

S. 3179

A. 5022

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

February 10, 2011

IN SENATE -- Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. CUSICK, CASTRO -- Multi-Sponsored by -- M. of A. BOYLAND, GUNTHER, MAYERSOHN -- read once and referred to the Committee on Judiciary

AN ACT to amend the lien law, in relation to lien filings for retainage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 10 of the lien law, as amended by
2 chapter 288 of the laws of 2000, is amended to read as follows:
3 1. Notice of lien may be filed at any time during the progress of the
4 work and the furnishing of the materials, or, within eight months after
5 the completion of the contract, or the final performance of the work, or
6 the final furnishing of the materials, dating from the last item of work
7 performed or materials furnished; provided, however, that where the
8 improvement is related to real property improved or to be improved with
9 a single family dwelling, the notice of lien may be filed at any time
10 during the progress of the work and the furnishing of the materials, or,
11 within four months after the completion of the contract, or the final
12 performance of the work, or the final furnishing of the materials,
13 dating from the last item of work performed or materials furnished; AND
14 PROVIDED FURTHER WHERE THE NOTICE OF LIEN IS FOR RETAINAGE, THE NOTICE
15 OF LIEN MAY BE FILED WITHIN NINETY DAYS AFTER THE DATE THE RETAINAGE WAS
16 DUE TO BE RELEASED; except that in the case of a lien by a real estate
17 broker, the notice of lien may be filed only after the performance of
18 the brokerage services and execution of lease by both lessor and lessee
19 and only if a copy of the alleged written agreement of employment or
20 compensation is annexed to the notice of lien, provided that where the
21 payment pursuant to the written agreement of employment or compensation

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 is to be made in installments, then a notice of lien may be filed within
2 eight months after the final payment is due, but in no event later than
3 a date five years after the first payment was made. For purposes of this
4 section, the term "single family dwelling" shall not include a dwelling
5 unit which is a part of a subdivision that has been filed with a munici-
6 pality in which the subdivision is located when at the time the lien is
7 filed, such property in the subdivision is owned by the developer for
8 purposes other than his personal residence. For purposes of this
9 section, "developer" shall mean and include any private individual,
10 partnership, trust or corporation which improves two or more parcels of
11 real property with single family dwellings pursuant to a common scheme
12 or plan. The notice of lien must be filed in the clerk's office of the
13 county where the property is situated. If such property is situated in
14 two or more counties, the notice of lien shall be filed in the office of
15 the clerk of each of such counties. The county clerk of each county
16 shall provide and keep a book to be called the "lien docket," which
17 shall be suitably ruled in columns headed "owners," "lienors," "lienor's
18 attorney," "property," "amount," "time of filing," "proceedings had," in
19 each of which he shall enter the particulars of the notice, properly
20 belonging therein. The date, hour and minute of the filing of each
21 notice of lien shall be entered in the proper column. Except where the
22 county clerk maintains a block index, the names of the owners shall be
23 arranged in such book in alphabetical order. The validity of the lien
24 and the right to file a notice thereof shall not be affected by the
25 death of the owner before notice of the lien is filed.

26 S 2. This act shall take effect immediately.