



## LEGISLATIVE UPDATE: NEW JERSEY TOUGHENS ITS PROMPT PAY LAWS

On September 1, 2006, New Jersey amended its Prompt Pay law. The changes:

- o afford general contractors prompt payment rights currently available to subcontractors and suppliers on private and non-State public projects, and
- o tighten the State's payment obligations on State projects.

Prior to the amendment, general contractors were required to pay their subcontractors and suppliers on all private and public construction projects within 10 days of receipt of payment from the owner. However, with the exception of State construction projects wherein the State is required to pay general contractor requisitions within 60 days, there was no corresponding provision entitling the general contractor to receive payment within a fixed timeframe. As a result, in the vast majority of instances, because the general contractor was not assured of prompt payment for the work it performed, its subcontractors and suppliers similarly were not assured of payment by any date certain. The amendment corrects this anomaly.

Pursuant to the amendment, the “prime contractor”- defined as any person that has a contract with any private or public owner to improve real property, including an architect/engineer - is entitled to receive payment of all money approved by the owner within 30 days of submission of its invoice. Within that 30 day period, the owner has 20 days from receipt of the invoice to approve the amount requested or provide a written statement as to any amounts that are being withheld for work claimed to be not in accordance with the contract and the reason for the withholding. If no statement is provided, the invoice is deemed to be approved and the full amount becomes due and payable within the 30 day period. If a statement is provided, the prime contractor is entitled to prompt payment of any undisputed sums.

Once the prime contractor receives payment from the owner, the prime contractor then is obligated to pay its subcontractors and suppliers within 10 days the full amount received from the owner for the work and materials provided. The prime contractor's subs and suppliers then have the same obligation with respect to their subs and suppliers.

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Failure to make a payment as required will render the delinquent party liable for interest on the unpaid amount at a rate of 1% over the prime rate until paid. In addition to being entitled to interest on all outstanding payments, the unpaid contractor also has the right to suspend performance of its contract, without penalty, on seven (7) days written notice.

Finally, all disputes regarding the failure to make payment as required by the statute “may” be submitted to an alternative dispute resolution (ADR) process. While the statute also requires all parties to expressly state in their contracts that this ADR right is available, it does not identify any penalty for failure to include such a provision. Notwithstanding, if an in-court civil action is commenced to collect payment, instead of an ADR process, the action must be commenced in the State of New Jersey and the prevailing party is entitled to an award of reasonable costs and attorney's fees.

The amendment became effective September 1, 2006, but is only applicable to contracts entered into after that date.

# Client Alert

