

NEW YORK LAWYERS' PRACTICAL SKILLS SERIES

Mechanic's Liens

2021-2022

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 in1990. Norman D. Alvy, Esq. also served as co-author from 1990–2017, and Marvin L. Schecter, Esq. served as co-author from 2018 until 2020.

NEW YORK STATE BAR ASSOCIATION

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.

Copyright 2021
New York State Bar Association
All rights reserved
ISBN: 978-1-57969-050-2
Product Number: 40319222

CONTENTS

I.	Ov	Overview		
	A.	Introduction	1	
	B.	Client Interview	2	
		1. Construction Projects	2	
		2. Public Versus Private Improvement	2	
	C.	Mechanic's Liens in General	3	
		1. Enactment of the Lien Law	3	
		2. Public Versus Private Improvement	4	
	D.	Definitions	7	
II.	Private Liens 8			
	A.	Purpose of Filing a Mechanic's Lien on a Private Improvement	8	
	B.	Type of Work or Materials for Which a Lien May Be Filed	9	
	C.	Who May File a Mechanic's Lien	12	
	D.	Contents of the Notice of Lien for a Private Improvement	18	
	E.	When to File the Notice of Lien for a Private Improvement	28	
	F.	Where to File the Notice of Lien	31	
	G.	Service of the Private Notice of Mechanic's Lien	31	
	Н.	How to Assign a Lien (Private Lien)	33	
	I.	How Long Does a Lien Last on a Private Improvement?	33	
	J.	How to Discharge a Mechanic's Lien on a Private Improvement	41	
		1. Generally	41	
		2. Practice Guide and Caveat	43	
		3. Method of Service of Papers Pursuant to Lien Law § 19(6)	49	
		4. Bonding-off Liens	50	
		a. Procedure Prior to January 1, 2003	51	
		b. Bonding-off Procedure, Effective January 1, 2003	51	
	K.	How to Enforce a Lien on Real Property	53	
	L.	Priorities of Liens on Private Improvements	54	
	M.	Demand Notices Upon Lienor—Private Improvements	57	
III.	Tru	asts Established Under the Lien Law (Applicable to Both Public and		
		vate Liens)	59	
IV.	Lie	ens on Public Improvements	63	
	A.	Concept of the Public Fund	63	
	B.	Who May File a Lien Against the Public Fund	64	
	C.	Contents of Notice of Lien for a Public Improvement	65	
	D.	When to File a Notice of Lien on a Public Improvement	65	
	E.	Where to File a Public Improvement Lien	65	
	F.	Practice Guide and Caveat to Practitioners	66	
	G.	How Long Does a Lien Last on a Public Improvement?	67	
	H.	How to Discharge a Mechanic's Lien on a Public Improvement	69	
		1. Lien Law § 21	69	
		2. Bonding-off Procedures for Public Improvement Liens	70	
		a. Bonding-off Procedure Prior to January 1, 2003	70	

	b. Bonding-off Procedure for a Public Improvement	
	Lien Effective January 1, 2003	71
	c. Public Improvement Bond Requirements	71
	d. Public Improvement Bond and Service Requirements	71
	e. Service of the Bond	72
	I. Enforcement of Lien Under Contract for Public Improvement	72
	J. Priorities of Liens on Public Improvements	73
V.	Necessary Parties to a Lien Foreclosure Action: Private and Public Liens	74
VI.	Pleadings in an Action to Foreclose the Private or Public Lien	75
VII.	The Effect of Arbitration on the Action to Foreclose the Lien	76
VIII.	Bonds	76
	A. Labor and Material Payment Bonds	76
	B. Federal Public Work Bonds	77
	C. State and Other Public Bodies	78
IX.	Construction Trust	80
	A. Article 3-A: Trust Fund Provisions	80
	B. Lien Law § 76 and Election of Remedies	86
X.	Conclusion	91
Mechar	nic's Liens Forms Index	95
Table o	of Authorities	167
About t	the Authors	181

ABOUT THE AUTHORS 181

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 multi-million dollar awards after trial for contractors against owners, sureties, and other contractors.

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.