

# TESSER & COHEN

## CONSTRUCTION LAW ALERT



September 19, 2006

### NEW JERSEY LEGISLATURE: ALL CONTRACTORS ENTITLED TO PROMPT PAYMENT

On September 1, 2006, Governor Corzine signed legislation requiring owners in the public and private sectors to promptly pay prime contractors. Prime contractor is broadly defined by the statute as anyone who has a contract with an owner to improve real property. The law (N.J.S.A. 2A:30A-1, et. seq.) extends the previous "Prompt Payment Act", which applied only to contractor payments to subcontractors. The highlights of the new legislation are as follows:

#### APPLICABILITY

- Applies to public and private, commercial and residential projects
- Applies to progress payments, final payment, change orders and retainage
- Requires payment no later than 30 days from the contractual billing date
- Only applies where billing has been "approved and certified"
- Billing deemed to be "approved and certified" 30 days after owner receives bill unless owner provides a written statement of the amount withheld and the reason for withholding payment.

- ⚡ Exception to time requirement for some public entities, which are deemed approved at next scheduled public meeting
- ⚡ Subcontractors remain entitled to payment within 10 calendar days of contractor's receipt of periodic payments

#### CONSEQUENCES OF FAILURE TO MAKE PROMPT PAYMENT

- ⚡ Interest on unpaid amounts at prime rate plus 1%
- ⚡ Contractor or subcontractor may, after seven calendar days' written notice, suspend performance of its work without penalty IF:
  - a. the unpaid party is not provided a written statement of the amount withheld and the reason for the withholding; and
  - b. the party is not engaged in a good faith effort to resolve the reason for the withholding.

#### REQUIRED CONTRACTUAL LANGUAGE

- ⚡ All contracts for the improvement of structures after September 1, 2006 SHALL PROVIDE:

That disputes regarding whether a party has failed to make payments required pursuant to the Prompt Payment Act may be submitted to alternate dispute resolution.

#### ATTORNEYS' FEES

- ⚡ The party prevailing in a civil action to collect payments pursuant to this section is entitled to statutory costs and attorneys fees.

You can contact Tessen & Cohen and obtain construction related forms and information by visiting its website at: [www.TessenCohen.com](http://www.TessenCohen.com)

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