

# PUBLICATION

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## Louisiana's New Retainage Law

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Louisiana Senate Bill No. 218 enacted La. R.S. 9:4815, a new section to Louisiana's Private Works Act, establishing mandatory escrow of retainage funds on private projects. This new law applies to private contracts of \$50,000 or more that permit the owner to withhold retainage from periodic payments due the contractor. The new law does not apply to public contracts, or to private contracts for single family residences, double family residences, or the construction or improvement of certain types of industrial facilities enumerated in the statute.

Section 4815 provides that the escrow account shall be interest bearing and located at a qualified financial institution selected by mutual agreement between the owner and the contractor.

Upon completion of the work, the funds, including interest, shall be paid to the contractor as follows:

- If there are no claims by the owner, funds are to be released three business days from the date that the escrow agent receives a written release signed by the contractor and owner; and
- If there is a dispute between the contractor and the owner, undisputed amounts shall be released three business days from the date that the escrow agent receives a notarized request from the contractor; disputed amounts shall be released three business days from the date that the escrow agent receives a final order from the court or the arbitrator. The section provides further that a written release signed by the contractor and owner, or an order issued by a court or arbitrator, shall act as a full release and discharge of the escrow agent. An escrow agent or financial institution cannot be held liable to the owner, contractor or any third party when complying with the new section.

Absent from new Section 4815 is guidance on whether the escrow requirements may be waived, and what, if any, damages or penalties apply for failure to implement the escrow arrangement. We expect that both of these questions will be addressed in the near future by courts attempting to interpret and implement the new legislation, and that the Louisiana Legislature be required to revisit the statute in order to address those issues.