

What Every Contractor Needs to Know: The (New) New Jersey Construction Lien Law:

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Earlier this year, New Jersey amended the construction lien law. It is essential that you are aware of your lien rights and what has changed following the amendment. This post will help answer the many questions that arise regarding the construction lien law in New Jersey regarding commercial construction projects. Future posts will include information regarding the amendments to the residential construction lien law and the lien fund.

There are vital distinctions between residential and commercial construction projects. It is important to know what qualifies as a residential project as compared to a commercial construction project. Failure to adhere to the proper statute can be fatal to your lien rights. Residential construction includes the construction of or improvement to a dwelling, which is a one, two or three family residence or a residential unit of a real property development. Generally, all other construction is characterized as commercial. However, different rules apply when the project is for a government project.

How are Lien Rights Formed?

Lien rights are derived from construction and design work performed that improves real property. Included in this may be engineering or architectural work, supplying of materials on a project, renovation work or landscaping. The statute requires that the work be performed pursuant to a written contract. In New Jersey, a contract cannot prohibit a contractor from waiving its right to file a lien. A lien claim must be filed within 90 days after the lien claimant's last date of work.

Why File a Lien?

A lien allows a contractor, subcontractor or supplier the ability to tie up real property to enforce a claim for unpaid work on a piece of property. This allows subcontractors who do not have any contractual relationship with the owner of property to assert a claim and put pressure on the contractor above or the owner to pay the unpaid balance.

When Must a Lien Claim be Filed?

A lien claim must be filed within 90 days after the lien claimant's last date of work. This is a strict requirement and generally will not be enlarged. Warranty or punch list work does not qualify.

What if I failed to File a Lien in the Required Time Period?

If you fail to file a lien with 90 days after your last work, you no longer have lien rights. However, you may still sue the prime contractor or owner or arbitrate, depending on the language of your contract, under principles of contract, "quantum meruit" and unjust enrichment.

How do you Determine the Amount of the Lien Claim?

The amount of the claim may be no greater than the unpaid balance on the written contract or written change orders. A lien can only be filed for work subject to a written contract or change order. If the work was authorized verbally, that work cannot be the subject of a lien claim. However, a contractor can still sue based upon contract principles in order to get paid.

Who has Lien Rights?

Only the first three tiers of subcontractors may file a lien. For example, general contractors, subcontractors and sub-subcontractors can file a lien claim. Equipment lessors may have lien rights but those rights do not extend to evaluative work or feasibility studies performed by engineers.

How Do you File a Lien?

Lien claims can be filed by completing the form set forth in the statute. The lien is filed with the county clerk in the county where the property is located. The lien claim must be filed within the 90 day period following the last date of work.

What Happens After the Lien is Filed?

After the lien is filed with the county clerk, it must be served within 10 days. Service may be completed by personal service, certified and regular mail or any other common carrier. It is important, although not necessarily required, to have proof of service and a signature of the individual served.

What Happens After the Lien is Served?

After the lien is served, the owner of party who owes the money has several options. The owner or party who owes the money may do any of the following:

1. Pay the lien amount claimed. Within 30 days after payment, the lien claimant must discharge the lien or face fines and penalties for failing to do so.
2. Post a bond with the county clerk or deposit cash with the Superior Court clerk of 110% of the lien claim.
3. Start a summary action to discharge the lien.
4. Serve a demand on the lien claimant to initiate a lawsuit within 30 days. If the owner or party who owes the money does so, the lien claimant must initiate a lawsuit in 30 days or forfeit the lien claim. The lien claimant can then file a lis pendens to protect their interests.
5. Do nothing.

What Must you do to Enforce the Lien?

If the owner or party who owes the money does not pay the lien you must initiate a lawsuit within one year of the date of the last work performed, equipment leased or supplies delivered. If the owner or party who owes the money makes a demand, you must initiate a lawsuit within 30 days. If you file a lawsuit, you should file a notice of lis pendens with the county. A lis pendens is a written notice that is filed with the clerk of the county where property is located that identifies that litigation is pending regarding that piece of real property. It is similar to a mortgage.

How is a Lien Discharged?

A lien is discharged by:

- a) the filing of a bond or deposit into court of 110% of the lien claim;
- b) filing a certificate discharging the lien claim; or
- c) by an Order from the Superior Court.

The New Jersey construction lien law has many intricacies. It is important to know your lien rights and the amendments to the lien law which went into effect earlier this year. If you are owed money and are considering filing a lien, consult with an [attorney](#). If you are an owner or party who owes money to a lien claimant, it is vital that you contact an attorney to understand your rights. Please check this blog for future posts regarding the New Jersey construction lien law.