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Law: Owners beware: Payment bonds must be filed with county clerk - by Joseph Asselta

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Either at its own election, or because a construction lender requires it, many owners of construction projects require their general contractor to issue a labor and material payment bond, which essentially serves to guarantee prompt payment to those who supply labor, material and equipment to the project. But the mere tendering to the owner by the contractor of the original payment bond from the surety is not enough. That bond must also be publicly filed.

Parties involved with construction projects in New York should be aware of an often overlooked provision in the New York General Obligations Law, namely §5-322.3, which provides as follows:

"A copy of any payment bond executed in connection with a contract for the improvement of real property other than a contract for a public improvement, shall be filed within thirty days of such execution by the owner of the improvement in the office of the county clerk in the county in which the improvement is to be undertaken.... Any owner failing to file such payment bond as provided herein shall be liable for the reasonable attorney's fees, as determined by the court, of any claimant successfully bringing an action or proceeding on the bond."

Thus, an owner of a project in New York City is required to file a copy of any payment bond executed in connection with a construction contract within thirty days in the office of the appropriate county clerk. In the author's experience, however, this is rarely done. However, where an owner fails to file a copy of the bond executed in connection with the contract, an unpaid subcontractor or supplier on the project may hold the owner liable for the reasonable attorneys' fees incurred in a successful nonpayment action on the bond.

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