



# the Advocate

LEGAL NEWSLETTER OF THE  
LAW OFFICES OF LEONARD S. DEPALMA, L.L.C.

Issue No. 7

Spring 1996

## Another Look At New Jersey's New Construction Lien Law

One wrong move can be costly to a contractor or subcontractor and cause a failure to preserve rights under the new Construction Lien Claim Law. For example, a subcontractor enters into a residential construction contract with a contractor for a lump sum price of \$50,000.00. The contractor only pays \$25,000.00 for the work then defaults on the subcontract balance. A construction lien claim improperly filed can mean no remedy against the owner of the project and a \$25,000.00 loss to the subcontractor. This article provides some tips in order to help you to preserve your lien claim rights with regard to projects involving non-residential and residential property.

### New Law Enacted December 23, 1993

The new Construction Lien Claim Law applies to all projects with building permits that issued on or after April 22, 1994. The old Mechanic's Notice of Intention required under the prior lien law has been eliminated. However, there is a pre-lien notice requirement for residential projects. The new document is called the Notice of Unpaid Balance. N.J.S.A. 2A:44A-21(b)(1).

Prior to the enactment of New Jersey's new Construction Lien Claim Law on December 23, 1993, a contractor need not differentiate between "resi-

dential contracts" and "non-residential" (or commercial) contracts. However, due to the recent changes in the law, contractors and subcontractors alike are faced with the need to become more knowledgeable concerning the construction lien claim law in order to protect their rights. The first step in protecting your rights is knowing your contract type under the statute.

### Know Your Contract

You should know the difference between a "contract" and a "residential contract". Knowing the difference will avoid improperly filed construction lien claims. According to the new law, a "contract" means "any agreement, or amendment thereto, in writing, evidencing the respective responsibilities of the contracting parties, which, in the case of a supplier, shall include a delivery or order slip signed by the owner, contractor, or subcontractor having a direct contractual relation with a contractor, or an authorized agent of any of them". N.J.S.A. 2A:44A-2.

### Residential Construction Contracts

On the other hand, a "residential construction con-

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tract" means "any written contract for the construction or improvement to a one- or two-family dwelling, or any portion of the dwelling, which shall include any residential unit in a condominium ..., any residential unit in a housing cooperative, any residential unit contained in a fee simple township development...". N.J.S.A. 2A:44A-2.

### No NUB on Commercial Construction

For general construction lien claims on non-residential property, there is no pre-lien notice requirement. Accordingly, unlike residential projects where a Notice of Unpaid Balance (also known as the "NUB") must be filed before providing labor or materials (N.J.S.A. 2A:44A-21(b)(1)), in the case of non-residential projects you can lien the project after providing labor and materials.

To perfect the construction lien claim on non-residential property, the claimant must file the Lien Claim within 90 days of the date of the last substantial labor or materials provided on the project. You must consider whether you are in contract with an owner in fee simple or a tenant. You must be sure to provide correct and timely notice to all interested parties such as tenants, **subtenants, and/or owners in fee simple** N.J.S.A. 2A:44A-6.

Those readers who were familiar with the old Mechanics' Lien Law may remember the rule that the Lien Claim could be filed up to 4 months from the date of providing last substantial labor or materials on the project. That rule no longer applies and instead claimants must be sure to file the Construction Lien Claim within 90 days of the date of last substantial labor or materials provided on the project under the new statute. Late filings are defective and unenforceable.

### Service of the Construction Lien Claim

A copy of the construction lien claim must be served (by certified mail) within 10 days of filing of the construction lien claim as specified under the new requirements of N.J.S.A. 2A:44A-7.

Also, the lien claimant must commence an action in the Superior Court of New Jersey to enforce the lien within 1 year of filing of the lien claim or within 30 days following notice to do so from an appropriate interested party.

In addition to all the above procedures, in the case of non-residential contracts, claimants must commence and complete a legal procedure with the American Arbitration Association as part of the process. The arbitration step is not in place of litigation, but is a prior condition to commencement of litigation. The arbitrator does not rule on the merits of the Construction Lien Claim, but rather decides whether the claimant has complied with all procedures necessary to go forward with the lawsuit to enforce the lien claim. The time limits for completing the arbitration process and proceeding to suit are extremely short in duration and a claimant should be completely familiar with all these procedures and time limits, or should rely upon legal counsel to avoid defects in the process.

This article is not intended to provide a complete statement of the new law. All contractors should be aware of all the requirements of the Construction Lien Law or should work closely with legal counsel to ensure the optimum lien protection available.



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(spring\_1996 v.2)

This article originally appeared in Solutions © 1996 by Leonard S. de Palma, Esq.

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