

### Terminology, Lien Waivers, and Design Pros

- The Notice of Non-Payment is now the **Notice of Claim for Unpaid Labor or Materials**.
- The Notice of Retainage is now the **Notice of Claim for Retainage**. *Retainage held by the owner is now referred to as reserved funds (instead of retainage).*
- Lien rights are now extended to architects, engineers, surveyors, and **design professionals**, regardless of whom they contract with.
- A **subcontractor** is now defined as one who supplies materials or labor to a general contractor or to a subcontractor of any tier.
- **Residential** projects now include individually owned condominiums. *(In addition to a single-family house, duplex, triplex, quadruplex, or a unit in a multi-unit structure used for residential purposes.)*
- **Lien waivers** no longer need to be notarized.

### When Are Changes Effective?

The new statute applies only to general contracts (contracts between the owner and prime contractor) entered on or after January 1, 2022. General contracts entered before January 1, 2022, will follow current statute. If you are unsure whether the general contract was entered on or after January 1, 2022, NCS recommends you follow the "OLD" statute.

**OLD**

effective for general contracts executed before 1/1/2022

**NEW**

effective for general contracts executed on/after 1/1/2022

### Notice of Non-Payment / Notice of Claim for Unpaid Labor or Materials

Contracting with a **Prime Contractor**:

- Serve a notice of non-payment upon the owner and the prime contractor by the **15th day of the third month** following each month of furnishing. (aka: 3rd month notice)

Contracting with the **Subcontractor**:

- Serve a notice of non-payment upon the prime contractor by the **15th day of the second month** following each month of furnishing. (aka: 2nd month notice)
- Serve a notice of non-payment upon the owner and the prime contractor by the **15th day of the third month** following each month of furnishing. (aka: 3rd month notice)

Contracting with a **Prime Contractor** or **Subcontractor**:

- Service a notice of claim for unpaid labor or materials upon the owner and the prime contractor by the **15th day of the third month** following each month of furnishing. (aka: 3rd month notice)

**If the general contract date is unknown, the requirements for the 2nd month notice should be followed.**

**NCS recommends serving both the 2nd month and the 3rd month notices.**

### Deadline Calculations: Notices

Statute requires notices to be postmarked by the 15th.

If the 15th falls on a weekend or holiday, the notice must be postmarked no later than the **prior business day**.

If the 15th falls on a weekend or holiday, the deadline to postmark the notices will be **the first business day following the 15th**.

If the general contract date is unknown, the notice should be postmarked prior to the weekend or the holiday.

**NCS recommends you continue to postmark notices prior to the 15th when the 15th falls on a weekend or holiday.**

# Specially Fabricated Materials

A Notice of **Specially Fabricated Materials** may protect the right to file a lien if the materials are not incorporated into the project.

Serve **notice** upon the owner and prime contractor no later than the **15th day of the second month** in which claimant received and accepted the order.

Statute now defines "materials" to include specially fabricated materials; therefore, **a separate notice will no longer be required.**

If an order for specially fabricated materials is cancelled, serve a Notice of Claim for Unpaid Labor or Materials, no later than the 15th day of the 3rd month (2nd month if residential) after the month during which the undelivered specially fabricated materials would normally have been delivered.

## Delivery / Service of Notices

Notices should be served in person or via **certified mail.**

Notices should be served in person, via **certified mail**, or "by any other form of traceable, private delivery or mailing service that can confirm proof of receipt."

**NCS recommends serving notices via certified mail as they are considered effective upon "depositing or mailing" the document.**

## Deadline Calculations: Mechanic's Lien

### Commercial Projects

- Prime Contractors: Serve the lien no later than the **15th day of the fourth month following the last month of furnishing.**
- Subcontractors & Material Suppliers: Serve the lien no later than the **15th day of the fourth month following the last month of furnishing or within 40 days after completion**, termination, or abandonment of the prime contract.

### Residential Projects

- Prime Contractors: Serve the lien no later than the **15th day of the third month following the last month of furnishing.**
- Subcontractors & Material Suppliers: Serve the lien no later than the **15th day of the third month following the last month of furnishing or within 40 days after completion**, termination, or abandonment of the prime contract.

### Commercial Projects

- Prime Contractors: Serve the lien no later than the **15th day of the fourth month from completion, termination, or abandonment of your contract.**
- Subcontractors & Material Suppliers: Serve the lien no later than the **15th day of the fourth month after the later of: last month of furnishing** or when undelivered specially fabricated materials would have normally been delivered.

### Residential Projects

- Prime Contractors: Serve the lien no later than the **15th day of the third month from completion, termination, or abandonment of your contract.**
- Subcontractors & Material Suppliers: Serve the lien no later than the **15th day of the third month after the later of: last month of furnishing** or when undelivered specially fabricated materials would have normally been delivered.

## Deadline Calculations: Suit

For **commercial** projects, suit must be filed within **2 years (within 1 year for residential projects)** from the last date the claimant could have filed a lien, OR within 1 year after completion of the general contract under which the lien is claimed, whichever is later.

Regardless of project type, **suit must be filed within 1 year** from the last date the claimant could have filed the lien.

# Questions? Contact NCS!

SecureYourTomorrow@NCScredit.com | www.NCScredit.com | 800.826.5256

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*This information is provided with the understanding that the publisher is not engaged in rendering legal advice. NCS recommends retaining an attorney for each case.*