

## **Alert | Construction Law**



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### **Landlord Rights to Dispute Contractor Liens for Work Done for Tenant Improvements**

New York and New Jersey are among the states that have clarified the often vague and ambiguous rules about lien rights for contractors which perform work for tenants.

In New York, the tenant's contractor can lien the leasehold for unpaid construction work performed at a leased premises, but can only lien the landlord/owner's interest in the property if the landlord consents to the improvements or requires that they be made. Something more is required than merely that the landlord is aware of the tenant's improvement work. See [New York's Construction Lien Law, § 3 et. seq.](#) The New York Lien Law has been explained in several judicial opinions which have clarified when the lien may attach to the owner/landlord's interest. See *e.g.*, [Ferrara v. Peaches Café LLC](#). Of course, each situation will be governed by the lease terms between the parties.

In New Jersey, a 2011 revision to the lien law statute codified the required circumstances for a tenant's contractor's lien to attach to the owner/landlord's interest. Under [Section 2A:44A-3 of the New Jersey Construction Lien Law](#), where construction work is performed on behalf of a tenant, a lien cannot attach to the property (as distinguished from the leasehold) unless the landlord: 1) has agreed in writing to the contract between the contractor and the tenant, which writing provides that the landlord's interest is subject to a lien for the improvement that is the subject of the contract, 2) has agreed in writing to pay a majority of the cost of the work that is the subject of the lien, or 3) agreed in the lease that its interest in the property is subject to liens for improvements.

Construction lien law statutes vary from state-to-state. Individualized review and analysis to address situations where the owner/landlord's fee interest is impacted by a contractor lien is the first step in developing pragmatic and real-world solutions to this common issue.

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