

# INTERROGATORIES

*Questions from members of the Bar on any subject are most welcome and should be addressed to "Interrogatories," c/o John L. McCarthy, 130 Orinoco Drive, Brightwaters, N. Y. 11718 or Milton Beech, 2 Lakeview Ave., Lynbrook, N. Y. 11563.*

## MECHANICS' LIENS

Prepared by Guest Author, BRUCE J. BERGMAN\*

1. Q. Is the fact that a job or project is "private" as opposed to "public" particularly relevant to the law relating to mechanics' liens?  
A. Yes. It is absolutely critical because much of the law is different as to each, and separate sections of the Lien Law are applicable. Thus, the character of the improvement as public or private is one of the first things to be ascertained.
2. Q. Concerning a private project, who can file a mechanics' lien?  
A. Pursuant to Lien Law § 3, a contractor, subcontractor, laborer, materialman and those in some more obscure categories, who performs labor or furnishes materials for the improvement of real property, all of course with the consent or at the request of the owner or of his agent. Just who is encompassed by the definition "contractor" etc., what the "consent" of the owner is, and what work or labor is actually contemplated by the statute has been the subject of considerable litigation. Accordingly, it is recommended that counsel carefully review the annotations to specifically ascertain the status of his particular facts.
3. Q. What is the effect of filing a lien for a private improvement?  
A. Essentially it becomes a lien of record against the real property itself, creating an obvious alienation problem for the owner, which in turn is the source of the effectiveness of filing the mechanics' lien.
4. Q. Is there anything an owner of liened real property can do to unencumber his property?  
A. Yes. In addition to the more obvious remedies, (filing a lienor's satisfaction; merely waiting for a careless lienor to allow his lien to expire; moving to dismiss the lien for failure to prosecute; filing a transcript of judgment of the lien foreclosure action itself; moving to dismiss a defective lien), the owner can "bond off" the lien. Lien Law § 19(4) outlines the procedure which basically substitutes the promise by bond of a surety to pay that sum which shall be found to be due upon the lien after judgment. It is a two step procedure requiring first an ex parte order to fix the amount of the bond, followed by an application on notice to the lienor to discharge the lien based upon the

*(Continued on Page 93)*

\* Associated with Rivkin, Leff & Sherman, Garden City; member, Editorial Board.

## INTERROGATORIES (Continued from Page 77)

posting of the bond. (If the lien had been filed by a subcontractor, as opposed to the contractor, it is likely that the owner would look to the contractor to obtain the bond.)

5. Q. When is a lien for a private improvement to be filed?
  - A. Time is an essential factor, not an unusual statement in the law—but particularly relevant to mechanics' liens because the time limitations are so short. The notice of lien can be filed at any time during the progress of the job or within *four* months after completion of the contract or the final performance of the work, dating from the last item of work performed. Note, however, that coming back to the job to do *extra* work will neither revive the time nor extend it.
6. Q. Where is a lien for a private improvement to be filed?
  - A. In the clerk's office of the county where the property is located. If the property is in two or more counties, file with the clerks of each county.
7. Q. Once a notice of lien for a private improvement is duly filed, is there any requirement that it be served upon anyone?
  - A. No, there is nothing mandatory. However, pursuant to Lien Law § 11, the lienor *may* serve the notice upon the owner. In actuality, this must be done because until the owner receives this service, he is protected for all good faith payments made. The practical effect is that an owner can make all payments due on a contract leaving no sum to which the lien can "attach". If no money remains due under the contract, the lien would be useless. *Ergo*, serve the notice.
8. Q. What is the duration of a lien for private improvement?
  - A. It lasts for *one* year from the date of filing, although extensions of one year each can be obtained upon application to a court of record. Starting the lien foreclosure action itself continues the effectiveness of the lien *so long as a lis pendens is filed*. If a lienor is made a party defendant by another lienor in a lien foreclosure action, the former's lien is continued and he need not file a *lis pendens*. (Lien Law § 17).

**SUPPORT YOUR  
BAR ASSOCIATION  
CONTRIBUTE TO  
THE BUILDING FUND**