

## PROTECTING YOUR INVESTMENT: PART 2

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

**When material** suppliers 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 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 for Suppliers

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.

Join us for a complimentary breakfast seminar on November 12, 2015 in Westfield. Lindabury's construction law team will be available to answer questions you have about protecting your investment.

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision. You may, if this letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, NJ 08625



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McCORMICK, ESTABROOK & COOPER, P.C.  
Attorneys at Law

908.233.6800 • [www.lindabury.com](http://www.lindabury.com)