

ALERTS AND UPDATES

New Jersey Significantly Amends Construction Lien Law, Effective Immediately

January 31, 2011

On January 5, 2011, N.J. Governor Chris Christie signed into law [significant revisions](#) to the New Jersey Construction Lien Law (CLL),¹ which take effect immediately.

The most significant changes are summarized below:

Changes Pertaining to Residential Projects

- "Residential construction" now includes virtually all construction of, or improvements made to, any dwelling, multiunit development or residential unit.
- Lienable residential work includes sitework, infrastructure improvements (on-site and off-site) and a development's common areas/elements.
- Lien claimants: (a) must file a Notice of Unpaid Balance and Right to File Lien (NUB) within 60 days from when the claimant last performed work or supplied materials; and (b) within 10 days of filing the NUB, the claimant is required to serve a demand for arbitration to determine the validity and amount of any lien claim;
- Within 10 days of receiving the arbitrator's determination, but no later than 120 days from when the claimant last performed work or supplied materials, record the lien claim.
- Wherever possible, the same arbitrator will determine all claims that arise from a given residential project, and both the claimant and owner may request consolidation of all arbitrations arising from the same residential project.

Changes Pertaining to Condominium Projects

- The CLL now clarifies the interest(s) in the real property to which a lien attaches where the work or materials at issue were provided to a condominium project.

CLL Specifies Criteria for a Lien Fund

The "lien fund," or the pool of money from which lien claims may be paid, has now been defined, and clarifies that:

- The lien fund is established as of the date the owner is served with a lien claim;
- The lien fund can never be greater than the unpaid portion of the earned amount of the contract as of the date the owner is served with the lien claim; and,
- No lien that exceeds the amount of the lien fund can attach to the owner's property.

Claims Arising from Tenant Improvements

If a tenant causes improvements to be made to real property, a lien will now attach to the tenant's leasehold interest *and* the interest in the property of anyone who:

- Authorizes the contract for the improvements in writing that provides that such person's interest is subject to a lien arising from the improvement;
- Has paid or agreed in writing to pay the majority of the cost of the improvement; or
- Is a party to the lease or sublease that created the tenant's leasehold, and the lease or sublease provides that the person's fee interest is subject to a lien for the improvement.

Procedural Change

"Lodging for record" the lien documents. Compliance with the various deadlines is measured by the date on which the document is "lodged for record." A document is lodged for record—and thereby enforceable against parties with notice of the document—when it is delivered to and date-stamped by the county clerk, even though the document has not yet been filed.

New mechanisms for discharging liens. In situations where the lien claim has been paid in full and the claimant has failed to timely discharge the lien, the owner now has two procedures to initiate a discharge process. First, the owner may initiate a summary action in New Jersey Superior Court to obtain a discharge order. Second, the owner need only file a discharge certificate and affidavit if 13 months have elapsed since the date of the lien claim and the owner provided to the claimant notice by certified mail of the owner's intention to file the discharge certificate 90 days prior to taking such action.

New forms are required. The amendments include new and revised forms for the NUB, lien claim, amended lien claim, the discharge surety bond and the affidavit to be filed by an owner seeking discharge of a lien. Use of these new forms is required.

Conclusion

The CLL's amendments eliminate many of the statutory ambiguities in the original law. Awareness of and compliance with the new requirements may be key to the defense or prosecution of future lien claims in the Garden State.

For Further Information

If you have any questions regarding this *Alert* or would like more information about New Jersey's Construction Lien Law amendments, please contact [Robert A. Prentice](#), [Edward B. Gentilcore](#), [Michael W. O'Hara](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. New Jersey Construction Lien Law, N.J.S.A. 2A:44A-1 et seq.

Disclaimer: This Alert has been prepared and published for informational purposes only and is not offered, or should be construed, as legal advice. For more information, please see the firm's [full disclaimer](#).