

MECHANIC'S LIENS AND PAYMENT BOND CLAIMS: A BASIC OVERVIEW FOR CONTRACTORS

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Imagine you are serving as the general contractor for a massive urban development job, responsible for building a skyscraper in downtown Philadelphia. Everything is going smoothly until the project is 90 percent complete and the property developer informs you they are not going to pay you in full for the work because of an issue with the electric wiring. You know your company or your subcontractors adequately installed the wiring and feel this refusal to pay is unjustified. What are your legal rights to fight this claim?

Failing to receive full payment for a job is a major nightmare. Unfortunately, it happens all of the time. The good news is there are tools available to contractors that can help ensure they get paid for their work.

There are two main recourses in these situations depending on the type of project: mechanic's liens filed against the property developer and payment bond claims.

A mechanic's lien is a security interest in real property that secures payments to a party who has improved the real estate with labor, materials or supplies.

Payment bond claims are another tactic used by government contractors that work on publicly-funded projects. All public projects will require the general contractor to provide a payment bond. Some private jobs require bonds as well.

Mechanic's liens severely handcuff an owner when it comes to their property. They can cause the bank financing the construction to stop monthly draws and can prevent the property owner from receiving permanent financing and a certificate of occupancy until the lien is satisfied with either cash, a letter of credit or a lien surety bond.

Because these liens carry serious consequences for the property owner, before a contractor can file for a mechanic's lien or a payment bond claim, there are a few considerations they must take into account. At Conner Strong & Buckelew, we have dedicated teams that provide guidance in cases where contractors are not getting paid.

Here are the four steps to take if you are a contractor exploring your options for using mechanic's liens or payment bond claims.

1 IDENTIFY THE BEST TOOL: MECHANIC'S LIEN VERSUS PAYMENT BOND CLAIMS

Mechanic's liens are a great tool to assist contractors in getting paid on private real estate jobs, but mechanic's lien laws do not apply to public projects.

Instead, these contractors are protected under payment bonds. If a contractor isn't paid in a timely manner per the terms of the contract, they can file a claim on the payment bond and potentially receive payment that way.

There are a few other important distinctions between these two strategies. Liens create a security interest in the improved real estate for the amount due and owed. Requirements also vary from state to state. Payment bonds are slightly different in that they provide an underwritten payment guaranty for the amount due. It creates a financial obligation to pay subcontractors per the terms of the construction contract, and the process of filing a claim against a payment bond is typically detailed in the bond form.

2 BUILD A CHECKLIST: WHAT CONTRACTORS NEED TO FILE A LIEN

For contractors filing for a lien, there are a few pieces of information they will need to have no matter what state they're filing in.

Below are a few of the most important pieces of required information:

- Claimant's name, the property description and owner
- Description of unpaid labor, materials and/or supplies
- Last date of work or materials supplied
- Agreement date and parties involved
- Amount due and owed

Certain delay damages, materials or work not incorporated into a renovated property and general conditions costs could exclude a contractor from qualifying for a lien. It is also important to remember that landscaping work and other land improvements not incidental to construction oftentimes do not qualify a contractor to file for a lien.

3 UNDERSTAND THE CORRECT TIMING: HITTING THE FILING DEADLINES

Depending on which state the contractor is operating in and whether or not they are filing for a mechanic's lien or a claim on a payment bond, the deadlines for filing vary. Below is a reference chart to help contractors operating in Pennsylvania and New Jersey understand the timing around this process. If you are operating in another state, contact a Conner Strong & Buckelew representative and we will help you ensure you have the correct filing timeline.

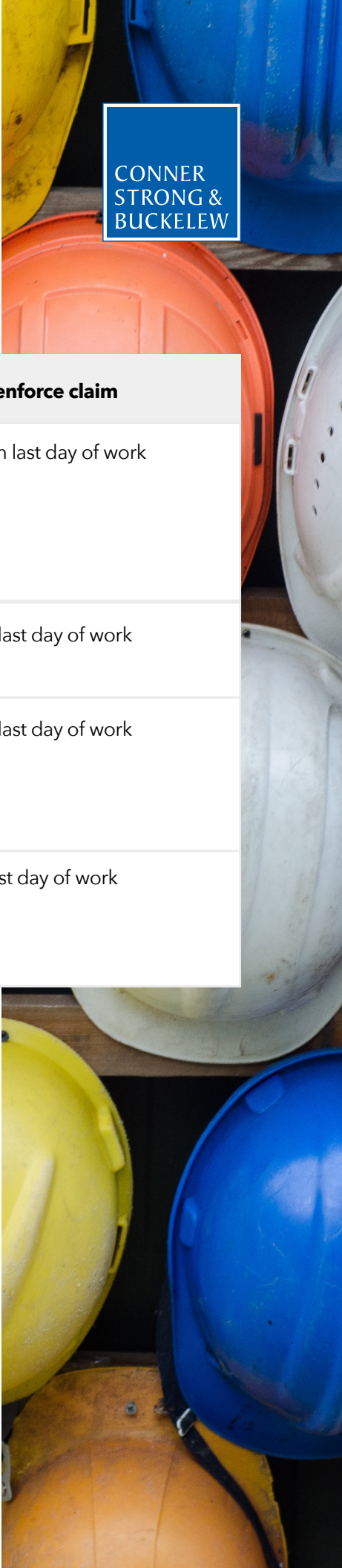


	Preliminary notice needed?	Deadline to enforce claim
Pennsylvania Mechanic's Lien	✓ Yes - On searchable projects, notice of furnishing is required within 45 days of starting work. Sub-contractors must give the owner 30 days written notice.	6 months from last day of work
New Jersey Construction Lien	✗ No	90 days from last day of work
Pennsylvania Payment Bond Claim	✓ Yes - Written notice is required within 90 days of last date of work for those not in direct contact with the bond principal	90 days from last day of work
New Jersey Payment Bond Claim	✓ Yes - Written notice is required within 90 days of last date of work for those not in direct contact with the bond principal	1 year from last day of work

4 KNOW IF YOUR FILING WILL QUALIFY: ELIGIBILITY AND THE EXTENSION OF LIEN RIGHTS

Eligibility for filing a mechanic's lien typically depends on whether or not the contractor has a "contract" with the real estate owner. Depending on the state, the definition of a contract as recognized by the courts varies slightly:

- In New Jersey, a contract constitutes as any written agreement signed by the party against whom the lien is asserted. It must also detail the respective responsibilities of the contracting parties, including the price that was agreed to be paid. It should also explain the benefit or improvement to the property that the contractor was supposed to perform.
- In Pennsylvania, a "contractor" is someone who, by contract with the owner, erects, constructs, alters or repairs an improvement or any part of the real estate. It also includes someone who furnishes labor, skill or superintendence.





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The scope in which liens can be applied is also limited. In both Pennsylvania and New Jersey, payment bond claims and mechanic liens can extend to general contractors, first-tier subcontractors and second-tier subcontractors, but no further. If you are operating in another state, contact a Conner Strong & Buckelew representative and we will ensure you understand your eligibility qualifications.

BRINGING IT ALL TOGETHER

Mechanic's liens and payment bond claims are necessary tools contractors must know how to leverage in the event they are not being paid in full for a job well done. Knowing exactly when and how to deploy these tactics can be a difficult process. To ensure the lien and claims are filed for properly and on time, contractors are wise to surround themselves with third-party insurance and surety brokers as well as attorneys who are well versed in this area. Otherwise, these payment issues can turn into hung receivables and can have an adverse impact on a contractor's bank and surety lines of credit.

To discuss mechanic's liens and payment bond claims:

Please contact a Conner Strong & Buckelew representative



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