

Protecting Your Right to Payment

Mechanic's Liens

The filing deadline for liens depends on the type of property improved.

Residential improvement:	4 months from the time of last work.
Commercial Improvement:	8 months commercial from the time of last work.
Public improvement:	"At any time before the construction or demolition of a public improvement is completed and accepted . . . , and within thirty days after such completion and acceptance."
Retainage:	Ninety days "after the date the retainage was due to be released" – this is a new addition to the law.

Subcontractors and suppliers should assert their lien rights as soon as possible because the lien only attaches to the funds due the General Contractor (GC) – the owner only has to pay once in New York. For public jobs, the lien attaches to funds due the GC. For public improvements, lien rights extend only to sub-subcontractors.

A lien terminates if a lawsuit is not brought to foreclose the lien within one year unless an extension is obtained. For commercial property and public improvements, a single one-year extension is permitted; no extensions are permitted on residential projects. Even if the lien is "bonded off," you still must file a lawsuit within one year.

It is important not to overstate the amount due in the lien as this can subject the lienor to damages, including paying the other side's attorneys' fees and a penalty in the amount of the overstatement.

Payment Bonds on Public Projects

For payment bonds on public projects, subcontractors (and sub-subcontractors) have one year to sue on the bond from "the date on which the public improvement has been completed and accepted by the public owner." (State Finance Law 137(b).)

"Sub-subcontractors" additionally have to give notice to the GC within 120 days from "the date on which the last of the labor was performed." The sub-subcontractor's notice has to accurately state the amount claimed and the subcontractor's name, and be served on the GC personally or by registered mail.

Payment Bonds on Private Projects

For private projects, the terms of the bond will control the time limits for bringing a lawsuit, but the terms often reflect the statutory time limits for public projects.

Trust Fund Claims

The trust fund statute allows suits against corporate officers in their personal capacity. Suing a corporate officer personally adds additional assets from which to collect a debt, and puts pressure on the debtor to pay the debt. "No [trust fund] action shall be maintainable if commenced more than one year after the completion of such improvement or, in the case of subcontractors or materialmen, after the expiration of one year from the date on which final payment under the claimant's contract became due, whichever is later." (Lien Law 77.)

Breach of Contract and Account Stated

Breach of contract and account stated actions have a six year statute of limitations. The time limit can be shortened by the parties' contract.

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