

Mechanic's Liens

Michael J. Mattia, Esq. Jeremy Kalina, Esq.

* The authors gratefully acknowledge the assistance of Norman D. Alvy, Esq. and Frederick C. Wolsky, Esq. in the initial preparation of this text in 1990. Norman D. Alvy, Esq. also served as co-author from 1990–2017, and Marvin L. Schechter, Esq. served as co-author from 2018 until 2020.

New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207 or publications@nysba.org.

Copyright 2023 New York State Bar Association All rights reserved ISBN: 978-1-57969-278-0 Product Number: 40319224

CONTENTS

§ 1.1	Overview
	[A] Introduction
	[B] Client Interview
	[1] Construction Projects
	[2] Public Versus Private Improvement
	[C] Mechanic's Liens in General
	[1] Enactment of the Lien Law
	[2] Public Versus Private Improvement
	[D] Definitions
§ 1.2	Private Liens
	[A] Purpose of Filing a Mechanic's Lien on a Private Improvement
	[B] Type of Work or Materials for Which a Lien May Be Filed
	[C] Who May File a Mechanic's Lien
	[D] Contents of the Notice of Lien for a Private Improvement
	[E] When to File the Notice of Lien for a Private Improvement
	[F] Where to File the Notice of Lien
	[G] Service of the Private Notice of Mechanic's Lien
	[H] How to Assign a Lien (Private Lien)
	[I] How Long Does a Lien Last on a Private Improvement?
	[J] How to Discharge a Mechanic's Lien on a Private Improvement
	[1] Generally 47
	[2] Practice Guide and Caveat
	[3] Method of Service of Papers Pursuant to Lien Law § 19(6) 55
	[4] Bonding-off Liens
	[a] Procedure Prior to January 1, 2003 57
	[b] Bonding-off Procedure, Effective January 1, 2003
	[K] How to Enforce a Lien on Real Property
	[L] Priorities of Liens on Private Improvements
	[M] Demand Notices Upon Lienor—Private Improvements
§ 1.3	Trusts Established Under the Lien Law (Applicable to Both Public and Private Liens) 66
§ 1.4	Liens on Public Improvements
3 1	[A] Concept of the Public Fund
	[B] Who May File a Lien Against the Public Fund
	[C] Contents of Notice of Lien for a Public Improvement
	[D] When to File a Notice of Lien on a Public Improvement
	[E] Where to File a Public Improvement Lien
	[F] Practice Guide and Caveat to Practitioners
	[G] How Long Does a Lien Last on a Public Improvement?
	[H] How to Discharge a Mechanic's Lien on a Public Improvement
	[1] Lien Law § 21
	[2] Bonding-off Procedures for Public Improvement Liens
	[a] Bonding-off Procedure Prior to January 1, 2003
	[b] Bonding-off Procedure for a Public Improvement Lien Effective
	January 1, 2003
	January 1, 2003

	[c] Public Improvement Bond Requirements	79
	[d] Public Improvement Bond and Service Requirements	79
	[e] Service of the Bond	80
	[I] Enforcement of Lien Under Contract for Public Improvement	81
	[J] Priorities of Liens on Public Improvements	81
§ 1.5	Necessary Parties to a Lien Foreclosure Action: Private and Public Liens	82
§ 1.6	Pleadings in an Action to Foreclose the Private or Public Lien	84
§ 1.7	The Effect of Arbitration on the Action to Foreclose the Lien	84
§ 1.8	Bonds	85
	[A] Labor and Material Payment Bonds	85
	[B] Federal Public Work Bonds	86
	[C] State and Other Public Bodies	86
§ 1.9	Construction Trust	89
	[A] Article 3-A: Trust Fund Provisions	89
	[B] Lien Law § 76 and Election of Remedies	96
§ 1.10	Conclusion	101
Mechan	ic's Liens Forms Index	105
Table of	f Authorities	195
About th	About the Authors	

JEREMY KALINA, ESQ.

Jeremy Kalina is a partner of the firm of Kalina & Mattia, P.C. and specializes in the areas of construction law, surety law, and commercial litigation. Mr. Kalina has litigated and arbitrated cases involving breach of contract, extra work, delays, acceleration, defective materials, changed conditions, latent defects, design errors, constructive abandonment, payment bonds, performance bonds, lien foreclosure, and other issues in the world of complex construction litigation, for both plaintiffs and defendants, on both public and private construction projects. Mr. Kalina routinely engages in complex and extensive motion practice, appellate practice, mediations, arbitrations and trials, and provides contract analysis and negotiation for clients as well.

Mr. Kalina graduated from The George Washington University with a Bachelor's Degree in Communications and graduated with a Juris Doctor degree from New York Law School, where he served as Associate Editor of the *New York Law Journal of Human Rights*. Mr. Kalina has won multimillion dollar awards after trial for contractors against owners, sureties, and other contractors. He was recently selected to the 2023 Super Lawyers list, a "rating service of outstanding lawyers who have attained a high-degree of peer recognition and professional achievement," which comprises the top 5% of all attorneys in New York State.

MICHAEL J. MATTIA, ESQ.

Michael J. Mattia is a partner of the firm of Kalina & Mattia, P.C. and focuses on the areas of construction law, surety law, and commercial litigation. He received his Bachelor's Degree in Politics, Philosophy and Law from SUNY Binghamton and his Juris Doctor degree from Hofstra University School of Law. Mr. Mattia has litigated cases involving breach of contract, extra work, delays, acceleration, defective materials, changed conditions, latent defects, design errors, constructive abandonment, payment bonds, performance bonds, lien foreclosure, and other issues in the world of complex construction litigation, for both plaintiffs and defendants, on both public and private construction projects. Mr. Mattia has also lectured for Lorman Educational Service and the Nassau County Bar Associations.