

Removing Invalid Construction Lien

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As the owner of a parcel of property, you might someday be faced with a scenario wherein a construction lien filed by a contractor who performed work for you was either improperly filed, or is simply invalid on its face. The issue becomes what is the proper way to remove and/or discharge this construction lien so that the property is no longer encumbered.

Although the process for a party to file a construction lien against a residential property, as compared to a commercial property, is different, the relevant section of the New Jersey Lien Law which deals with the discharge of an improper or invalid construction lien is the same. N.J.S.A. 2A:44A-15 provides that if a lien claim is without basis, the amount of lien claim is overstated, or the lien claim is not filed in accordance with the relevant sections of the lien law, nor in the time required by the act, the lien claimant shall forfeit the rights to this lien or any subsequent related lien. In a nut shell, this means that if the lien claim is not timely filed, whether residential or commercial construction, or the lien claim is willfully overstated or is without basis, such as the lack of an enforceable contract, then the lien claim is deemed forfeited. Further, the statute punishes a contractor who does not willfully remove a lien claim as long as notice is given. Any owner who is forced to file an action to remove an invalid lien claim is entitled to reasonable counsel fees and costs incurred in said action.

The next question concerns what is the appropriate process to remove an invalid lien claim. Once you have determined that a lien claim is invalid, whether residential or commercial, the first thing that should be done is that an appropriate notice should be provided to the contractor demanding that the lien claim be discharged. It is suggested that this be done via certified and regular mail and any other delivery alternatives which are available. Once this notice is given, typically a short period of time is given for the lien claim to be discharged. A typical period would be approximately two weeks. If the lien claim is not properly discharged, a Complaint may be filed with the Court in the county wherein the lien claim was filed. This process can be done in a summary fashion pursuant to Rule 4:67, and if successful, would entitle the property owner to counsel fees, costs, and potentially sanctions.

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National Law Review, Volume VI, Number 259

Source URL: <https://natlawreview.com/article/removing-invalid-construction-lien>

