



Changes to the Residential Provisions of the New Jersey Construction Lien Law

by Matthew Sontz

On Jan. 5, 2011, the New Jersey Construction Lien Law¹ (CLL) was revised. The purpose of the revisions, according to the New Jersey Law Revision Commission report, was to simplify, clarify, and modernize the CLL. The residential provisions of the previous CLL were a particular focus of the commission because those provisions were ambiguous and led to many inconsistent rulings throughout New Jersey. This article seeks to emphasize some of those revisions.

The CLL permits contractors, subcontractors, and design professionals to file a lien against an owner's improvements to real property should the owner fail to pay amounts due and owing for those improvements. In the residential context, there are strict prerequisites that must be followed before a construction lien can be properly filed. Under the old CLL, the prerequisites were so onerous that completing them within the statutory time period was almost impossible. The revised CLL seeks to provide additional time and mechanisms to permit a reasonable opportunity for the construction lien to be perfected.

Several significant changes are as follows:

The time period for perfecting a residential construction lien has been extended from 90 to 120 days from the date of last work. This difference is significant because in many instances a potential lien claimant may not have been in position to even start

a lien claim filing procedure until 60 days from the date of last work had passed. In such instances, potential lien claimants had less than 30 days to complete the required N.J.S.A. 2A:44A-21 arbitration. The additional 30 days should now permit potential lien claimants to have the full 30 days to complete the arbitration proceeding prescribed in N.J.S.A. 2A:44A-21(b)(6).

The CLL's requirement of "filing" a notice of unpaid balance and right to file lien (NUB) has been changed to requiring that the NUB be "lodged for record." This difference is significant because previously a potential lien claimant may have lost lien rights because the county clerk did not actually 'file' the NUB, although it was submitted to the county clerk timely.

The law was previously unsettled with respect to what lien rights, if any, a potential lien claimant had against a condominium association. Construction lien rights attach to an owner's real property. Condominium associations, however, often don't own real property. Although the condominium associations may be the exclusive agent for managing the association, the ownership rights of the condominium's common property is often vested in the individual condominium owners.

The new CLL makes clear that a construction lien filed against a condominium association does not attach to any real property. However, the lien claimant may enforce a properly filed and foreclosed lien

claim against a condominium association by assessing the unit owners as they would be assessed for any other common expense. What was once an ambiguous and confusing lien situation for a potential lien claimant now appears to be a definite and reliable means of recovering against a condominium association.

Although many of the changes to the CLL seem to favor potential lien claimants over project owners, project owners still retain strong protections. The CLL still provides for damages to be paid to project owners, including attorneys' fees and costs, if a lien claim is filed without basis, is overstated, or is not lodged for record in the form, manner, or time prescribed by law. The CLL still causes potential lien claimants to forfeit their lien rights if they fail to meet statutory deadlines.

The new CLL provides potential lien claimants with more of an opportunity and greater guidance to completing the rigorous prerequisites to filing a residential construction lien claim. Overall, the commission appears to have met its goal in simplifying, clarifying, and modernizing the residential construction lien law. ■

Endnote

1. N.J.S.A. 2A:44A-1, *et. seq.*

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