New York Lawyers' Practical Skills Series

Mechanic's Liens

George Foster Mackey, Esq.*
Norman D. Alvy, Esq.

2012–2013

* The authors gratefully acknowledge the assistance of Frederick C. Wolsky, Esq., in the initial preparation of this text in 1990.

NEW YORK STATE BAR ASSOCIATION NYSBA

New York State Bar Association Continuing Legal Education 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: CLE Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2012
New York State Bar Association
All rights reserved
ISBN: 1-57969-366-0
Product Number: 403192

CONTENTS

I. Overview 1
- 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 6

II. Private Liens 7
- A. Purpose of Filing a Mechanic's Lien on a Private Improvement 7
- B. Type of Work or Materials for Which a Lien May Be Filed 8
- C. Who May File a Mechanic's Lien 9
- D. Contents of the Notice of Lien for a Private Improvement 13
- E. When to File the Notice of Lien for a Private Improvement 19
- F. Where to File the Notice of Lien 21
- G. Service of the Private Notice of Mechanic's Lien 22
- H. How to Assign a Lien (Private Lien) 23
- I. How Long Does a Lien Last on a Private Improvement? 23
- J. How to Discharge a Mechanic's Lien on a Private Improvement 30
  - 1. Generally 30
  - 2. Practice Guide and Caveat 32
  - 3. Method of Service of Papers Pursuant to Lien Law § 19(6) 36
  - 4. Bonding-off Liens 38
    - a. Procedure Prior to January 1, 2003 38
    - b. Bonding-off Procedure, Effective January 1, 2003 38
- K. How to Enforce a Lien on Real Property 40
- L. Priorities of Liens on Private Improvements 41
- M. Demand Notices Upon Lienor—Private Improvements 43

III. Trusts Established Under the Lien Law (Applicable to Both Public and Private Liens) 44

IV. Liens on Public Improvements 47
- A. Concept of the Public Fund 47
- B. Who May File a Lien Against the Public Fund 48
- C. Contents of Notice of Lien for a Public Improvement 49
- D. When to File a Notice of Lien on a Public Improvement 49
- E. Where to File a Public Improvement Lien 49
- F. Practice Guide and Caveat to Practitioners 50
- G. How Long Does a Lien Last on a Public Improvement? 51
- H. How to Discharge a Mechanic's Lien on a Public Improvement 53
  - 1. Lien Law § 21 53
  - 2. Bonding-off Procedures for Public Improvement Liens 54
    - a. Bonding-off Procedure Prior to January 1, 2003 54
    - b. Bonding-off Procedure for a Public Improvement Lien Effective January 1, 2003 54

c. Public Improvement Bond Requirements 54
d. Public Improvement Bond and Service Requirements 55
e. Service of the Bond 55
I. Enforcement of Lien Under Contract for Public Improvement 56
J. Priorities of Liens on Public Improvements 56
V. Necessary Parties to a Lien Foreclosure Action: Private and Public Liens 57
VI. Pleadings in an Action to Foreclose the Private or Public Lien 59
VII. The Effect of Arbitration on the Action to Foreclose the Lien 59
VIII. Bonds 59
A. Labor and Material Payment Bonds 59
B. Federal Public Work Bonds 60
C. State and Other Public Bodies 61
IX. Construction Trust 63
A. Article 3-A: Trust Fund Provisions 63
B. Lien Law § 76 and Election of Remedies 66
X. Conclusion 68

Mechanic's Liens Forms Index 71

Table of Authorities 151
About the Authors 161

NORMAN D. ALVY, ESQ.

Mr. Alvy is head of the commercial litigation and construction law group at the law firm of Ficara & Associates, P.C., in Melville, NY. He is a graduate of Cornell University, School of Industrial and Labor Relations, and the State University of New York at Buffalo, School of Law. For over 35 years, he has primarily been practicing in the construction law, government contracts and surety fields. He is a member of the New York State Bar Association, its Municipal Law Section and its Torts, Insurance and Compensation Law Section. He has written numerous articles concerning the construction law field and is a member of several contractor and building associations in the New York metropolitan area. He is also counsel to the Queens and Bronx Building Association.

GEORGE FOSTER MACKEY, ESQ.

George Mackey is of counsel to the law firm of Lewis & McKenna, with offices in Saddle River, New Jersey, and New York City, practicing in construction and engineering, public contract and surety law. He is a graduate of Trinity College and the New York University School of Law; and he is a member of the American Bar Association Section on Dispute Resolution. He is a former associate editor of *The Procurement Lawyer*, published by the Public Contract Law Section of the American Bar Association. Mr. Mackey also serves on the National Panel of Construction Industry Arbitrators, American Arbitration Association. He is also a member of the New Jersey Bar as well as the Florida Bar. Mr. Mackey has written and lectured on construction industry topics to bar groups, contractors and sureties.