

Retainage Laws in the District of Columbia, Maryland, and Virginia for Private, State, and Federal Projects

	GOVERNING STATUTES	RETAINAGE BY OWNER	RETAINAGE BY CONTRACTORS	RETAINAGE BY SUBCONTRACTORS	ADDITIONAL GUIDANCE
Federal Projects	48 C.F.R. § 32.103 and § 52.232-27	Retention up to a maximum of 10% of the contract. See 48 C.F.R. § 32.103	No regulation. See § 52.232-27	No regulation.	Retainage “may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.” See 48 C.F.R. § 32.103. FAR 52.232-27(d)(1) permits “the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a later payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond.”
District of Columbia - Public	D.C. CODE § 2-203.01.	Requires a minimum of 10% retention.	No regulation.	No regulation.	On all contracts, 10% <i>shall</i> be retained. Once 50% completion of the work is reached, the mayor has discretion to eliminate or reduce the retention.
District of Columbia - Private	No regulation.	No regulation.	No regulation.	No regulation.	No regulation.
Maryland - Public	Md. Code Ann., State Fin. & Proc. § 17-110	Retention up to a maximum of 5% of the contract (when contractor has furnished 100% payment and performance security).	Not more than the retainage by the public body. See Md. Code Ann., State Fin. & Proc. § 17-110 (c)(1).	Not more than the payments retained from the contractor. Md. Code Ann., State Fin. & Proc. § 17-110 (d)(1).	A public body may withhold from payments otherwise due a contractor any amount that the public body reasonably believes necessary to protect the public body’s interest. See Md. Code Ann., State Fin. & Proc. § 17-110 (b)(2). A contractor/subcontractor is not prohibited from withholding any amount in addition to retainage if the contractor determines that a subcontractor’s performance provides reasonable grounds for withholding the additional amount. <i>Id.</i> at (c)(2). Retainage must be released 120 days after satisfactory completion or resolution of any disputes. <i>Id.</i> at (b)(3) and (b)(4).

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Maryland - Private	Md. Code Ann., Real Prop. § 9-304 (West)	Retention up to a maximum of 5% for contracts above \$250,000, when 100% payment security and performance security furnished).	Retainage from the contractor to the subcontractor may not exceed the percentage of retention from the owner to the contractor.	Retainage from the subcontractors may not exceed the percentage of retention from contractor.	<p>The law does not prohibit withholding of any amount due from the owner to the contractor, contractor to subcontractor, or subcontractor to another subcontractor if the non-paying party reasonably determines that the contractor or subcontractor's performance under the contract provides reasonable grounds for withholding the additional amount.</p> <p>Law also does not apply to contracts for single family homes, contracts under \$250,000, or contracts funded by the Maryland Department of Housing and Community Development, home improvement contracts by Maryland-licensed home improvement contractors, or contracts covered by the Custom Home Protection Act.</p>
Virginia - Public	Va. Code Ann. § 2.2-4333	Up to a maximum of 5%.	Up to a maximum of 5%.	Up to a maximum of 5%.	On public contracts exceeding \$200,000, a contractor may place the retained funds in an escrow account; this option must be exercised in the bid proposal. Va. Code Ann. § 2.2- 4334.
Virginia - Private	No regulation.	No regulation.	No regulation.	No regulation.	No regulation.