

# NEW YORK CONSTRUCTION LAW UPDATE

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## **WHAT CHANGES YOU NEED TO KNOW ABOUT IN THE NEW AIA A312 PAYMENT BOND**

In 2010 the American Institute of Architects (AIA) issued a new revised A312 Payment Bond. The new AIA A312 has some significant and noteworthy changes that those in the construction industry should be aware of.

- The surety that issued the bond now has sixty (60) days to respond to your claim.
- In good news for contractors and suppliers, the scope of those who can file a claim has been expanded. Previous versions of the A312 limited the scope of claimants to those no lower than a second tier subcontractor. However, under the new 2010 version, anyone that can file a mechanic's lien can file a bond claim. (Editor's note: In New York we are going to need further clarification on this. As many of you know, those who can file mechanic's liens are different on public as opposed to private projects. Since most A312 bonds are for public projects, is the scope of claimants limited to those who can file a public improvement lien? Does it depend on whether the project is public or private? Stay tuned...)
- There is a new section (7.3) that expressly states the surety's failure to respond within sixty (60) days does not constitute a waiver of any potential defenses. However, the new AIA A312 also states that if the surety fails to respond and if the claimant has to bring an action to recover under the bond, and is successful, then the surety will be responsible for attorneys' fees incurred by the claimant.

- The new Section 16.1 provides certain minimum requirements that must be in the notice of claim to constitute a valid claim under the bond. Previous versions of the AIA A312 did not contain such minimum requirements and a claimant in a rush could potentially submit a simple letter identifying the project and setting forth the amount of its claim to try and squeeze in before the deadline to submit a claim.
- Pursuant to Section 12 of the 2010 version of the A312, the claimant must now bring a suit to enforce its claim against the bond within the earlier of: 1) 1 year from the time the bond claim is submitted; or 2) 1 year from the time the claimant last provided labor or materials.

These are only the highlights of the key changes. You should take the time to read and familiarize yourself with the entire new 2010 version of the AIA A312 (or hire a good attorney to do so for you!).