

Summary of 2011 New Jersey Construction Lien Law Changes

The [New Jersey Builder's Association excitedly announced recent changes to the New Jersey Construction Lien Law](#) by stating that "after 16 years, a much needed revision to the New Jersey Construction Lien Law...was signed into law by Governor Chris Christie on January 5, 2011." New Jersey's Construction Lien Law (CLL), its current form promulgated in 1993, had some ambiguities and outstanding court decisions that really required a change to promote clarity across the state.

Last year, [we mentioned that a bill proposing changes to the CLL](#) was pending in the New Jersey legislature. The bill passed, has been signed into law by the governor, and is now the law of the land in New Jersey. [You can read the full text of the new law here.](#)

So, what's new?

Defining The Meaning of "Residential"

The legislature has made an effort with the new law to clarify the meaning of the term "residential." It's an important distinction in New Jersey's Construction Lien Law, as filing a lien on residential property in New Jersey requires a special procedure (involving the filing of an arbitration action). Clarification of the "residential" term is accomplished in three parts.

First, by defining the term "dwelling:"

A one-, two- or three-family residence that is freestanding or shares a party wall without common ownership interest in that party wall. A dwelling may be part of a real property development.

Second, by defining "Residential Construction:"

[A]lso referred to as "residential construction" or "home construction," means construction of or improvement to a dwelling, or any portion thereof, or any residential unit, or any portion thereof. In the case of a real property development, "residential construction" or "residential housing construction" or "home construction" also includes: (1) all offsite and onsite infrastructure and sitework improvement required by a residential construction contract, master deed, or other document; (2) the common elements of the development, which may also include by definition the offsite and onsite infrastructure and sitework improvements; and (3) those areas or buildings commonly shared.

Third, by defining a "Residential Unit:"

[A] unit in a real property development designed to be transferred or sold for use as a residence...evidenced by a document...recorded with the county clerk...includes a unit designed to be transferred or sold for use as a residence that is part of a multi-use or mixed use development project...[but] shall not include a unit designed for rental purposes or a unit designed to be transferred or sold for non-residential use.

These definitions frequently refer to a "real property development," which is also defined by the act as (i) a condominium; (ii) a housing cooperative; (iii) a fee simple townhouse development; (iv) a planned unit development.

Changes to Filing Requirements

-- Those performing work on a "real property development," or where work was done on behalf of a tenant, must identify the contractual relationship with the owner or community association and other known parties in the construction chain.

-- Filings for non-residential liens must still be within 90 days of last furnishing labor and/or materials. However, the residential construction lien deadline has been changed. Previously, the law required that residential liens be filed within 90 days from the last furnishing of labor or materials, but also required that a claimant file an arbitration action and get an arbitrator's determination concerning the good faith validity of the lien. The turnaround time for this was quite tight. The new law still requires the arbitration filing, and a lien may not be filed until the arbitrator's determination is received. Now, however, the lien must be filed within 10 days of receiving the arbitrator's determination, and within 120 days from the last date of furnishing labor or materials.

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-- Within ten days of filing a mechanic lien, the claimant must deliver a copy of the completed and signed lien claim form, with the county's stamp marking its filing thereupon, to the owner (or community association, and, if any, the contractor and subcontractor against whom the lien is asserted). The document must be delivered by either; (i) personal service as required by rules of court in New Jersey; or (ii) simultaneous registered or certified mail or commercial courier whose regular business is delivery service; and ordinary us mail addressed to the last known business or residence address of the parties to receive notice.

Other Changes

-- A supplier to a supplier who is not lower than the third tier of contracting parties now has the right to lien if it has a written contract to provide the supplies.

-- "Filing" a lien now only requires delivery to the county clerk, as oppose to "indexing" of the lien as formerly required.

-- New Forms are created by the statute for a number of notices and filings.

Resourses

- [Perfection of a Mechanic's Lien on New Jersey Residential Projects](#) (Construction Law Signal Blog)
- [Lien Law Alert on New Jersey Changes](#) from Lien Law Online

Read this article on the Construction Lien Blog here:
<http://constructionlienblog.com/?p=2237>

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