



CONSTRUCTION LAW E-UPDATE

PRESERVING YOUR MECHANICS' LIEN AND PAYMENT BOND RIGHTS, A HANDY TOOL

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This month we are going to depart from the normal format of this column 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 STA 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." As always, please feel free to call with any questions or concerns.

I. MECHANIC'S LIENS

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



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II. PAYMENT BONDS

	PRIVATE	PUBLIC	FOR RETAINAGE ONLY
Before August 3, 2011	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.	
On or After August 3, 2011	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 without a direct contract with the 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 <u>from completion and acceptance of the project</u> . Subcontractors with a direct contract with the general contractor must commence a lawsuit within 1 year <u>from completion and acceptance of the project</u> .	Public owner must require a private developer to post a payment bond to guarantee payment to contractors.

This article has been prepared for informational purposes only. It is not a substitute for legal advice addressed to particular circumstances. You should not take or refrain from taking any legal action based upon the information contained herein without first seeking individualized legal counsel.

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