

# CONSTRUCTION LAW NEWSLETTER

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## TRENDS IN CONSTRUCTION LAW

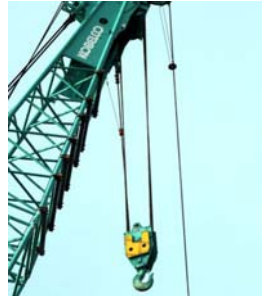
Labor and Material Payment bonds are one of the best ways to secure payment on a construction project, particularly on public projects.

These bonds exist for public projects partially because unpaid contractors are unable to foreclose on and sell public property, as with private property.

The NYS State Finance Law provides the minimum bond protections which must be present for all pub-

lic improvement labor and material payment bonds.

For example, subcontractors and sub-subcontractors (or suppliers to a subcontractor) have statutory bond rights pursuant to the State Finance Law. Any attempt to limit bond rights to only subcontractors is void. Another example of an unenforceable term common in public improvement bonds is limiting the time period to provide notice of a claim to the GC to 90 days. The statute provides for a 120 day time period and



caselaw has held that this period cannot be shortened.

It should be noted that State Finance Law 137(2) permits a party to request a copy of the bond from the owner if it has not already been provided.

**Jordan R. Pavlus, Esq.**  
Email: [jpavlus@bcplegal.com](mailto:jpavlus@bcplegal.com)

**Zea M. Wright, Esq.**  
Email: [zwright@bcplegal.com](mailto:zwright@bcplegal.com)

**Gregory P. Bazan, Esq.**  
Email: [gbazan@bcplegal.com](mailto:gbazan@bcplegal.com)



**Byrne, Costello & Pickard, P.C.**

**ATTORNEYS AT LAW**

**Tower I, Suite 1600  
100 Madison Street  
Syracuse, New York 13202**

**PHONE 315/474-6448  
FAX 315/424-8556**

**Website: [www.bcplegal.com](http://www.bcplegal.com)**

## CASE LAW UPDATE

On May 9, 2016, Justice Jeffrey S. Brown, of the Nassau County Supreme Court, decided the case of *Matter of Shilian v. All Sons Elec. Corp.*

The case dealt with the issue of whether a mechanic's lien could be extended for one year despite the lienors failure to extend it in compliance with the Lien Law.

Therein, the contractor filed a mechanic's lien on the owner's property on Novem-

ber 21, 2014. On November 9, 2015, the lienor filed an extension of lien to extend the lien for an additional year. However, the lienor was evidently unaware that the property was a single family home, for which a court order is required to extend a mechanic's lien.

The owner's filed a petition to discharge the lien due to the lienor's failure to comply with the requirements for a lien extension set forth in Lien Law section 17.

The lienor cross-moved for an order extending its mechanic's lien as of November 9, 2015, arguing that the owners were not prejudiced thereby because they were on notice of the lienor's attempt to extend its lien.

The court found that the lienor demonstrated good cause and that its lien would be extended for the additional year sought, despite its failure to comply with the Lien Law.

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