

# Preserving Your Mechanics' Lien And Payment Bond Rights, A Handy Tool

By Henry L. Goldberg, Subcontractors Trade Association Legal Counsel



This month we are going to provide what should be a useful tool in preserving your mechanics' lien and payment bond rights. In "chart" form (which you may copy and distribute to key staff members), we have summarized the *essential due dates* for both initial mechanics' lien and payment bond notices, as well as critical lawsuit start dates necessary to enforce each.

This is all about *self-help*. You must be proactive and not inadvertently waive your rights. They are valuable, but as can be seen, they expire over relatively short periods of time.

It is also opportune at this time to highlight some of the new provisions [in yellow] the Subcontractors Trade Association was recently able to achieve as part of its highly successful legislative program in Albany. These legislative developments provide: (1) new mechanics' lien protection for sums being held as retainage (which greatly assists early trades whose lien rights may otherwise expire long before its retainage becomes due at the end of a project); (2) extend the trigger point on public projects for lawsuits against payment bond sureties; and (3) close the "no-mechanics' lien" loophole for private development on public land by mandating the public agency involved require a payment bond from the developer.

In these difficult times, it is particularly important not to sit on

your rights. The important thing to remember with both mechanics' liens and payment bond claim rights is that you either "use them... or lose them."

## About Goldberg & Connolly Attorneys at Law

*Goldberg & Connolly is a recognized authority on all aspects of construction and government contract law and is at the forefront of new issues, developments and legislation affecting the industry. The firm provides legal counsel in the areas of construction, government contracts, surety law, real estate development, environmental law and commercial law and litigation. Goldberg & Connolly also service the personal, corporate, business succession and estate planning needs of our entrepreneurial clientele. The firm has aggressively pursued the interests of its clients since 1955. More information may be found at: [www.goldbergconnolly.com](http://www.goldbergconnolly.com)*

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## Mechanics' Lien And Payment Bond Claims

### I. MECHANIC'S LIENS

	PRIVATE	PUBLIC	PRIVATE DEVELOPMENT ON PUBLIC LAND
<i>Before August 3, 2011</i>	No statutory requirement to post a payment bond. If required, timing and statute of limitations are governed by the terms of the payment bond.	Subcontractors <u>without</u> a direct contract with a general contractor must: (a) file a notice of claim within 120 days of the last date of work; and (b) commence a lawsuit within 1 year from the last date of work.  Subcontractors <u>with</u> a direct contract with the general contractor must commence a lawsuit within 1 year of the last date of work, without notice.	---
<i>On or After August 3, 2011</i>	[Same]	Subcontractors <u>with</u> a direct contract with the general contractor must commence a lawsuit within 1 year from completion and acceptance of the project.	Public owner must require a private developer to post a payment bond to guarantee payment to contractors.

### II. PAYMENT BONDS

	PRIVATE	PUBLIC	FOR RETAINAGE ONLY
<i>Before August 3, 2011</i>	Must file a mechanic's lien within 8 months from the last date of work performed.  Must commence a lawsuit within 1 year of timely filing a mechanic's lien, unless extended.	Must file a mechanic's lien within 30 days after completion and acceptance of the project.  Must commence a lawsuit within 1 year of timely filing a mechanic's lien, unless extended.	---
<i>On or After August 3, 2011</i>	[Same]	[Same]	Must file a mechanic's lien within 90 days after the date that retention was due to be released under the contract.  <u>Note:</u> Retainage claims only. Does <u>not</u> apply to: (a) public projects; or (b) contract balance/change order claims, etc.