

## **STATEMENT FROM STUART S. ZISHOLTZ**

Over the years, contractors have reached out to us to inquire as to whether they can pursue a claim even if they did not file a Mechanic's Lien. The obvious answer to that question is yes.

Many people are confused about their legal rights. Some contractors believe that the failure to file a Mechanic's Lien forfeits their rights to collect the amount due. That falsehood is illogical. A Mechanic's Lien is a device used to protect the contractor's receivable. It is only one part of a host of other options available to you in order to collect your receivables. You can sue to foreclose on the lien, for breach of contract, account stated, quantum meruit, unjust enrichment, violation of the trust provisions in the Lien Law, etc.

The statute of limitations for a breach of contract is six years from the breach. This means that when the owner or the general contractor fails to remit payment to you, you have six years to sue for the amount due. I do not recommend that you wait six years because the longer things drag on, the more likely records will be lost and memories will be forgotten. Remember, however, that a Mechanic's Lien is only good for one year. It can be renewed for an additional year but I never recommend waiting that long. Further, the filing of a Mechanic's Lien does not guarantee payment. If you are not paid within 60-90 days after the lien was filed, it is time to get more aggressive and commence a foreclosure action. Sitting around and listening to multiple excuses as to why you are not being paid is bad business practice. Similarly, not filing a Mechanic's Lien does not mean that you are not due the money for the work performed and materials furnished. You can still pursue your claim for breach of contract, account stated, etc.

My recommendation is always to file a Mechanic's Lien. By filing a Mechanic's Lien, you are securing your receivable. However, if you do not file a Mechanic's Lien, it does not mean you must write off the receivable.

Never let your lien time run out!

For a free copy of our pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me.

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