

July 20, 2007

The Construction Law Practice at Lindabury provides the full scope of legal services to businesses and other organizations in the construction industry—everything from the inception of the project, including negotiation with the design team to final wrap-up of the project, resulting in acceptance and final payment to architects, engineers and contractors. We also provide representation in all venues for disputes arising out of projects, including representation in arbitration and mediation.

Westfield Office

P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
(TEL) 908-233-6800
(FAX) 908-518-2967

Summit Office

480 Morris Avenue
Summit, NJ 07901
(TEL) 908-273-1212
(FAX) 908-273-8922

Rumson Office

20 Bingham Avenue
Rumson, NJ 07760
(TEL) 732-741-7777
(FAX) 732-758-1879

New York Office

Suite 2300
26 Broadway
New York, NY 10004
(TEL) 212-742-3390
(FAX) 212-269-5016

Pennsylvania Office

Two Penn Center Plaza
Suite 200
Philadelphia, PA 19102
(TEL) 215-854-4090
(FAX) 215-569-0216

www.lindabury.com

NEW PROMPT PAY ACT PROVISIONS

By Edward J. Frisch, Esq.

New Jersey amended its Prompt Pay Act on September 1, 2006. The law, N.J.S.A. 2A:30A-1, et. seq. has some new highlights. First, the Act now applies to owners in both the private and public sectors requiring them to promptly pay prime contractors. It applies to all contracts entered into after September 1, 2006, as to progress payments, final payment, change order and retainage. The statute also covers payments due to prime contractors who contract with the owner to “improve” the property and requires payment no later than 30 days from the contractual billing date.

In regards to the payment provisions from owner to prime, the following are now part of the statute:

- If the prime performs in accordance with the contract and the billings have been approved, the owner must pay within 30 days of the billing date, which shall be a periodic billing date specified in the contract.
- Billings are deemed approved 20 days after the owner receives them unless the owner provides, during the 20 day period, a written statement as to the amount withheld and why (see public body exception.)
- A public owner, where a vote is needed by its board, may provide in contract documents an exception that payment will be approved at the next scheduled meeting and paid during the subsequent payment cycle.
- If only a portion of work is deemed unacceptable, payment must be made of the balance when due.

Payment provisions from prime to subcontractor are as follows:

- Prime contractors must pay subcontractors and subcontractors must pay sub-subcontractors within 10 days of receiving payment unless the parties have agreed otherwise in a written contract.
- The amount paid must be the full amount the prime contractor received for the work of the sub or sub-sub.
- In case of periodic payments, payments for work completed are payable only if the sub or sub-sub is performing to the satisfaction of the prime contractor or subcontractor. (*cont'd*)

Edward J. Frisch has more than twenty-five years experience in all phases of law relating to the construction trades, representing owners, general contractors, mechanical and electrical contractors, masonry contractors, and other specialty subcontractors. He can be reached at efrisch@lindabury.com.



- There is no requirement that, unlike owners, prime contractors must provide a reason for withholding partial or full payment, but if they do not, this may give the sub a right to suspend the work.

There is no absolute right to suspend work under the Act. There must still be notice given within seven calendar days, and work may be suspended if payee is not provided a written statement stating the amount to be withheld and the reason. Also, the payor must be involved in a good faith effort to resolve the reason for withholding payment, or payee may suspend work.

There are consequences for failing to make a prompt payment. Failure to dispute an invoice will act as a waiver by the owner. Therefore, an invoice is deemed approved if not disputed. Also, interest on any unpaid amounts will be at the prime rate plus 1%. A contractor or subcontractor may, after seven calendar days'

written notice, suspend performance of work, in essence stop work, without penalty if:

- the unpaid party is not provided a written statement of the amount withheld and the reason for withholding; and
- the Payor is not engaged in a good faith effort to resolve the reason for the withholding.

Attorneys' fees, along with statutory costs, are available under the statute to the prevailing party in a civil action.



The material in this Construction Alert is for information purposes only and is not intended as legal advice. If you have any questions concerning this Alert, please contact Edward J. Frisch (efrisch@lindabury.com). For biographical information on our attorneys, see our web site at www.lindabury.com.

