



### **In These Difficult Economic Times, a Timely Filed Construction or Municipal Mechanics' Lien can Spell the Difference Between Getting Paid or Not**

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The New Jersey Construction Lien Law (the "NJCLL") is intended to provide effective payment security (a construction lien filed against the owner's property) to certain eligible lien claimants on private sector construction projects for the value of the labor, materials, equipment or services performed or furnished for the improvement of the owner's property. The security of such a lien is available to second and third tier subcontractors and materialmen notwithstanding their lack of privity of contract with the owner. Absent the security of a timely filed construction lien, an unpaid party who otherwise is an eligible claimant may be limited to an unsecured claim for damages for breach of contract. A timely construction lien, if reduced to judgment, can be foreclosed, thus forcing a sale of the owner's property to satisfy the judgment rendered on the lien. The mere filing of a construction lien encumbers the owner's title and typically triggers a default under pre-existing mortgages and/or prohibits the owner from securing new mortgage-backed financing. Thus, a timely filed construction lien is generally viewed as having more "teeth" than other available remedies, and, all things being equal, may spell the difference between getting paid sooner rather than later, if at all. In order to be timely, a construction lien claim generally must be filed within a statutorily fixed period of time after the date on which the last work, services, material or equipment was performed or furnished for which payment is claimed. In addition, special timing rules apply when the private sector owner becomes a debtor in bankruptcy, an all too frequent occurrence in these difficult economic times. The Bankruptcy Code draws a distinction between the post-petition perfection of a lien that attached to the debtor's property pre-petition, which is permitted, and the post-petition creation or attachment of a lien, which is not permitted. As the adage goes, "if you snooze, you lose."

The New Jersey Municipal Mechanics' Lien Law (the "NJMMLL") also is intended to provide effective payment security (in addition to that offered by any payment bond) to certain eligible claimants who provide labor, materials, equipment or services on public projects other than State projects. However, since public property cannot be liened, the security of the municipal mechanics' lien generally attaches to the amount of money that is due, or to grow due, under the contract and in the control of the public agency. Since the lien generally attaches to monies "due or to grow due", a timely filed municipal mechanics' lien claim can provide payment security to an unpaid third tier claimant (eg, a sub-subcontractor or a materialman to a subcontractor) even if the second tier party with whom it has a contract (the subcontractor) has been paid in full. In order to be timely and effective, a municipal mechanics' lien claim generally must be filed within a statutorily fixed period of time after the whole work to be performed by the contractor is completed or formally accepted by the public agency. Moreover, in the case of third tier claimants, an early, special notice must be filed with the public agency in advance of a lien claim. This early notice is important because the security of a subsequently filed lien claim is limited to any monies owing from the contractor to the subcontractor at the time the lien claim is filed, if no such notice is given, or the value of any labor or materials provided on or after the date that late notice is given. Here too, "if you snooze, you lose."

The services of a knowledgeable attorney are invaluable to ensure the timely filing and perfection of construction and municipal mechanics' liens in to order benefit from the payment security that these liens provide. Vincent J. Paluzzi has almost 30 years experience in construction law. He has worked closely with the New Jersey Law Revision Commission to draft pending legislation substantially revising the New Jersey Construction Lien Law. Mr. Paluzzi also currently serves as Special Counsel to the New Jersey Schools Development Authority for school facilities projects and is a member of the Construction Codes Committee of the New Jersey Builders Association. If you have questions or require assistance with construction or municipal mechanics' liens or any other construction related matters, please contact Mr. Paluzzi at [vpaluzzi@sternslaw.com](mailto:vpaluzzi@sternslaw.com) or (609) 989-5033.