

LOWENSTEIN SANDLER PC CLIENT ALERT

CONSTRUCTION LAW & LITIGATION

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AMENDMENTS TO THE CONSTRUCTION LIEN LAW

SAVE THE DATE FOR WEBINAR - FEBRUARY 2, 2011

By Adrienne L. Isacoff, Esq.

January 2011

Sixteen years after its enactment, on January 5, 2011, Governor Chris Christie signed into law major revisions to the New Jersey Construction Lien Law, N.J.S.A. 2A:44A-1 et seq. ("CLL"). The new law, which is effective immediately, clarifies various portions of the statute and synthesizes the statute with numerous court decisions that have been issued since its original enactment.

Lowenstein Sandler's Construction Practice Group will present a webinar focusing on key revisions to the CLL, as well as a refresher on the Municipal Mechanics' Lien Law and Bond Act, and actions to enforce lien and bond claims. The webinar will be held on Wednesday, February 2, 2011, 12:30 p.m. to 2 p.m., and will be presented by Steven E. Brawer, Adrienne L. Isacoff and Jonathan Guldin. The webinar will be presented at no charge, but you must register in advance. Details about registration will be sent by e-mail within the next week.

The following are some of the key amendments to the CLL:

Form of Lien Claim

The statutory form to file a lien claim has been revised and old forms should no longer be used. The form was revised to clarify the appropriate method for determining the total lien claim amount, and includes a suggested notarial that references the importance of having the lien claim signed only by principals and other expressly authorized signatories.

"Filing" vs. "Lodging for Record"

In recognition of the time delay that often occurs between the date that lien claimants forward their lien claims to the County Clerk's offices and the date by which the lien actually gets recorded (which, depending on the County, may be weeks later), the new law distinguishes between "filing" and "lodging for record" in the same manner that those terms are used to record mortgages. A lien claim is "lodged for record" on the date that the County Clerk marks it with a date stamp. The lien claim is then enforceable against parties who have

been served a copy of the lien. The lien claim is "filed" when the County Clerk has both "lodged for record" and "indexed" the lien claim by recording it, at which point even parties who have not been served with the lien claim are put on "record notice" of it.

Definition of Residential Construction Contracts that Require "Pre-Lien" Procedures

The new law clarifies that residential construction contracts include hi-rises, condominiums, townhouses and other large-scale development projects, as well as single family homes. All work performed in connection with any residential construction contract requires the potential lien claimant to first file and serve a Notice of Unpaid Balance and a Demand for Arbitration and Right to File Lien. The lien may only be filed once an arbitration award has been made determining the right to file and the amount of the lien.

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**Timing Requirements for
Commercial and Residential
Construction Contracts**

For commercial projects, a lien claim must be “lodged for record” no later than 90 days from the last date of work. For residential projects, in recognition of the additional time constraints required by the “pre-lien” procedures, a lien must be filed within 120 days of the last date of work (or within 10 days of the arbitration award).

Community Associations

If the contract is with the developer of a condominium, a lien will attach to the interest of the developer in the property. If the contract is with a community association for work performed on common elements, a lien will attach to the association. Such lien rights may not be enforced by foreclosure and sale. The remedy for such a lien claim is a court-ordered assessment against the unit owners. If the contract is with a unit owner, then the lien will attach to the interest of that owner in its unit.

Tenant Improvements

If a tenant contracts for improvements to real property, its leasehold interest is subject to attachment by a lien claim. The landlord’s fee interest in the property is only subject to a lien claim where: the landlord expressly authorizes the construction and

provides that the fee interest is subject to a lien; or the landlord has paid or agreed to pay (in writing) the majority of the costs; or the lease itself provides that the fee interest is subject to a lien for improvements.

Lien Fund

The lien fund is now expressly defined as the “pool of money from which one or more lien claims may be paid.” The revisions clarify that the size of the lien fund can never be greater than the cost of the work and also delineate what payments an owner may legitimately make that may reduce the lien fund.

**Make Sure You Are Fully
Acquainted with the
Amendments to the CLL**

Owners, developers, contractors, subcontractors and suppliers must all become aware of the significant changes to the CLL that affect their rights, remedies and obligations. The above cited changes and others will be covered in detail in the upcoming webinar, which will include time for Q&A.

Members of the Construction Practice Group at Lowenstein Sandler PC have been involved with the drafting of the proposed amendments to the CLL by the New Jersey Law Revision Commission, and regularly present seminars and publish articles on it, as well as on the Municipal Mechanics’ Lien Law and Bond Act.

If you have any questions about the amendments to the CLL or any other aspect of construction law, please contact:

Steven E. Brawer, Esq.

Chair, Construction Law Practice Group
sbrawer@lowenstein.com
973 597 2412

Adrienne L. Isacoff, Esq.

Senior Counsel, Construction Law Practice Group
aisacoff@lowenstein.com
973 597 2596

James Stewart, Esq.

Member, Construction Law and Environmental Practice Groups
jstewart@lowenstein.com
973 597 2522

Christopher M. Erb, Esq.

Counsel, Construction Law Practice Group
cerb@lowenstein.com
973 422 6516

Jonathan Guldin, Esq.

Associate, Construction Law Practice Group
jguldin@lowenstein.com
973 422 6710

Robbie J. Vargo, Esq.

Associate, Construction Law Practice Group
rvargo@lowenstein.com
973 597 6178

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www.lowenstein.com

New York

1251 Avenue of the Americas
New York, NY 10020
212 262 6700

Palo Alto

590 Forest Avenue
Palo Alto, CA 94301
650 433 5800

Roseland

65 Livingston Avenue
Roseland, NJ 07068
973 597 2500