**
  - state procurement
    - generally, **2:11 to 2:15**
    - advertisement, **2:12**
    - bid bond, **2:13**
    - bid opening, **2:14**
    - exemptions, **2:15**
  - withdrawal of bids
    - generally, **2:21 to 2:23**
    - effect, **2:23**
    - procedure, **2:22**
- Contract requirement, claims, **2:79**
- Delay damages, administration of contracts, **2:66**
- Department of Administration. See “Claims” under this index heading
- Department of Transportation
  - claims. See “Claims” under this index heading
  - construction services, procurement of, **2:16**
  - minority business participation, **2:57**
  - progress payments, **2:69**
- Design-build, project delivery systems, **2:35**
- Design-build bridging, project delivery systems, **2:36**

**PUBLIC CONTRACTS—Cont'd**

- Design professional, role in administration of contracts, **2:60**
- Design services
  - generally, **2:3 to 2:9**
  - conflicts of interest, **2:9**
  - procurement, **2:4, 2:5**
  - registered design professional requirement, **2:7, 2:8**
  - selection criteria, **2:6**
- Dual bidding. See “Project delivery systems” under this index heading
- Execution of construction contracts
  - generally, **2:45 to 2:52**
  - form construction contract agreement, **2:51**
  - general conditions, **2:52**
  - performance and payment bonds, below
  - timing of execution, **2:46**
- False claims, **2:91**
- Fifty percent completion, retainage, **2:74**
- Final payment, administration of contracts, **2:67**
- Form of performance and payment bonds, **2:48**
- Good faith efforts, minority business participation, **2:56**
- Guaranteed maximum price (GMP), construction manager at risk for project delivery systems, **2:34**
- Liquidated damages, administration of contracts, **2:64, 2:65**
- Local procurement of construction services, **2:17**
- Lowest responsible bidder, construction services, **2:19**
- Mediation of claims, **2:84, 2:90**
- Minority business participation
  - generally, **2:53 to 2:57**
  - definition of minority business, **2:54**
- Department of Transportation, **2:57**
- goals, **2:55**
- good faith efforts, **2:56**

## INDEX

### **PUBLIC CONTRACTS—Cont'd**

- Multiple-prime bidding, project delivery systems, **2:26**
- Pass-through claims, **2:80**
- Payment bonds. See “Performance and payment bonds” under this index heading
- Performance and payment bonds
  - generally, **2:47 to 2:50**
  - form of bonds, **2:48**
  - payment bonds, **2:50**
  - performance bonds, **2:49**
- Prequalification, **2:25**
- Procurement, design services, **2:4, 2:5**
- Procurement codes, **2:2**
- Progress payments, administration of contracts, **2:68, 2:69**
- Project delivery systems
  - generally, **2:24 to 2:41**
  - alternative contracting methods
    - generally, **2:38 to 2:41**
    - approval criteria, **2:40**
    - defined, **2:39**
    - limitations on approval, **2:41**
  - approval criteria, alternative contracting methods, **2:40**
  - bid counting, dual bidding, **2:30**
  - construction manager at risk
    - generally, **2:31 to 2:34**
    - guaranteed maximum price (GMP), fixing of, **2:34**
    - selection of manager, **2:32**
    - subcontractor bidding, **2:33**
  - design-build, **2:35**
  - design-build bridging, **2:36**
  - dual bidding
    - generally, **2:28 to 2:30**
    - bid counting, **2:30**
    - restrictions, **2:29**
  - guaranteed maximum price (GMP), construction manager at risk, **2:34**
  - limitations on approval, alternative contracting methods, **2:41**
  - multiple-prime bidding, **2:26**
  - public-private partnerships, **2:37**

### **PUBLIC CONTRACTS—Cont'd**

- Project delivery systems—Cont'd
  - selection of construction manager, **2:32**
  - single-prime bidding, **2:27**
  - subcontractor bidding, construction manager at risk, **2:33**
- Project designer review of claims, Department of Administration, **2:83**
- Project expeditor, role in administration of contracts, **2:61**
- Protesting of bids
  - generally, **2:42 to 2:44**
  - grounds, **2:44**
  - procedure, **2:43**
- Public bodies, **2:2**
- Public-private partnerships, project delivery systems, **2:37**
- Registered design professional requirement, design services, **2:7, 2:8**
- Responsive bid, construction services, **2:20**
- Retainage. See “Administration of contracts” under this index heading
- Selection criteria, design services, **2:6**
- Selection of construction manager, project delivery systems, **2:32**
- Single-prime bidding, project delivery systems, **2:27**
- Subcontractors
  - administration of contracts. See “Administration of contracts” under this index heading
  - bidding, construction manager at risk for project delivery systems, **2:33**
- Time
  - administration of contracts. See “Administration of contracts” under this index heading
  - execution of construction contracts, **2:46**
- Transportation Department. See “Department of Transportation” under this index heading

**PUBLIC CONTRACTS—Cont'd**

- Verified claims, **2:85, 2:88**
- Withdrawal of bids. See “Construction services” under this index heading

**PUBLIC RECORDS**

- Generally, **15:54 to 15:60**
- Application, **15:55**
- Confidential legal materials, **15:60**
- Construction diaries, **15:59**
- Contract bid documents, **15:59**
- Exemptions, generally, **15:56 to 15:60**
- Law, **15:54**
- Minutes of closed sessions, **15:58**
- Trade secrets, **15:57**

**PUNITIVE DAMAGES**

- Generally, **10:9**

**QUALITY**

- Implied warranty of habitability, **6:16**

**QUANTUM MERUIT**

- Extra-contractual remedies, **9:2**

**RATIFICATION AGREEMENTS**

- Bonds and sureties, **4:42**

**REAL PROPERTY**

- Bankruptcy, mechanic’s liens, **12:10**

**RECIPROCAL PROVISIONS**

- Damages, attorneys’ fees, **10:15**

**RECORDS**

- Generally, **15:54 to 15:60**
- For detailed treatment see index heading **PUBLIC RECORDS**

**REHABILITATION CODE**

- Building codes, applicability, **13:13**

**REIMBURSEMENT**

- Liens, wrongful payments, **3:65**

**RELIEF FROM JUDGMENT**

- Construction litigation, **15:51**

**REPOSE, STATUTES OF**

- Generally, **15:12 to 15:30**

**REPOSE, STATUTES OF—Cont'd**

- For detailed treatment see index heading **STATUTES OF LIMITATIONS AND REPOSE**

**RESCISSION OF CONTRACT**

- Generally, **1:13**

**RESIDENTIAL CASES**

- Negligence, economic loss rule, **11:11**

**RESIDENTIAL CONSTRUCTION**

- Building codes, applicability, **13:8**

**RESPONSIVE BIDS**

- Public contracts, construction services, **2:20**

**RETAINAGE**

- Public contracts. See index heading **PUBLIC CONTRACTS**

**RETENTION OF FUNDS**

- Liens, obligor’s duties regarding subcontractor’s claim upon funds, **3:62**

**REVIEW**

- See index heading **APPEAL AND REVIEW**

**REVISED UNIFORM ARBITRATION ACT**

- Generally, **17:3, 17:17 et seq.**

**SANCTIONS**

- Mediation, civil superior court actions, **16:6**

**SATISFACTION OF CLAIM**

- Liens, form, **3:84**

**SEALS**

- See index heading **LICENSES**

**SECOND TIER SUBCONTRACTORS**

- Liens. See index heading **LIENS**

**SERVICE OF NOTICE**

- Liens, claim upon funds, **3:58**

**SERVICE OF PROCESS**

- Generally, **15:35 to 15:37**
- For detailed treatment see index heading **CONSTRUCTION LITIGATION**

## INDEX

### SEVERABILITY

Arbitration agreements, **17:9**

### SINGLE-PRIME BIDDING

Public contracts, project delivery systems, **2:27**

### SITE CONDITIONS

Changes and delays, **7:5**

### SPECIAL DAMAGES

Changes and delays, owner damages, **7:17**

### SPECIAL INSPECTIONS

Building codes, **13:21**

### STANDARD FORM AGREEMENTS BETWEEN OWNER AND ARCHITECT (B SERIES)

American Institute of Architects (AIA) standard form construction contracts, **1:18**

### STATE CONSTRUCTION OFFICE

Building codes, **13:25**

### STATE COURT GENERAL RULES OF PRACTICE

Construction litigation, **15:31**

### STATUTES OF LIMITATIONS AND REPOSE

Generally, **15:12 to 15:30**

Discovery rule, **15:14, 15:15**

Equitable estoppel, **15:29**

Last act or omission, six year statute of repose, **15:22**

Liens. See index heading LIENS

Local government, actions against, **15:16**

Miscellaneous actions, **15:19**

Negligence

generally, **11:31 to 11:33**

for detailed treatment see index heading NEGLIGENCE

Payment bond actions, **4:33, 15:18**

Performance bond actions, **15:18**

Procedural issues, **15:20, 15:25**

Products liability, statute of repose, **15:28**

### STATUTES OF LIMITATIONS AND REPOSE—Cont'd

Professional negligence, statute of repose, **15:26, 15:27**

Six year statute of repose generally, **15:21 to 15:25**  
exceptions, **15:24**

procedural issues, **15:25**

substantial completion/last act or omission, **15:22**

warranty, breach of, **15:23**

State, claims brought by, **15:30**

Substantial completion, six year statute of repose, **15:22**

Three year statute of limitations generally, **15:13 to 15:15**

discovery rule, **15:14, 15:15**

warranties, discovery rule, **15:15**

Two year statute of limitations, **15:16**

Warranty, breach of

generally, **15:15, 15:23**

for detailed treatment see index heading WARRANTIES

### STAYS

Arbitration, **17:20**

Bankruptcy, **12:5, 12:16, 12:17**

### STOP WORK

Building codes, **13:22**

Nonperformance of contract, **8:4**

### STUCCO CASES

Negligence, economic loss rule, **11:13**

### SUBCONTRACTORS

Bankruptcy, debtors, **12:4**

Bonds and sureties, **4:20, 4:29, 4:46**

Licenses, **14:5**

Liens

generally, **3:46 to 3:67**

for detailed treatment see index heading LIENS

Public contracts. See index heading PUBLIC CONTRACTS

### SUBROGATION

Bonds and sureties, **4:39**

Liens

generally, **3:68 to 3:78**

**SUBROGATION—Cont'd**

Liens—Cont'd  
for detailed treatment see index  
heading LIENS

**SUBSEQUENT NEW VALUE**

Bankruptcy, preference, **12:34**

**SUBSTANTIAL COMPLETION**

Six year statute of repose, **15:22**

**SUBSTANTIAL PERFORMANCE  
DOCTRINE**

Generally, **8:10**

**SUITABILITY OF DRAWINGS AND  
SPECIFICATIONS**

Generally, **6:21 to 6:23**  
For detailed treatment see index  
heading WARRANTIES

**SUPERSEDING NEGLIGENCE**

Negligence, **11:29**

**SURETY BOND**

See index heading BONDS AND SURETIES

**SURVEYORS**

Licenses  
generally, **14:31 to 14:35**  
for detailed treatment see index  
heading LICENSES  
Negligence, **11:16, 15:27**

**TERMINATION OF  
PERFORMANCE**

Generally, **8:4**

**THEFT**

Extra-contractual remedies, **9:12**

**THIRD PARTIES**

Generally, **11:16 to 11:27**  
For detailed treatment see index  
heading NEGLIGENCE

**THIRD TIER SUBCONTRACTORS**

Liens. See index heading LIENS

**TIME AND DATE**

Liens. See index heading LIENS  
Public contracts. See index heading  
PUBLIC CONTRACTS

**TITLE**

Implied warranty, **6:25**

**TORTIOUS INTERFERENCE  
WITH CONTRACT**

Extra-contractual remedies, **9:10**

**TOTAL COST**

Delay damages, **7:25, 7:26**

**TRADE SECRETS**

Public records, **15:57**

**TRANSPORTATION  
DEPARTMENT**

Public contracts. See index heading  
PUBLIC CONTRACTS

**TREBLE DAMAGES**

Generally, **10:10**

**TUFCO RULE**

Insurance, determination of  
applicable policy, **5:5 to 5:7**

**UMBRELLA COVERAGE**

Insurance, **5:31**

**UNCONSCIONABILITY**

Nonperformance of contract, **8:23**

**UNFAIR TRADE PRACTICES**

Extra-contractual remedies, **9:9**

**UNIFORM COMMERCIAL CODE**

Bankruptcy, UCC financing state-  
ment, **12:26**  
Warranties  
generally, **6:26 to 6:32**  
for detailed treatment see index  
heading WARRANTIES

**UNJUST ENRICHMENT**

Extra-contractual remedies, **9:2**

**U.S. DISTRICT COURT**

Generally, **16:17 to 16:20**  
For detailed treatment see index  
heading MEDIATION

**VACATING AWARD**

Arbitration, **17:31**

**VENUE AND FORUM**

Generally, **15:1 to 15:11**

## INDEX

### VENUE AND FORUM—Cont'd

- Arbitration
  - Federal Arbitration Act preemption, forum selection clauses, **15:10**
  - forum selection clauses, **15:10, 17:41**
  - state courts, denial of motion to compel, **15:6**
- Choice-of-law provisions, **15:8**
- District courts, **15:3**
- Federal Arbitration Act preemption, forum selection clauses, **15:10**
- Federal courts, **15:7, 15:11**
- Forum selection clauses
  - generally, **15:9 to 15:11**
  - arbitration, **15:10, 17:41**
  - Federal Arbitration Act preemption, **15:10**
  - federal court, **15:11**
  - public policy limitations, **1:25**
- Liens, enforcement of claims on real property, **3:31**
- Payment bonds, claims against, **4:32**
- State courts
  - generally, **15:2 to 15:6**
  - appellate courts, **15:4 to 15:6**
  - arbitration, denial of motion to compel, **15:6**
  - substantial right, appellate courts, **15:5, 15:6**
  - superior and district courts, **15:3**
- Substantial right, state appellate courts, **15:5, 15:6**
- Superior courts, **15:3**

### VERIFIED CLAIMS

- Public contracts, **2:85, 2:88**

### WAIVER OR ESTOPPEL

- Arbitration
  - generally, **17:11 to 17:14**
  - for detailed treatment see index heading ARBITRATION
- Contracts, **1:12**
- Delay claims, defenses to, **7:12**
- Liens, right to assert lien on real property, **3:27**
- Nonperformance of contract, **8:16, 8:17**

### WAIVER OR ESTOPPEL—Cont'd

- Statutes of limitation and repose, equitable estoppel, **15:29**
- Warranties. See index heading WARRANTIES

### WARRANTIES

- Generally, **6:1 to 6:35**
- Accuracy and suitability of drawings and specifications, implied warranty of
  - generally, **6:21 to 6:23**
  - damages, **6:22**
  - defenses, **6:23**
- Claims, implied warranty of title free of, **6:25**
- Damages
  - generally, **6:33 to 6:35**
  - accuracy and suitability of drawings and specifications, implied warranty of, **6:22**
  - habitability, implied warranty of, **6:18**
  - non-Uniform Commercial Code, **6:34**
  - Uniform Commercial Code, **6:35**
  - workmanlike construction, implied warranty of, **6:7**
- Defenses
  - accuracy and suitability of drawings and specifications, implied warranty of, **6:23**
  - express warranties, **6:3**
  - habitability, implied warranty of, **6:19**
  - workmanlike construction, implied warranty of, **6:8**
- Delay, implied warranty not to, **6:24**
- Disclaimers, Uniform Commercial Code, **6:28, 6:30:6:32**
- Dwelling, implied warranty of habitability, **6:13**
- Express warranties
  - generally, **6:2 to 6:4**
  - defenses, **6:3**
  - statutes of limitation and repose, **6:4**
  - Uniform Commercial Code, **6:27, 6:28**

**WARRANTIES—Cont'd**

- Fitness for particular purpose, implied warranty under Uniform Commercial Code, **6:31, 6:32**
- Habitability, implied warranty of
  - generally, **6:10 to 6:20**
  - builder-vendor, **6:12**
  - damages, **6:18**
  - defense/waiver, **6:19**
  - dwelling, **6:13**
  - elements, generally, **6:11 to 6:17**
  - initial vendee, **6:15**
  - latent defects, **6:17**
  - quality, **6:16**
  - recently completed, **6:14**
  - statutes of limitation and repose, **6:20**
- Hinder, implied warranty not to, **6:24**
- Implied warranties
  - generally, **6:5 to 6:25**
  - accuracy and suitability of drawings and specifications, implied warranty of, above
  - claims, warranty of title free of, **6:25**
  - delay, warranty not to, **6:24**
  - habitability, implied warranty of, above
  - hinder, warranty not to, **6:24**
  - liens, warranty of title free of, **6:25**
  - title, warranty of, **6:25**
  - workmanlike construction, implied warranty of, below
- Latent defects, implied warranty of habitability, **6:17**
- Liens, implied warranty of title free of, **6:25**
- Limitation of actions. See “Statutes of limitations and repose” under this index heading
- Merchantability, implied warranty under Uniform Commercial Code, **6:29, 6:30**
- Quality, implied warranty of habitability, **6:16**
- Repose. See “Statutes of limitations and repose” under this index heading

**WARRANTIES—Cont'd**

- Statutes of limitations and repose
  - generally, **15:15, 15:23**
  - express warranties, **6:4**
  - habitability, implied warranty of, **6:20**
  - workmanlike construction, implied warranty of, **6:9**
- Suitability of drawings and specifications. See “Accuracy and suitability of drawings and specifications, implied warranty of” under this index heading
- Title, implied warranty of, **6:25**
- Uniform Commercial Code
  - generally, **6:26 to 6:32**
  - damages, **6:35**
  - disclaimers, **6:28, 6:30:6:32**
  - express warranties, **6:27, 6:28**
  - fitness for particular purpose, implied warranty of, **6:31, 6:32**
  - merchantability, implied warranty of, **6:29, 6:30**
- Waiver
  - habitability, implied warranty of, **6:19**
  - workmanlike construction, implied warranty of, **6:8**
- Workmanlike construction, implied warranty of
  - generally, **6:6 to 6:9**
  - damages, **6:7**
  - defense/waiver, **6:8**
  - statutes of limitation and repose, **6:9**

**WESTERN DISTRICT, NORTH CAROLINA JUDGE WHITNEY PROTOCOL**

- Construction litigation, electronic discovery, **15:43**

**WITHDRAWAL OF BIDS**

- Public contracts. See index heading PUBLIC CONTRACTS

**WITHDRAWAL OF NOTICE**

- Liens, claim upon funds, form, **3:91**



INDEX

**WITNESSES**

- Generally, **15:44 to 15:48**
- Consulting expert, **15:46**
- Exclusion, **15:48**
- Fact, **15:47**
- Licensure of testifying expert, **15:45**
- Testifying expert, **15:44**

**WOODSON CLAIMS**

- Negligence, **11:18**

**WORKERS' COMPENSATION**

- Insurance, **5:33**

**WORKMANLIKE**

**CONSTRUCTION, IMPLIED  
WARRANTY**

- Generally, **6:6 to 6:9**
- For detailed treatment see index  
heading **WARRANTIES**

**WRONGFUL PAYMENTS**

- Liens. See index heading **LIENS**

