

# NEW JERSEY CONSTRUCTION LIEN LAW

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## Chapter Survey...

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## Who is Entitled to a Construction Lien?

New Jersey statutes designate lien rights for any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract. These parties are entitled to a lien for the value of the work or services performed, or materials or equipment furnished in accordance with the contract and based upon the contract price.

**Exemptions:** Lien claims cannot be filed for the following types of work:

- ✓ materials that have been furnished or delivered subject to a security agreement which has been entered into pursuant to Chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101 et seq.)
- ✓ public works or improvements to real property contracted for and awarded by a public entity; provided, however, that nothing herein shall affect any right or remedy established pursuant to the "municipal mechanic's lien law," N.J.S.2A:44-125 et seq
- ✓ work, services, material or equipment furnished pursuant to a residential construction contract unless there is strict compliance with sections 20 and 21 of this act

## What is a Lien?



Construction liens "cloud" the title to real property and can be an effective method (and sometimes the only method) for securing payment for labor or materials used in the improvement of real property. The lien stops the owner from selling the property with a clear title. The lien

may be foreclosed in a lawsuit. The court can order that property be sold and the proceeds used to pay the contractor, subcontractor, or material supplier. This may be true even if the owner has already paid a general contractor, meaning that the owner may have to pay twice. This is one of the reasons that a lien can be such a powerful collection tool.

The law governing construction liens is found in the New Jersey statutes §2A:44A-1 et al. The state statutes and court opinions establish a strict procedure to perfect and foreclose a lien. It is strongly recommended that a professional be routinely used to record and foreclose on construction liens.

## Process for Filing a Lien

To preserve lien rights, a contractor, subcontractor or supplier entitled to file a lien must follow the process as outlined in N.J.S. 2A:44A-6. A summary of this process is provided below.

1. The lien claim form as provided by section 8 of P.L.1993, c.318 (C.2A:44A-8) shall be signed, acknowledged and verified by oath of the claimant setting forth:

- ✓ the specific work or services performed, or material or equipment provided pursuant to contract; and
  - ✓ the claimant's identity and contractual relationship with the owner or community association and other known parties in the construction chain.
2. Except in the case of residential construction, the lien claim form shall then be filed within 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. In the case of a residential construction contract, the lien claim form shall be lodged for record, as required by paragraph (8) of subsection b. of section 21 of P.L.1993, c.318 (C.2A:44A-21), not later than 10 days after receipt by the claimant of the arbitrator's determination, and within 120 days following the date the last work, services, material or equipment was provided for which payment is claimed. If requested, at the time of lodging for record, the clerk shall provide a copy of the lien claim form marked with a date and time received.
3. The lien must be filed using the form provided in N.J.S. 2A:44A-8.

## Service of the Lien Claim

Within 10 days following the filing of a lien claim, the claimant shall serve on the owner, or community association in accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), and, if any, the contractor and subcontractor against whom the claim is asserted, a copy of the completed and signed lien claim substantially in the form prescribed by section 8 of P.L.1993, c.318 (C.2A:44A-8) and marked "received for filing" or a similar stamp with a date and time or other mark indicating the date and time received by the county clerk. Service shall be by personal service

as prescribed by the Rules of Court adopted by the Supreme Court of New Jersey or by:

- ✓ simultaneous registered or certified mail or commercial courier whose regular business is delivery service
- ✓ ordinary mail addressed to the last known business or residence address of the owner or community association, contractor or subcontractor. A lien claim served upon a community association need not be served upon individual "unit owners" as defined in section 3 of P.L.1993, c.318 (C.2A:44A-3).

## Priority of Liens

If more than one lien claimant will participate in a lien fund, the lien fund shall be established as of the date of the first of the participating lien claims filed unless the earned amount of the contract increases, in which case the lien fund shall be calculated from the date of the increase. Lien rights shall exist are limited to first, second, or third tier lien claimants.

## Bonding Around a Lien

To release a lien, a bond may be filed with the court for the amount of the claim of lien. As an alternative, a sum of money equivalent to the required bond amount may be deposited with the court.

## Time in Which to File a Lien Foreclosure Petition

Action to foreclose on the lien must begin within one year after filing a lien.

## Sale of Land to Satisfy Lien

If the lawsuit is successful, the judge can order the sale of the land to pay the lien.

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## Final Inspection...

**What is a Lien?** A lien can be a useful tool in securing payment for labor or materials for improvement on real property.

**Who is Entitled to a Construction Lien?** The law gives contractors, subcontractors, and suppliers lien rights.

**Process for Filing a Lien:** To preserve lien rights, a contractor, subcontractor or supplier entitled to file a lien must follow the process as outlined by law.

**Service of Lien Claim:** Proper service of lien claim is required to ensure lien claim remains valid.

**Priority of Liens:** The lien fund shall be established as of the date of the first of the participating lien claims.

**Bonding Around a Lien:** The owner may file a bond or cash deposit for the amount of the lien to release the lien.

**Time in Which to File a Lien Foreclosure Petition:** Action to foreclose on the lien must commence within one year after filing a lien.

**Sale of Land to Satisfy Lien:** To pay a lien, the judge can order the sale of the land.