

Protect Your Payment When the General or Sub Goes Out of Business

When material suppliers or subcontractors enter into agreements with a prime contractor or subcontractor to provide materials, they are taking a risk that the contractor may go out of business or declare bankruptcy prior to paying for the supplies.

When supplying labor and materials for the benefit of a private, non-residential construction project in New Jersey, you can protect your rights and monies by filing a construction lien.

Construction liens filed in New Jersey must follow specific timing and procedural requirements in order to be valid.

New Jersey Construction Liens can only be filed by the following:

- Supplier to Subcontractor or Prime Contractor
- General Contractor
- First-Tier Subcontractor
- Second-Tier Subcontractor

Lien Rights – What Suppliers & Subcontractors Need to Know

① Detailed Packing Slips – Vitaly Important

An additional requirement to file a valid New Jersey construction lien is that the work was performed pursuant to a written contract/agreement.

A common question is whether a signed delivery slip is sufficient to serve as a written contract/agreement. Generally, a supplier's delivery ticket or order slip,

signed by the entity that hired the supplier, should satisfy the writing requirement necessary for filing a construction lien. Your delivery ticket should include information regarding the contract price and a description of the services. Of course, a more detailed contract/agreement (rather than just a delivery ticket) would better protect a supplier's lien right claims.

② Timing is Everything

In addition to the writing requirement, the construction lien must be filed with the County Clerk where the project is located within 90 days of the supplier's last date of work. It should be noted that warranty, repair/service calls and punch list work generally does not extend the 90-day deadline.

③ Still More to do After the Claim is Filed

After a lien claim is filed, a claimant must ultimately enforce its lien rights by filing a lien foreclosure action against the owner of the property. The lawsuit must be filed within one year of the lien claimant's last date of work, not one year from the date that the construction lien was filed with the County Clerk.

④ The Takeaway

In order to protect your investment when providing materials/services on a private construction project in New Jersey, suppliers must remain mindful of their rights. As a general rule, if 45–60 days have passed since its last date of work, and payment has not yet been received, a supplier should take the steps necessary to ensure payment by filing a construction lien claim against the property.



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Lindabury, McCormick, Estabrook & Cooper, P.C.

is a mid-sized general practice law firm, located in Central New Jersey. We provide litigation and transactional counsel to a broad spectrum of clients throughout New Jersey and the Mid-Atlantic region. We are committed to providing quality legal representation with a focus on personalized service.

The Construction Law Practice at Lindabury is comprised of some of the leading construction attorneys in New Jersey, nationally recognized for their capabilities and experience. We have represented clients in the construction industry in some of the largest construction disputes in New Jersey and have established some of the leading reported case law on issues arising out of public contract law.

Lindabury provides representations in all venues for disputes arising out of construction projects, including litigation, arbitration and mediation.

We represent a broad range of clients in all areas of construction law, including trade associations, owners, contractors, vendors, sureties and insurance companies. We are general counsel to the Mechanical Contractors Association of New Jersey and are recognized as special counsel for the Mechanical Contractors Association of America. We are also general counsel to the New Jersey Subcontractors Association and the New Jersey Chapter of Professional Women in Construction. Additionally, we have represented some of the major institutional owners and sureties and are experienced in all areas and disciplines involved in the construction process for both public and private projects.

Our Construction Law attorneys have provided extensive representation of entities in public construction projects, including construction of numerous projects under the Education Facilities Financing Act and the oversight of the New Jersey Schools Construction Corporation.

Lindabury, McCormick, Estabrook & Cooper's construction law team is comprised of leading New Jersey attorneys who have represented construction clients in some of the largest disputes in the state.



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Representative Litigation & Transactional Matters

- Currently serving as local counsel in Morris County, New Jersey to a fire suppression contractor in the defense of a multi-million dollar construction defect claim brought by a condo association against the general and subcontractors.
- Currently serving as local counsel to a drilling company in a dispute with a general contractor over payment and delay impacts arising from a public project installing electrical cable beneath the Hudson River.
- Negotiated a \$1.2 million settlement with the School Development Authority for contract funds and change orders due, including a claim for general conditions due to project delays.
- Obtained a \$1 million settlement on behalf of a construction client for contract funds owed, including disputed work items.
- Represented owner/landlord in redevelopment/construction of 524,000 square foot warehouse.

Business Associations to Which We Are Legal Counsel

- Mechanical Contractors Association of New Jersey
- National Subcontractors Alliance
- New Jersey Subcontractors Association
- New Jersey Chapter of Professional Women in Construction

Nonprofit Boards on Which Attorneys Serve

- American Subcontractors Association
- Linden Industrial Association
- National Subcontractors Alliance