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One Year Later: A Look At New Jersey's New Lien Law

Prior to 1994, New Jersey's lien law had stood with minor revisions for nearly 100 years. It had been originally enacted in 1898. As a good friend had once told me many years ago regarding all things legal: "If it's not broke, don't fix it." Unfortunately, our State Legislature was not aware of this unwritten maxim and, as a result, on December 23, 1993, it enacted an entirely new construction lien law.

While many in construction, including myself, wanted certain revisions made to the old law, a strong argument can be made that any problems with the old law could have been best adjusted through a revision to the existing law, rather than a complete redrafting, in order not to lose the benefits and predictability of the nearly 100 year continuity already available to the construction community by way of the prior legislation and all of the case law that rests upon it.

But the new legislation was enacted, and was scheduled to begin completely replacing the old lien law starting on April 22, 1994.

But alas, as the eighteenth century poet Robert Burns wrote, if you'll permit me to paraphrase:

*But Mousie, you are not alone,
In proving foresight may be vain;
The best laid schemes of Mice and Men,
Will often go amiss...*

As you probably know, it is now a little over one year after the effective date of the new law. But New Jersey's construction community did not exactly get what the legislature had intended.

Effective Date of April 22, 1994 Delayed?

Shortly after the effective date of April 22, 1994, it became so apparent that there were substantial problems with the new law and the State's failure to set in place the new administrative procedures necessary to implement it, that the Courts were forced to order the new law not to go into effect.

But this solution had its problems too. The counties had already begun accepting filings under the new law.

Would the new lien filings be considered valid if attempted to be enforced by suit? Should unpaid laborers and suppliers file under the old law, the new law, or both? The situation was thrown into

Continued on reverse page...

such confusion that most counties are now accepting filings under both the old and new laws. Therefore, parties wanting to file liens are well advised to first check with the county where the project is located to ensure the filing is in the form presently being accepted on a project-by-project basis.

Let us examine some significant changes affecting the rights of both Construction Industry claimants and Landowners as a result of this new legislation.

First, the requirement that a Mechanic's Notice of Intention be filed has been eliminated. Lien claims need not be preceded by the prior filing of a notice, except for the work, services, material or equipment furnished pursuant to a Residential construction contract. In all other types of contracts, the claimant files a lien claim not later than ninety days following the date that the last work, services, material or equipment was provided for which payment is claimed.

Next, the claimant must serve personally or by registered or certified mail, return receipt requested, a copy of the lien claim upon the party against whom the claim is asserted within ten days following the filing of the lien claim.

The new lien claim form is included as part of the new statute and it includes a notice to the owner of real property advising as to the owner's rights and options. The notice to the owner specifically advises that in order to avoid subjecting the real estate to sale the owner can either pay the claimant and obtain a discharge of lien claim or pose the bond or deposit funds and then cause the lien claim to be discharged.

Regarding enforcement of lien claims, the claimant must bring an action in the Superior Court in the County in which the property is located to establish its lien claim no later than one year from the date when work, services, material or equipment was last provided on the project. This is a vast improvement over the old four month rule which often had the effect of forcing the parties to suit prematurely

and before all possible settlement options had been explored fully.

However, under the new law, if the owner, having been served with a copy of the lien claim within ten days of its filing so desires, he can serve a Notice by Personal or Certified Mail return receipt requested upon the claimant requiring that the claimant commence a suit to enforce the lien claim within thirty days of the claimant's receipt of such notice. In such an event, the claimant will have no alternative but to proceed to suit within thirty days or lose its rights to lien the property and enforce its claim.

With the trend to dissuade individuals from filing frivolous claims, the new law also provides that any lien claim filed without basis can result in the claimant being liable to other parties for court costs and reasonable counsel fees incurred in defending or causing the discharge of the lien claim.

Similarly, any defense without basis to a lien claim can also result in court costs, reasonable counsel fees including attorneys' fees, being charged against the owner and in favor of the claimant.

Our next article will examine the new law for changes regarding projects involving condos, co-ops, and residential construction contracts.



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Publisher

Leonard S. DePalma, L.L.C.
Attorney at Law
37 Vreeland Avenue, 1st Floor
Totowa, New Jersey 07512
973-837-1488 • Fax 973-837-1460
lawyers@advocate.org
www.advocate.org

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