



# Mechanic's Lien In New Jersey and Bankruptcy in Delaware

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SEPTEMBER 1, 2017 By [Kristin Alford](#)

## Invalid New Jersey Mechanic's Lien & the Definition of "Receipt" for Section 503(b)(9) Claims

This week we shared two articles related to bankruptcy: an invalidated mechanic's lien in New Jersey and the definition of "receipt" for section 503(b)(9) claims.

Up first, [Third Circuit Holds That Post-Petition Filing of NJ Construction Lien Violates the Automatic Stay](#).

This article reviews a case in which a subcontractor's New Jersey mechanic's lien filing violated the automatic stay because the date the lien related back to was after the GC's bankruptcy filing.

"The construction liens filed by Cooper and Samson under New Jersey law were effective as of their post-petition filing date and did not relate back. The Third Circuit held that if under applicable State law the post-petition filing of a mechanic's lien would not relate back to a date prior to the filing of the bankruptcy case, then the automatic stay of section 362(a)(4) applies, and the filing is prohibited. If under applicable State law the post-petition filing of a mechanic's lien would relate back to a prepetition date, then the section 362(b)(3) exception to the automatic stay would apply, and the lien can be filed."

Next, [Section 503\(b\)\(9\) Claims – What Does "Receipt" Really Mean?](#)

As you know, [503\(b\)\(9\)](#) is the section of the bankruptcy code that allows "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business" to be considered administrative — giving them priority and increasing the likelihood of payment.

According to the article, the bankruptcy code doesn't define "receipt," so the courts looked to the UCC.

"The Third Circuit also based its decision on the UCC's explicit distinction of "receipt" and "delivery" – observing that while a supplier may be contractually obligated to "deliver" goods, that does not necessarily mean a buyer receives them – and that delivery and receipt can occur at two separate times."

So, what is the time of receipt? In this opinion, receipt occurred when the debtor physically took possession of the goods.

"...[R]eceipt did not occur until the goods were *physically* in the debtor's possession, which occurred *within* the 20-day period, enabling the creditors to succeed in meeting the prerequisite element that the goods were "received" within the 20-day period as required by Section 503(b)(9)."

## NCS Blog

The first step in securing mechanic's lien or bond claim rights is often the service of a statutory notice. The statutory notice, depending on the project state, may be called any number of names: Preliminary Notice, Prelien Notice, Notice to Owner, Notice of Furnishing, and the list goes on.

Once the preliminary type notice is served, and payment has not been received, a Notice of Intent may be required. Read this week's blog post to learn [What is a Notice of Intent to Lien?](#)